

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 18, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 753

Introduced by Senator Steinberg

(Coauthors: Assembly Members Dickinson and Pan)

February 22, 2013

An act to amend Section 8732 of, to add Section 8579 to, and to repeal and add Article 6 (commencing with Section 8700) of Chapter 3 of Part 4 of Division 5 of, the Water Code, relating to flood protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 753, as amended, Steinberg. Central Valley Flood Protection Board.

(1) Existing law provides the Central Valley Flood Protection Board with the authority to construct and maintain various flood control works. Existing law authorizes the board to hold a hearing or partial hearing before a committee of one or more members of the board, or before the general manager or chief engineer of the board, at any place within the state.

This bill would eliminate the authorization for the board to hold a hearing before the general manager and would authorize the board to hold a hearing or partial hearing before a qualified neutral hearing officer designated by the board president or the executive officer.

(2) Existing law requires specified plans that contemplate the construction, enlargement, revetment, or alteration of any levee, embankment, canal, or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or specified lands to be approved by the board before construction is commenced.

Existing law authorizes the board, and the executive officer if delegated that authority, to issue an order directing a person or public agency to cease and desist from undertaking, or threatening to undertake, an activity that may encroach on levees, channels, or other flood control works under the jurisdiction of the board. Existing law requires the cease and desist order to be issued only if the person or public agency has failed to respond in a satisfactory manner to a prescribed notice provided, as specified. Existing law provides that a cease and desist order is effective upon its issuance and that copies are required to be served immediately by certified mail upon the person or agency subject to the order.

This bill would repeal these provisions and provide that it is unlawful for any person or public agency to interfere with, obstruct the performance, maintenance, or operation of, or otherwise take actions that may adversely affect facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board. This bill would authorize the board, following notice and opportunity for a hearing, to order the removal or modification of an encroachment that was previously issued a permit by the board if the board makes a specified finding.

This bill would authorize the board, the executive officer, the department, or certain local agencies to issue a notice of violation, as specified, if it is determined that any person or public agency has undertaken, is threatening to undertake, or maintains any encroachment, flood system, improvement, or activity in violation of certain provisions. If the board or executive officer determines that any person or public agency has failed to adequately respond to a notice of violation, this bill would authorize the board or executive officer to issue an order directing that person or public agency to cease and desist, as specified. This bill would require that if the board determines that any person or public agency has failed to correct a violation as required in a cease and desist order, the board shall hold an enforcement hearing and may, at the conclusion of the hearing, issue an enforcement order, as prescribed.

This bill would provide the board, executive officer, Department of Water Resources, and local agencies that operate and maintain facilities and works on behalf of the board with the authority, as prescribed, to take administrative or civil enforcement actions to abate and remedy any interference or potential interference with facilities of the State Plan of Flood Control, designated floodways, or streams that are regulated by the board. This bill would establish the Flood Risk Management Fund in the State Treasury and require all funds received from these penalties to be paid into the fund and available, upon appropriation by the Legislature, to be expended by the board to carry out enforcement of these provisions. The bill would require the board to adopt emergency regulations necessary to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 8579 is added to the Water Code, to read:
 2 8579. (a) Any aggrieved person shall have a right to seek
 3 judicial review of any permit or enforcement order issued by the
 4 board by filing a petition for a writ of mandate in accordance with
 5 Section 1094.5 of the Code of Civil Procedure, within 30 days
 6 after the decision or action has become final.

7 (b) For purposes of this section, an “aggrieved person” means
 8 any person or public agency that, in person or through a
 9 representative, appeared at a public hearing of the board in
 10 connection with the decision or action appealed, or that, by other
 11 appropriate means before the decision, informed the board of the
 12 nature of their concerns.

13 SEC. 2. Article 6 (commencing with Section 8700) of Chapter
 14 3 of Part 4 of Division 5 of the Water Code is repealed.

15 SEC. 3. Article 6 (commencing with Section 8700) is added
 16 to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:

17
 18 Article 6. Enforcement of Unauthorized Activities and
 19 Encroachments
 20

21 8700. (a) It is unlawful for any person or public agency to
 22 interfere with, obstruct the performance, maintenance, or operation
 23 of, or otherwise take actions that may adversely affect facilities of

1 the State Plan of Flood Control, designated floodways, or streams
2 that are regulated by the board.

3 (b) The board, executive officer, department, and local agencies
4 that operate and maintain facilities and works on behalf of the
5 board shall have the authority, as set forth in this article, to take
6 administrative or civil enforcement actions to abate and remedy
7 any interference or potential interference proscribed ~~in~~ by
8 subdivision (a).

9 8701. (a) If the board or the executive officer determines that
10 any person or public agency has undertaken, is threatening to
11 undertake, or maintains any encroachment, flood system
12 improvement, or activity in violation of this part, the board or the
13 executive officer may issue a notice of violation to the person or
14 public agency responsible for the encroachment, flood system
15 improvement, or activity.

16 (b) The department or a local agency may issue a notice of
17 violation pursuant to subdivision (a) for facilities within the board's
18 jurisdiction that the department or local agency operates and
19 maintains if the board delegates the agency that authority. This
20 subdivision shall not require the department or local agency to
21 accept that delegation of authority.

22 (c) A notice of violation shall include all of the following:

23 (1) A statement describing the activity, failure to act, flood
24 system improvement, or encroachment that constitutes a violation
25 of this article, including the sections of this part or board
26 regulations that are being violated.

27 (2) A statement of whether the activity, flood system
28 improvement, or encroachment may be eligible for a permit from
29 the board.

30 (3) The corrective actions that shall be taken within a specified
31 time period.

32 (4) Whether the person or public agency may correct the
33 violation without obtaining prior approval from the board or
34 executive officer, or whether prior approval from the board or
35 executive officer must be obtained prior to taking a corrective
36 action.

37 (5) A statement that the notice of violation shall be referred to
38 the board and that the failure to take the requested actions within
39 the time specified may subject the person or public agency to a
40 cease and desist order and the imposition of further remedial and

1 enforcement actions, including, but not limited to, correction of
2 the violation by the board at the person's or public agency's
3 expense and penalties.

4 (6) The name, address, and telephone number of the state or
5 issuing agency that may be contacted for further information.

6 (d) The notice of violation shall be served in accordance with
7 Section 8703 and a copy transmitted to the executive officer within
8 five calendar days of its issuance. The board or the executive
9 officer may amend the notice of violation, and, once served in
10 accordance with Section 8703, the amended notice of violation
11 shall supersede any notice of violation previously issued for the
12 same violation.

13 8701.2. (a) If the board or executive officer determines that
14 any person or public agency has failed to adequately respond to a
15 notice of violation, the board or executive officer may issue an
16 order directing that the person or public agency to whom the notice
17 of violation was issued to cease and desist. ~~Nothing shall prevent~~
18 ~~the board or executive officer from issuing a cease and desist order~~
19 ~~in cases where it deems a notice of violation would not to be in~~
20 ~~the best interest of the state.~~

21 (b) *Nothing shall prevent the board or executive officer from*
22 *issuing a cease and desist order without first issuing a notice of*
23 *violation in cases where it deems a notice of violation would not*
24 *be in the best interest of the state. In the event the board issues a*
25 *cease and desist order without first issuing a notice of violation,*
26 *the cease and desist order shall contain the information required*
27 *under subdivision (c) of Section 8701.*

28 (b)

29 (c) A cease and desist order shall do all of the following:

30 (1) Include a copy of the notice of violation.

31 (2) Be effective upon its issuance and served immediately
32 pursuant to Section 8703.

33 (3) Require that the corrective actions described in the notice
34 of violation be completed within a specified time period or the
35 person or public agency shall be subject to an enforcement order
36 pursuant to Section 8701.4.

37 (4) Provide a date, time, and location of a public meeting before
38 the board at which the ~~person, entity,~~ *person* or public agency may
39 appear to contest the cease and desist order.

40 (e)

1 (d) The meeting noticed pursuant to paragraph (4) of subdivision
2 (b) (c) shall be consistent with all of the following:

3 (1) The meeting shall be scheduled *to occur* at least 30 days
4 after issuance of the cease and desist order and shall be held
5 pursuant to the provisions of this part and regulations adopted by
6 the board.

7 (2) At the meeting, the board may affirm, amend, modify, stay,
8 or rescind the cease and desist order.

9 (3) If a person or public agency subject to a cease and desist
10 order fails to appear at the meeting, the cease and desist order may
11 be approved by default.

12 8701.4. (a) If the board or executive officer determines that
13 any person or public agency has failed to correct a violation as
14 outlined in a cease and desist order, the board shall hold an
15 enforcement hearing to consider the issuance of an enforcement
16 order.

17 (b) The enforcement hearing shall comply with all of the
18 following:

19 (1) Notice of the ~~hearing~~ *hearing*, issued pursuant to Section
20 8703, shall be provided at least 30 days before the hearing is
21 scheduled ~~pursuant to Section 8703~~ *to occur*, unless it is determined
22 that the public interest necessitates a shorter notice period.

23 (2) Notice of the hearing shall include a proposed enforcement
24 order, including any proposed administrative penalties.

25 (3) The hearing shall be held pursuant to the provisions of this
26 part and regulations adopted by the board.

27 (4) If the person or public agency subject to the cease and desist
28 order fails to appear at the hearing, the right to a hearing will be
29 deemed waived.

30 (c) At the conclusion of the hearing, the board may approve,
31 amend, or reject the proposed enforcement order and thereby take
32 any and all of the following actions:

33 (1) Order the removal, modification, or abatement of the
34 encroachment, flood system improvement, or activity causing a
35 violation of this part.

36 (2) Order the restoration of the site.

37 (3) Impose and require the payment of administrative penalties
38 as set forth in Section 8704.

1 (4) Order the recording of the enforcement order with the office
2 of the county recorder of the county in which the property
3 associated with the violation is located.

4 ~~(4)~~

5 (5) Initiate a civil action in the name of the state for mandamus,
6 injunction, civil penalties, or other appropriate remedy authorized
7 by law.

8 ~~(5)~~

9 (6) Order any other actions or conditions as the board may
10 determine are necessary to resolve the violation and ensure
11 compliance with this part.

12 (d) The enforcement order shall state any necessary findings
13 and shall be served immediately pursuant to Section 8703.

14 (e) A ~~person, entity,~~ person or public agency against which the
15 board has issued an enforcement order may seek judicial review
16 of the enforcement order pursuant to Section 8579. The
17 enforcement order shall be deemed effective upon issuance.

18 (f) If the board orders ~~removal and~~ removal, modification,
19 abatement, or restoration pursuant to this part, the board, its
20 contractor, or its designee may conduct the ~~removal and restoration~~
21 work, the costs of which shall be collected from the responsible
22 person or public agency by whatever legal remedy is available,
23 including, but not limited to, the placement of a lien on the property
24 owned by the person or public agency responsible for the violation
25 pursuant to Section 8704.2. ~~Removal~~ Removal, modification,
26 abatement, or restoration actions shall not be taken by the board
27 until after the time for judicial review has passed.

28 (g) If the board orders the enforcement order to be recorded
29 with the office of the county recorder, the executive officer shall
30 issue a certificate of abatement to the person or public agency
31 against whose property the enforcement order was recorded when
32 the enforcement action has been fully resolved, including the
33 payment of any costs and penalties. The person or public agency
34 may, at the owner's expense, record the certificate with the office
35 of the county recorder.

36 ~~(g)~~

37 (h) This section does not authorize the issuance of an
38 enforcement order as to any lawful activity undertaken by a public
39 agency pursuant to Section 8708.

1 8702. (a) The board, following notice and opportunity for a
2 hearing, may order the removal or modification of an encroachment
3 that was previously issued a permit by the board if the board makes
4 one of the following findings based on substantial evidence:

5 (1) The encroachment presents a threat to the structural integrity
6 of the levee, channel, flood control work, or other facility of the
7 State Plan of Flood Control.

8 (2) The encroachment impairs the functional capability of the
9 levee, channel, flood control work, or other facility of the State
10 Plan of Flood Control to fulfill its particular intended role in the
11 overall flood control plan.

12 (3) The encroachment is not in conformance with state law,
13 board regulations, or, in the case of facilities of the State Plan of
14 Flood Control, the standards and regulations of the Secretary of
15 the Army.

16 (b) Routine maintenance by the board, the executive officer,
17 *the department*, or local agencies that operate and maintain
18 facilities and works on behalf of the board that includes the removal
19 or modification of abandoned property, fences, gates, and
20 vegetation on a levee or other flood control structure shall not be
21 subject to this section.

22 (c) The removal *or modification* of previously permitted
23 encroachments shall not be subject to administrative or civil
24 penalties pursuant to Section 8704 or 8704.1.

25 (d) *If the board orders the removal or modification of a*
26 *previously permitted encroachment, the permit for the*
27 *encroachment shall be modified or revoked accordingly.*

28 8703. Notice and service required by this article shall be
29 provided to the person or public agency believed to be responsible
30 for the violation and the owner of the property on which the
31 violation occurred or is threatened to occur by one of the following
32 means:

33 (a) Hand delivery.

34 (b) Certified mail.

35 (c) If the person or agency cannot be reached or reasonably
36 notified pursuant to subdivision (a) or (b), by placing a copy of
37 the notice or order on the encroachment or property.

38 8704. (a) Civil penalties may be imposed by a court of
39 competent jurisdiction against any person or public agency that
40 undertakes an activity, flood system improvement, or encroachment

1 that is in violation of this part or that is inconsistent with any ~~permit~~
2 ~~or permit~~, cease and desist ~~order~~ *order*, or *enforcement order*
3 previously issued by the board or executive officer in an amount
4 not less than five hundred dollars (\$500) and not greater than thirty
5 thousand dollars (\$30,000).

6 (b) In addition to any other penalties, civil penalties may be
7 imposed by a court of competent jurisdiction against any person
8 or public agency that intentionally and knowingly undertakes an
9 activity, flood system improvement, or encroachment that is in
10 violation of this part or that is inconsistent with any ~~permit~~ ~~or~~
11 *permit*, cease and desist ~~order~~ *order*, or *enforcement order*
12 previously issued by the board or executive officer in an amount
13 that shall not be less than one thousand dollars (\$1,000) or more
14 than fifteen thousand dollars (\$15,000) per day for each day in
15 which the ~~encroachment~~ *violation* persists.

16 (c) In determining the amount of liability pursuant to
17 subdivisions (a) and (b), the following factors shall be considered:

18 (1) The nature, circumstance, extent, and gravity of the violation.

19 (2) Whether the violation is susceptible to ~~restoration~~ *removal*,
20 *modification*, *abatement*, *restoration*, or other remedial measures.

21 (3) Whether the function of the levee, channel, or other flood
22 control work is affected by the violation.

23 (4) The cost to the state of bringing the action.

24 (5) With respect to the person or public agency responsible for
25 the violation, any voluntary ~~restoration~~ ~~or~~ remedial measures
26 undertaken, any prior history of violations, the degree of
27 culpability, economic profits, if any, resulting from, or expected
28 to result as a consequence of, the violation, and other matters ~~the~~
29 ~~board deems~~ *deemed* relevant.

30 (d) Civil penalties may be imposed by a court of competent
31 jurisdiction against any ~~person, entity~~, *person* or public agency
32 that intentionally or negligently violates any cease and desist order
33 issued, reissued, or amended by the board, or any ~~restoration~~
34 *enforcement* order issued, reissued, or amended by the board in
35 an amount that shall not exceed six thousand dollars (\$6,000) for
36 each day in which that violation persists. Any actual penalty
37 imposed shall be reasonably proportionate to the damage suffered
38 as a consequence of the violation.

39 8704.1. (a) Administrative penalties may be imposed by the
40 board in the same manner as civil penalties described in Section

1 8704, upon an enforcement hearing and issuance of an enforcement
2 order pursuant to Section 8701.4, but shall not be less than five
3 hundred dollars (\$500) or exceed fifty thousand dollars (\$50,000)
4 for a single violation.

5 (b) In imposing penalties, the board shall express its rationale
6 for the amount and specifically address the factors listed under
7 subdivision (c) of Section 8704.

8 (c) Any penalties imposed shall be paid within 60 days.

9 (d) A person or public agency shall not be subject to both civil
10 and administrative penalties for the same violation.

11 (e) After the time for judicial review pursuant to Section 8579
12 has passed, the board may apply to the clerk of the appropriate
13 court in the county in which the administrative penalties were
14 imposed for a judgment to collect the penalties assessed. The
15 application, which shall include a certified copy of the board action,
16 constitutes a sufficient showing to warrant issuance of the
17 judgment. The clerk shall enter judgment immediately in
18 conformity with the application. The judgment so entered has the
19 same force and effect, and is subject to all the provisions of law
20 relating to, a judgment in a civil action and may be enforced in the
21 same manner as any other judgment of the court in which it is
22 entered.

23 8704.2. (a) Pursuant to subdivision (f) of Section 8701.4, the
24 board or the board's designee shall have the authority to record a
25 lien with the county clerk in the county of this state where the
26 person's or agency's property responsible for the violation is
27 located, to recover any and all of the following:

28 (1) Costs incurred in abating, removing, and restoring a
29 violation, including, but not limited to, costs incurred in seeking
30 *modification*, removal, abatement, ~~and~~ *or* restoration pursuant to
31 this part.

32 (2) Costs incurred in the summary abatement of emergencies.

33 (3) Attorney's fees associated with actions to enforce this part.

34 (b) A lien recorded pursuant to this section shall have the same
35 force, effect, and priority as a judgment lien.

36 (c) Before recording a lien, the board shall provide notice and
37 an opportunity for a hearing to contest the amount of the lien.

38 (1) Notice shall be provided at least 20 days before the hearing
39 pursuant to Section 8703.

1 (2) The hearing required by this section may be satisfied by an
2 enforcement order hearing pursuant to Section 8701.4 or, in the
3 summary abatement of emergencies, a hearing pursuant to Section
4 8708.

5 8704.4. The remedies provided by this article are not exclusive
6 of, but shall be concurrent with and in addition to, any other
7 remedy, penalty, or sanction that may exist by law, civil or
8 criminal. The board may enforce compliance with the provisions
9 of this article by mandamus, mandatory injunction, or by any other
10 appropriate remedy authorized by law. The action or proceeding
11 may be commenced and maintained by the board in the name of
12 the state.

13 8705. The Flood Risk Management Fund is hereby established
14 in the State Treasury. All funds received from penalties pursuant
15 to this article shall be paid into the fund. Upon appropriation by
16 the Legislature, the moneys in the fund shall be expended by the
17 board to carry out enforcement pursuant to this part, including the
18 costs of the ~~abatement and~~ *modification, removal, abatement, or*
19 *restoration of violations and recent related* litigation.

20 8706. The board may maintain actions in the name of the state
21 to compel by injunction the owner or owners of any bridge, trestle,
22 wire line, viaduct, embankment, or other structure or obstruction
23 that shall be intersected, traversed, or crossed by any bypass,
24 drainage canal, channel, or overflow channel to construct or alter
25 any structure in order to offer a minimum of obstruction to the free
26 flow of water. In the case of existing works, the board may compel
27 the removal or alteration of structures or obstructions that impede
28 the free flow of water.

29 8706.5. Any activity that does or may interfere with, obstruct
30 the performance, maintenance, or operation of, or otherwise
31 adversely affect facilities of the State Plan of Flood Control,
32 designated floodways, or streams that are regulated by the board
33 constitutes a public nuisance, and the board may commence and
34 maintain a suit in the name of the people of the state for the
35 prevention or abatement of that nuisance.

36 8707. If the board or Attorney General prevails in a civil action
37 to enforce this part, or if a local agency prevails in a civil action
38 to seek abatement costs under subdivision ~~(b)~~ (c) of Section 8708
39 or ~~removal~~ *modification, removal, abatement, or restoration* costs
40 as the board's designee under subdivision (f) of Section 8701.4,

1 the board, Attorney General, or local agency shall be awarded
2 attorney’s fees and costs, including, but not limited to, any fees
3 and costs incurred by its agents.

4 8708. (a) Nothing in this article shall be construed to prevent
5 the department, the board, the executive officer, or a
6 levee-maintaining agency from taking any action to prevent an
7 imminent failure of a levee, channel, floodway, stream bank, or
8 flood control feature, or other emergency action necessary to
9 protect the public welfare.

10 (b) To the extent emergency action is required that involves the
11 removal, modification, or abatement of an encroachment, flood
12 system improvement, or activity maintained by an ~~individual,~~
13 ~~entity,~~ *individual* or public agency, the ~~individual,~~ ~~entity,~~ *individual*
14 or public agency may request a hearing before the board within
15 30 days after the action has been commenced.

16 (c) After a public hearing, by request or by its own motion, the
17 entity that has carried out the abatement functions pursuant to this
18 section may seek reimbursement of its abatement costs and may
19 pursue any legal remedies available to recover its costs, including
20 imposing a lien pursuant to Section 8704.2.

21 8709. The board shall adopt emergency regulations necessary
22 to implement this article in accordance with Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code. The adoption of emergency regulations
25 shall be deemed an emergency and necessary for the immediate
26 preservation of the public peace, health and safety, or general
27 welfare.

28 SEC. 4. Section 8732 of the Water Code is amended to read:

29 8732. The board may hold a hearing or partial hearing before
30 a committee of one or more members of the board, before a
31 qualified neutral hearing officer designated by the board president,
32 or before the executive officer or chief engineer of the board, at
33 any place within the state.

O