

Assembly Bill No. 1965

CHAPTER 554

An act to amend Section 65007 of the Government Code, and to amend Section 9610 of the Water Code, relating to land use.

[Approved by Governor September 25, 2012. Filed with Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1965, Pan. Land use.

Existing law requires the Department of Water Resources to develop preliminary maps for the 100- and 200-year flood plains protected by project levees, as specified, and to provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley.

This bill would additionally require the department, on or before July 2, 2013, to release floodplain maps, as specified, and the available data as to the water surface elevation of flooding in urban areas, as specified. The bill would provide that the department's issuance of floodplain maps are not subject to the review and approval of the Office of Administrative Law, as specified. The bill would provide that the state or any state agency is not liable for any claim based upon the reasonable exercise or performance of a discretionary or ministerial function or duty pursuant to this provision. The bill would incorporate additional changes pursuant to SB 1278, as specified.

This bill would become operative only if SB 1278 is enacted and takes effect on or before January 1, 2013, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 65007 of the Government Code is amended to read:

65007. As used in this title, the following terms have the following meanings, unless the context requires otherwise:

(a) "Adequate progress" means all of the following:

(1) The total project scope, schedule, and cost of the completed flood protection system have been developed to meet the appropriate standard of protection.

(2) (A) Revenues that are sufficient to fund each year of the project schedule developed in paragraph (1) have been identified and, in any given year and consistent with that schedule, at least 90 percent of the revenues scheduled to be received by that year have been appropriated and are currently being expended.

(B) Notwithstanding subparagraph (A), for any year in which state funding is not appropriated consistent with an agreement between a state agency and a local flood management agency, the Central Valley Flood Protection Board may find that the local flood management agency is making adequate progress in working toward the completion of the flood protection system.

(3) Critical features of the flood protection system are under construction, and each critical feature is progressing as indicated by the actual expenditure of the construction budget funds.

(4) The city or county has not been responsible for a significant delay in the completion of the system.

(5) The local flood management agency shall provide the Department of Water Resources and the Central Valley Flood Protection Board with the information specified in this subdivision sufficient to determine substantial completion of the required flood protection. The local flood management agency shall annually report to the Central Valley Flood Protection Board on the efforts in working toward completion of the flood protection system.

(b) “Central Valley Flood Protection Plan” has the same meaning as that set forth in Section 9612 of the Water Code.

(c) “Developed area” has the same meaning as that set forth in Section 59.1 of Title 44 of the Code of Federal Regulations.

(d) “Flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency. The identification of flood hazard zones does not imply that areas outside the flood hazard zones, or uses permitted within flood hazard zones, will be free from flooding or flood damage.

(e) “National Federal Emergency Management Agency standard of flood protection” means the level of flood protection that is necessary to withstand flooding that has a 1-in-100 chance of occurring in any given year using criteria developed by the Federal Emergency Management Agency for application in the National Flood Insurance Program.

(f) “Nonurbanized area” means a developed area or an area outside a developed area in which there are fewer than 10,000 residents that is not an urbanizing area.

(g) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(h) “Sacramento-San Joaquin Valley” means lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or their tributaries or connected therewith, or upon any land adjacent thereto, or within the overflow basins thereof, or upon land susceptible to overflow therefrom. The Sacramento-San Joaquin Valley does not include lands lying within the Tulare Lake basin, including the Kings River.

(i) “State Plan of Flood Control” has the same meaning as that set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

(j) “Tulare Lake basin” means the Tulare Lake Hydrologic Region as defined in the California Water Plan Update 2009, prepared by the

Department of Water Resources pursuant to Chapter 1 (commencing with Section 10004) of Part 1.5 of Division 6 of the Water Code.

(k) “Undetermined risk area” means an urban or urbanizing area within a moderate flood hazard zone, as delineated on an official flood insurance rate map issued by the Federal Emergency Management Agency, which has not been determined to have an urban level of protection.

(l) “Urban area” means a developed area in which there are 10,000 residents or more.

(m) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(n) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources. “Urban level of flood protection” shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection.

SEC. 2. Section 9610 of the Water Code is amended to read:

9610. (a) (1) By July 1, 2008, the department shall develop preliminary maps for the 100- and 200-year flood plains protected by project levees. The 100-year flood plain maps shall be prepared using criteria developed or accepted by the Federal Emergency Management Agency (FEMA).

(2) The department shall use available information from the 2002 Sacramento and San Joaquin River Basins Comprehensive Study, preliminary and regulatory FEMA flood insurance rate maps, recent flood plain studies, and other sources to compile preliminary maps.

(3) The department shall provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley for use as best available information relating to flood protection.

(4) The department shall post this information on the board’s Internet Web site and may periodically update the maps as necessary.

(b) By July 1, 2008, the department shall give notice to cities in the Sacramento-San Joaquin Valley outside areas protected by project levees regarding maps and other information as to flood risks available from the Federal Emergency Management Agency or another federal, state, or local agency.

(c) On or before December 31, 2010, the department shall prepare a status report on the progress and development of the Central Valley Flood Protection Plan pursuant to Section 9612. The department shall post this information on the board’s Internet Web site, and make it available to the public.

(d) (1) On or before July 2, 2013, and for the purpose of providing information to cities and counties necessary for their determinations relating to level of flood protection, the department shall release flood plain maps that identify at a minimum the facilities of the State Plan of Flood Control and the available data as to the water surface elevation of flooding in urban

areas in the event of the failure of the facilities of the State Plan of Flood Control during flooding that has a 1-in-200 chance of occurring in any given year.

(2) Concurrent with the release of these maps and for the purpose of assisting local agencies in determining their level of flood protection, the department shall make available levee reliability data for the facilities of the State Plan of Flood Control identified in the maps.

(e) The department's issuance of flood plain maps shall not be subject to the review and approval of the Office of Administrative Law or to any other requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The state, or any state agency, shall not be liable for any claim based upon the reasonable exercise or performance of a discretionary or ministerial function or duty on the part of a state agency or a state employee or officer in carrying out subdivision (d).

SEC. 3. This act shall become operative only if Senate Bill 1278 is enacted and takes effect on or before January 1, 2013, and this bill is enacted last.