

AMENDED IN SENATE AUGUST 15, 1996
AMENDED IN SENATE AUGUST 8, 1996
AMENDED IN SENATE AUGUST 5, 1996
AMENDED IN SENATE JULY 16, 1996
AMENDED IN SENATE JULY 8, 1996
AMENDED IN SENATE MAY 20, 1996
AMENDED IN SENATE APRIL 10, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 360

Introduced by Assembly Member Hannigan

February 10, 1995

An act to amend Sections 12300, 12301, 12303, 12310, 12311, 12312, 12314, 12316, 12980, 12981, 12984, 12986, 12987, 12988, and 12989 of, to amend and repeal Section 12987.5 of, and to add Sections 12318, 12994, and 12995 to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 360, as amended, Hannigan. Delta flood protection: delta levee maintenance.

(1) Existing law creates, until January 1, 1999, the Delta Flood Protection Fund to provide funds for delta levee maintenance subventions. Existing law provides for special delta flood protection projects at certain locations in the delta

for specified purposes, as prescribed, and imposes related environmental mitigation and protection requirements. Existing law defines “project” as a flood control improvement or interests in land acquired for flood control improvement.

This bill would revise those provisions to, among other things, extend the existence of the fund until July 1, 2006, authorize the use of fund money for projects at any other location in the delta and certain levees on specified islands bordering the Northern Suisun Bay, extend the application of special delta flood project provisions to specified project levees, as defined, and require net long-term habitat improvement.

The bill would authorize the Resources Agency to establish a team of federal, state, and local agencies, *and other persons or entities with a stake in finding a solution to the problems of the delta levees*, to develop recommendations for the beneficial reuse of dredged material, as prescribed.

(2) Existing law governing delta levee maintenance requires the Department of Water Resources to develop and submit to the Reclamation Board, for adoption by the board, criteria for the maintenance and improvement of levees that are not project facilities under the State Water Resources Law of 1945, known as nonproject levees, as prescribed. Existing law provides for the reimbursement of eligible local agencies for costs incurred in any year for the maintenance or improvement of nonproject levees. Local agencies that maintain nonproject levees, to be eligible for reimbursement, are required to submit to the board plans for the maintenance and improvement of the levees, as prescribed.

This bill would require those maintenance and improvement criteria to include specified vegetation management guidelines. The bill would revise those reimbursement provisions to, among other things, provide for the reimbursement of eligible local agencies for costs incurred for the maintenance or improvement of project levees, defined as federal flood control levees that are project facilities under the State Water Resources Law of 1945 and other specified existing law, if not less than a majority of the acreage within the jurisdiction of the local agency that maintains the levee is within the primary zone of the delta, as



defined. The bill would also require local agencies that maintain project levees, and seek reimbursement, to submit levee maintenance and improvement plans, as prescribed, and would revise plan requirements with regard to subsidence, easements, and net long-term habitat improvement.

The bill would authorize the Department of Water Resources to use maintenance and improvement funds, as specified, in an emergency, as defined, prepare a delta emergency response plan for levee failures, as prescribed, and establish a multiagency emergency response team to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.

The bill would authorize the Department of Water Resources and the board to cooperate with the United States Army Corps of Engineers to develop and implement delta levee rehabilitation, improvement, and realignment, and enhance the environment.

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 12300 of the Water Code is
2 amended to read:

3 12300. (a) The Delta Flood Protection Fund is
4 hereby created in the State Treasury. There shall be
5 deposited in the fund all moneys appropriated to the fund
6 and all income derived from the investment of moneys
7 that are in the fund.

8 (b) It is the intent of the Legislature to appropriate, in
9 accordance with Section 12938, twelve million dollars
10 (\$12,000,000) each year through fiscal year 1998–99 to the
11 Delta Flood Protection Fund from moneys deposited in
12 the California Water Fund pursuant to subdivision (b) of
13 Section 6217 of the Public Resources Code. It is further
14 the intent of the Legislature to appropriate annually
15 moneys in the Delta Flood Protection Fund to the
16 department for expenditure and allocation, without



1 regard to fiscal years, in the following amounts and for the
2 following purposes:

3 (1) Six million dollars (\$6,000,000) annually for local
4 assistance under the delta levee maintenance
5 subventions program pursuant to Part 9 (commencing
6 with Section 12980), and for the administration thereof.

7 (2) Six million dollars (\$6,000,000) annually for special
8 delta flood protection projects under Chapter 2
9 (commencing with Section 12310) and subsidence
10 studies and monitoring, and the administration thereof.
11 These funds shall only be allocated for projects on Bethel,
12 Bradford, Holland, Hotchkiss, Jersey, Sherman,
13 Twitchell, and Webb Islands, and at other locations in the
14 delta and for the Towns of Thornton and Walnut Grove
15 and for approximately 12 miles of levees on islands
16 bordering the Northern Suisun Bay from Van Sickle
17 Island westerly to Montezuma Slough.

18 (c) Any moneys unexpended at the end of a fiscal year
19 shall revert to the Delta Flood Protection Fund and shall
20 be available for appropriation by the Legislature for the
21 purposes specified in subdivision (b).

22 (d) It is the intent of the Legislature that, to the extent
23 consistent with Sections 12314, 12987, and 78543, projects
24 funded under subdivision (b) shall be consistent with the
25 delta ecosystem restoration strategy of the CALFED
26 Bay-Delta Program.

27 SEC. 2. Section 12301 of the Water Code is amended
28 to read:

29 12301. The Delta Flood Protection Fund is hereby
30 abolished on July 1, 2006, and all unencumbered moneys
31 in the fund are transferred to the General Fund.

32 SEC. 3. Section 12303 of the Water Code is amended
33 to read:

34 12303. (a) It is the intent of the Legislature that,
35 subject to subdivision (b) of Section 12929.12, if twelve
36 million dollars (\$12,000,000) or any lesser amount is
37 transferred pursuant to paragraph (3) of subdivision (b)
38 of Section 12937 to the California Water Fund from the
39 California Water Resources Development Bond Fund in
40 each of the fiscal years 1990–91 to 1997–98, inclusive, and



1 if six million dollars (\$6,000,000) or any lesser amount is
2 so transferred in the 1998–99 fiscal year, that amount shall
3 be appropriated to the Delta Flood Protection Fund for
4 the purposes specified in subdivision (b) of Section 12300,
5 in lieu of the funds deposited in the California Water
6 Fund pursuant to subdivision (b) of Section 6217 of the
7 Public Resources Code. However, that the director, in
8 consultation with the Department of Finance, may
9 accelerate payments to the California Water Fund for
10 reappropriation to the Delta Flood Protection Fund if the
11 director deems it appropriate to do so.

12 (b) The obligation of the State Water Resources
13 Development System to reimburse the California Water
14 Fund, pursuant to paragraph (3) of subdivision (b) of
15 Section 12937, shall decrease by amounts equal to the
16 amounts which are transferred from the California Water
17 Resources Development Bond Fund to the California
18 Water Fund and appropriated to the Delta Flood
19 Protection Fund pursuant to subdivision (a).

20 (c) For any fiscal year, the Director of Finance, in
21 consultation with the Director of Water Resources, may
22 recommend in the Budget Act a source of funding for the
23 Delta Flood Protection Fund which is different from that
24 set forth in subdivision (a). If the Legislature approves
25 the alternative source of funding, the portion of the State
26 Water Resources Development System obligation
27 specified in subdivision (b) which remains outstanding
28 because of the selection of the alternative funding source
29 shall be discharged pursuant to subdivision (b) of Section
30 11913.

31 (d) It is the intent of the Legislature, upon the creation
32 of the Delta Levee Rehabilitation Subaccount pursuant
33 to Section 78540, as proposed to be added by S.B. 900 of
34 the 1995–96 Regular Session, that subdivisions (a), (b),
35 and (c) shall not apply to the Delta Levee Rehabilitation
36 Subaccount and that the funds of the subaccount shall be
37 available to fund equally both of the following:

38 (1) The delta levee maintenance subventions
39 program pursuant to Part 9 (commencing with Section



1 12980), associated mitigation and habitat improvement
2 programs, and the administration thereof.

3 (2) The special delta flood protection projects
4 pursuant to Chapter 2 (commencing with Section 12310),
5 associated mitigation and habitat improvement
6 programs, and the administration thereof.

7 SEC. 4. Section 12310 of the Water Code is amended
8 to read:

9 12310. As used in this chapter, the following terms
10 have the following meanings:

11 (a) "Local public agency" means a reclamation
12 district or levee district or other public agency
13 responsible for the maintenance of a nonproject levee as
14 defined in subdivision (d) of Section 12980 or a project
15 levee as defined in subdivision (e) of Section 12980.

16 (b) "Project" means the flood control improvement
17 and any mitigation and habitat improvement
18 constructed, or interests in land acquired, for those
19 purposes pursuant to this part.

20 (c) "Department" means the Department of Water
21 Resources.

22 (d) "Delta" means the Sacramento-San Joaquin Delta
23 as described in Section 12220.

24 (e) "Net long-term habitat improvement" means
25 enhancement of riparian, fisheries, and wildlife habitat.

26 (f) "CALFED Bay Delta Program" or "CALFED
27 program" means the program established in May 1995 as
28 a joint effort among state and federal agencies with
29 management and regulatory responsibilities in the San
30 Francisco Bay and Sacramento-San Joaquin River Delta
31 to develop long-term solutions to resource management
32 problems involving the bay-delta.

33 SEC. 5. Section 12311 of the Water Code is amended
34 to read:

35 12311. (a) The department shall develop and
36 implement a program of flood control projects on Bethel,
37 Bradford, Holland, Hotchkiss, Jersey, Sherman,
38 Twitchell, and Webb Islands, and at other locations in the
39 delta and for the Towns of Thornton and Walnut Grove,
40 and for approximately 12 miles of levees on islands



1 bordering Northern Suisun Bay from Van Sickle Island
2 westerly to Montezuma Slough. This program shall have,
3 as its primary purpose, the protection of discrete and
4 identifiable public benefits, including the protection of
5 public highways and roads, utility lines and conduits, and
6 other public facilities, and the protection of urbanized
7 areas, water quality, recreation, navigation, and fish and
8 wildlife habitats, and other public benefits. The program
9 shall also include net long-term habitat improvement.

10 (b) Notwithstanding subdivision (a), the department
11 shall develop and recommend a plan of action, including
12 alternatives, for flood control for the Towns of Thornton
13 and Walnut Grove and shall submit the plan to the
14 Legislature by January 1, 1989. The department shall not
15 allocate any funds for implementation of the plan of
16 action for flood control for the Towns of Thornton and
17 Walnut Grove until a plan is approved by the Legislature.

18 SEC. 6. Section 12312 of the Water Code is amended
19 to read:

20 12312. The department may expend any moneys
21 available to it pursuant to paragraph (2) of subdivision
22 (b) of Section 12300 or any moneys available from other
23 sources of funding appropriated by the Legislature for
24 the purposes of this part. In addition, the department
25 shall seek a sharing of costs with the beneficiaries or
26 owners or operators of the public facilities benefited by
27 the flood protection projects. The department shall also
28 seek cost sharing with, or financial assistance from,
29 federal agencies which have programs applicable to, or
30 which have an interest in, the flood protection projects.

31 SEC. 7. Section 12314 of the Water Code is amended
32 to read:

33 12314. (a) Guided by the approved priority list
34 developed pursuant to Section 12313, the department
35 shall develop project plans to accomplish the needed
36 flood protection work in cooperation with the local public
37 agency, the public beneficiary, and the Department of
38 Fish and Game.

39 (b) The plans shall be subject to the approval of the
40 appropriate local public agency or agencies and subject



1 to any cost-sharing agreement the department may have
2 entered into under Section 12312. Project plans may
3 include, or be a combination of, the improvement,
4 rehabilitation, or modification of existing levees, and the
5 conveyance of interests in land to limit or to modify land
6 management practices which have a negative impact on
7 flood control facilities.

8 (c) Project plans shall include provision for the
9 protection of fish and wildlife habitat determined to be
10 necessary by the Department of Fish and Game and not
11 injurious to the integrity of flood control works. The
12 Department of Fish and Game shall consider the value of
13 the riparian and fisheries habitat and the need to provide
14 greater flood protection in preparing its requirements,
15 and shall not approve any plan which calls for the use of
16 channel islands or berms with significant riparian
17 communities as borrow sites for levee repair materials,
18 unless fully mitigated, or any plans that will result in a net
19 long-term loss of riparian, fisheries, or wildlife habitat.

20 (d) After the memorandum of understanding
21 required pursuant to Section 12307 is amended as
22 required by Section 78543, the Department of Fish and
23 Game shall also make a written determination as part of
24 its review and approval of a plan or project pursuant to
25 this section and Section 12987 that the proposed
26 expenditures are consistent with a net long-term habitat
27 improvement program and have a net benefit for aquatic
28 species in the delta. The memorandum of understanding
29 in effect prior to the amendments required by Section
30 78543 shall remain in effect with regard to levee projects
31 and plans until the memorandum of understanding is
32 amended.

33 SEC. 8. Section 12316 of the Water Code is amended
34 to read:

35 12316. In addition to any obligations assumed under
36 an agreement with the department and to the extent
37 consistent with that agreement, the local public agency
38 shall do all of the following:

39 (a) Provide construction access to lands or
40 rights-of-way which it owns or maintains for flood control



1 purposes or for purposes with which the project's
2 required uses are compatible and necessary to complete
3 the project.

4 (b) Maintain the completed project pursuant to
5 maintenance criteria developed and adopted in
6 accordance with Section 12984.

7 (c) Apply for federal disaster assistance, whenever
8 eligible, under Public Law 93-288.

9 (d) Hold and save the department, any other agency
10 or department of the state, and their employees free from
11 any and all liability for damages, except that caused by
12 gross negligence, that may arise out of the construction,
13 operation, or maintenance of the project.

14 (e) Acquire easements from the crown along levees
15 for the control and reversal of subsidence in areas where
16 the department determines that such an easement is
17 desirable to maintain structural stability of the levee. The
18 easement shall (1) restrict the use of the land to
19 open-space uses, nontillable crops, the propagation of
20 wildlife habitat, and other compatible uses, (2) provide
21 full access to the local agency for levee maintenance and
22 improvement purposes, and (3) allow the owner to
23 retain reasonable rights of ingress and egress as well as
24 reasonable rights of access to the waterways for water
25 supply and drainage. The local public agency costs of
26 acquisition of the easements shall be reimbursable by the
27 department from moneys appropriated pursuant to
28 paragraph (2) of subdivision (b) of Section 12300 or any
29 sources of funding appropriated by the Legislature for
30 purposes of this part.

31 (f) Comply with all habitat mitigation and
32 improvement requirements pursuant to this part.

33 (g) Use subsidence control alternatives, where
34 appropriate, to reduce long-term maintenance and
35 improvement costs.

36 SEC. 9. Section 12318 is added to the Water Code, to
37 read:

38 12318. (a) The Resources Agency may establish a
39 ~~multiagency team of state, federal, and local agencies to~~
40 *team of federal, state, and local agencies, and other*



1 *persons or entities with a stake in finding a solution to the*
2 *problems of the delta levees, to develop*
3 recommendations for the beneficial reuse of dredged
4 material, consistent with actions identified by the
5 CALFED Bay-Delta Program as core actions, which are
6 those actions included in all bay-delta solutions. The
7 recommendations shall address all of the following needs:

8 (1) Long-term availability of cost-effective,
9 environmentally safe, and appropriate dredged material
10 for delta levee maintenance and improvements.

11 (2) Beneficial reuse of dredged or suitable alternative
12 materials.

13 (3) Coordination of dredging projects to augment
14 on-island stockpiles.

15 (4) Development of a comprehensive monitoring
16 program of the effects of the reuse of dredged material.

17 (5) A study of the applicability *and appropriateness* of
18 constructing channel sediment traps and dredged
19 material rehandling facilities adjacent to frequently
20 dredged channel sections.

21 SEC. 10. Section 12980 of the Water Code is amended
22 to read:

23 12980. As used in this part:

24 (a) "Board" means the Reclamation Board.

25 (b) "Delta" means the Sacramento-San Joaquin Delta
26 as described in Section 12220.

27 (c) "Local agency" means any city, county, district, or
28 other political subdivision of the state which is authorized
29 to maintain levees.

30 (d) "Net long-term habitat improvement" means
31 enhancement of riparian, fisheries, and wildlife habitat.

32 (e) "Nonproject levee" means a local flood control
33 levee in the delta that is not a project facility under the
34 State Water Resources Law of 1945, as shown on page 38
35 of the Department of Water Resources "Sacramento-San
36 Joaquin Delta Atlas," dated 1993.

37 (f) "Project levee" means a federal flood control levee,
38 as shown on page 40 of the Department of Water
39 Resources "Sacramento-San Joaquin Delta Atlas," dated
40 1993, that is a project facility under the State Water



1 Resources Law of 1945 (Chapter 1 (commencing with
2 Section 12570) and Chapter 2 (commencing with Section
3 12639) of Part 6), if not less than a majority of the acreage
4 within the jurisdiction of the local agency that maintains
5 the levee is within the primary zone of the delta, as
6 defined in Section 29728 of the Public Resources Code.

7 SEC. 11. Section 12981 of the Water Code is amended
8 to read:

9 12981. (a) The Legislature finds and declares that
10 the delta is endowed with many invaluable and unique
11 resources and that these resources are of major statewide
12 significance.

13 (b) The Legislature further finds and declares that the
14 delta's uniqueness is particularly characterized by its
15 hundreds of miles of meandering waterways and the
16 many islands adjacent thereto; that, in order to preserve
17 the delta's invaluable resources, which include highly
18 productive agriculture, recreational assets, fisheries, and
19 wildlife environment, the physical characteristics of the
20 delta should be preserved essentially in their present
21 form; and that the key to preserving the delta's physical
22 characteristics is the system of levees defining the
23 waterways and producing the adjacent islands. However,
24 the Legislature recognizes that it may not be
25 economically justifiable to maintain all delta islands.

26 (c) The Legislature further finds and declares that
27 funds necessary to maintain and improve the delta's
28 levees to protect the delta's physical characteristics
29 should be used to fund levee work that would promote
30 agricultural and habitat uses in the delta consistent with
31 the purpose of preserving the delta's invaluable
32 resources.

33 SEC. 12. Section 12984 of the Water Code is amended
34 to read:

35 12984. The department shall develop and submit to
36 the board, for adoption by the board, criteria for the
37 maintenance and improvement of nonproject levees.
38 The criteria shall vary as required to meet specific
39 conditions and shall be multipurpose in nature, and
40 include environmental considerations, when feasible.



1 The criteria shall embody and implement both of the
2 following:

3 (a) The short-term mitigation plan set forth in the
4 “Flood Hazard Mitigation Plan for the Sacramento-San
5 Joaquin Delta,” prepared by the department for the
6 Office of Emergency Services, dated September 15, 1983,
7 or as amended.

8 (b) The “Vegetation Management Guidelines for
9 Local Nonproject Delta Levees” dated April 1994, or any
10 successor guidelines.

11 SEC. 13. Section 12986 of the Water Code, as
12 amended by Section 5 of Chapter 28 of the Statutes of
13 1988, is amended to read:

14 12986. (a) It is the intention of the Legislature to
15 reimburse an eligible local agency pursuant to this part
16 for costs incurred in any year for the maintenance or
17 improvement of project or nonproject levees as follows:

18 (1) No costs incurred shall be reimbursed if the entire
19 cost incurred per mile of project or nonproject levee is
20 one thousand dollars (\$1,000) or less.

21 (2) Not more than 75 percent of any costs incurred in
22 excess of one thousand dollars (\$1,000) per mile of project
23 or nonproject levee shall be reimbursed.

24 (3) (A) As part of the project plans approved by the
25 board, the department shall require the local agency or
26 an independent financial consultant to provide
27 information regarding the agency’s ability to pay for the
28 cost of levee maintenance or improvement. Based on that
29 information, the department may require the local
30 agency or an independent financial consultant to prepare
31 a comprehensive study on the agency’s ability to pay.

32 (B) The information or comprehensive study of the
33 agency’s ability to pay shall be the basis for determining
34 the maximum allowable reimbursement eligible under
35 this part. Nothing in this paragraph shall be interpreted
36 to increase the maximum reimbursement allowed under
37 paragraph (2).

38 (4) Reimbursements made to the local agency in
39 excess of the maximum allowable reimbursement shall be
40 returned to the department.



1 (5) The department may recover, retroactively,
2 excess reimbursements paid to the local agency from any
3 time after January 1, 1997, based on an updated study of
4 the agency's ability to pay.

5 (6) All final costs allocated or reimbursed under a plan
6 shall be approved by the reclamation board for project
7 and nonproject levee work.

8 (7) Costs incurred pursuant to this part that are
9 eligible for reimbursement include construction costs
10 and associated engineering services, financial or
11 economic analyses, environmental costs, mitigation costs,
12 and habitat improvement costs.

13 (b) This section shall become inoperative on July 1,
14 2006, and, as of January 1, 2007, is repealed, unless a later
15 enacted statute, that becomes operative on or before
16 January 1, 2007, deletes or extends the dates on which it
17 becomes inoperative and is repealed.

18 SEC. 14. Section 12986 of the Water Code, as added by
19 Section 6 of Chapter 28 of the Statutes of 1988, is amended
20 to read:

21 12986. (a) It is the intention of the Legislature to
22 reimburse from the General Fund an eligible local
23 agency pursuant to this part for costs incurred in any year
24 for the maintenance or improvement of project or
25 nonproject levees as follows:

26 (1) No costs incurred shall be reimbursed if the entire
27 cost incurred per mile of levee is one thousand dollars
28 (\$1,000) or less.

29 (2) Fifty percent of any costs incurred in excess of one
30 thousand dollars (\$1,000) per mile of levee shall be
31 reimbursed.

32 (3) The maximum total reimbursement from the
33 General Fund shall not exceed two million dollars
34 (\$2,000,000) annually.

35 (b) This section shall become operative on July 1, 2006.

36 SEC. 15. Section 12987 of the Water Code is amended
37 to read:

38 12987. (a) Local agencies maintaining project or
39 nonproject levees shall be eligible for reimbursement
40 pursuant to this part upon submission to and approval by



1 the board of plans for the maintenance and improvement
2 of the project or nonproject levees, including plans for the
3 annual routine maintenance of the levees, in accordance
4 with the criteria adopted by the board.

5 (b) The nonproject plans shall also be compatible with
6 the plan for improvement of the delta levees as set forth
7 in Bulletin No. 192-82 of the department, dated
8 December 1982, and as approved in Section 12225. Both
9 project and nonproject plans shall include provisions to
10 acquire easements along levees that allow for the control
11 and reversal of subsidence in areas where the department
12 determines that such an easement is desirable to maintain
13 structural stability of the levee. The easement shall
14 (1) restrict the use of the land to open-space uses,
15 nontillable crops, the propagation of wildlife habitat, and
16 other compatible uses, (2) provide full access to the local
17 agency for levee maintenance and improvement
18 purposes, and (3) allow the owner to retain reasonable
19 rights of ingress and egress as well as reasonable rights of
20 access to the waterways for water supply and drainage.
21 The local agency cost of acquisition of the easements shall
22 be reimbursable by the department from moneys
23 appropriated pursuant to paragraph (1) of subdivision
24 (b) of Section 12300, or any other sources appropriated
25 by the Legislature for purposes of this part.

26 (c) The plans shall also include provision for
27 protection of the fish and wildlife habitat determined to
28 be necessary by the Department of Fish and Game and
29 not injurious to the integrity of the levee. The
30 Department of Fish and Game shall consider the value of
31 the riparian and fisheries habitat and the need to provide
32 safe levees in preparing its requirements. The
33 Department of Fish and Game shall not approve any plan
34 which calls for the use of channel islands or berms with
35 significant riparian communities as borrow sites for levee
36 repair material, unless fully mitigated, or any plans which
37 will result in a net long-term loss of riparian, fisheries, or
38 wildlife habitat.

39 (d) After the memorandum of understanding
40 required pursuant to Section 12307 is amended as



1 required by Section 78543, the Department of Fish and
2 Game shall also make a written determination as part of
3 its review and approval of a plan or project pursuant to
4 Section 12314 and this section that the proposed
5 expenditures are consistent with a net long-term habitat
6 improvement program and have a net benefit for aquatic
7 species in the delta. The memorandum of understanding
8 in effect prior to the amendments required by Section
9 78543 shall remain in effect with regard to levee projects
10 and plans until the memorandum of understanding is
11 amended.

12 (e) The plans shall also take into account the most
13 recently updated Delta Master Recreation Plan prepared
14 by the Resources Agency.

15 (f) Upon approval of the plans by the board, the local
16 agencies shall enter into an agreement with the board to
17 perform the maintenance and improvement work,
18 including the annual routine maintenance work,
19 specified in the plans. If applications for state funding in
20 any year exceed the state funds available, the board shall
21 apportion the funds among those levees or levee
22 segments that are identified by the department as most
23 critical and beneficial, considering the needs of flood
24 control, water quality, recreation, navigation, habitat
25 improvements, and fish and wildlife.

26 SEC. 16. Section 12987.5 of the Water Code is
27 amended to read:

28 12987.5. (a) In an agreement entered into under
29 Section 12987, the board may provide for an advance to
30 the applicant in an amount not to exceed 75 percent of the
31 estimated state share. The agreement shall provide that
32 no advance shall be made until the applicant has incurred
33 costs averaging one thousand dollars (\$1,000) per mile of
34 levee.

35 (b) Advances made under subdivision (a) shall be
36 subtracted from amounts to be reimbursed after the work
37 has been performed. If the department finds that work
38 has not been satisfactorily performed or where advances
39 made actually exceed reimbursable costs, the local
40 agency shall promptly remit to the state all amounts



1 advanced in excess of reimbursable costs. If advances are
2 sought, the board may require a bond to be posted to
3 ensure the faithful performance of the work set forth in
4 the agreement.

5 (c) This section shall become inoperative on July 1,
6 2006, and, as of January 1, 2007, is repealed, unless a later
7 enacted statute, that becomes operative on or before
8 January 1, 2007, deletes or extends the dates on which it
9 becomes inoperative and is repealed.

10 SEC. 17. Section 12988 of the Water Code is amended
11 to read:

12 12988. Upon the completion in any year of the
13 maintenance or improvement work, including annual
14 routine maintenance work, as specified in the plans
15 approved by the board, the local agency shall notify the
16 department, and the department shall inspect the
17 completed work. The department, upon completion of
18 such inspection, shall submit to the board a report as to its
19 findings. Upon a finding that the work has been
20 satisfactorily completed in accordance with the approved
21 plans, the board shall certify for reimbursement 75
22 percent of any costs incurred per mile of levee if the
23 entire cost incurred per mile of levee is greater than one
24 thousand dollars (\$1,000).

25 SEC. 18. Section 12989 of the Water Code is amended
26 to read:

27 12989. (a) The department shall conduct at least one
28 annual inspection of every levee for which maintenance
29 or improvement costs have been reimbursed pursuant to
30 this part. In addition, the department shall inspect
31 nonproject levees of local agencies for the purpose of
32 monitoring and ascertaining the degree of compliance
33 with, or progress toward meeting, standards such as those
34 set forth in Section 12984.

35 (b) The local agency shall cooperate with the
36 department in the conduct of these inspections, including
37 the provision of reasonable access over local agency lands
38 and easements.

39 SEC. 19. Section 12994 is added to the Water Code, to
40 read:



1 12994. (a) The Legislature finds and declares all of
2 the following:

3 (1) The CALFED Bay-Delta Program has identified as
4 a core action the need for emergency levee management
5 planning for delta levees to improve system reliability.

6 (2) Even with active levee maintenance, the threat of
7 delta levee failures from earthquake, flood, or poor levee
8 foundation, will continue to exist.

9 (3) Because of this threat of failure, and the potential
10 need to mobilize people and equipment in an emergency
11 to protect delta levees and public benefits, the
12 department needs authority that will enable it to act
13 quickly.

14 (b) The department may do all of the following:

15 (1) In an emergency, as defined by Section 21060.3 of
16 the Public Resources Code, that requires immediate
17 levee work to protect public benefits in the delta, the
18 department may use funds pursuant to this part without
19 prior approval of a plan by the board or the Department
20 of Fish and Game, in which case the requirements of
21 Sections 12987 and 12314, and the memorandum of
22 understanding pursuant to Section 12307, shall be carried
23 out as soon as possible.

24 (A) The amount of funds that may be expended each
25 year on emergency levee work under this section shall
26 not be greater than two hundred thousand dollars
27 (\$200,000) and the amount that may be expended per
28 emergency levee site shall not be greater than fifty
29 thousand dollars (\$50,000). The local agency shall fund 25
30 percent of the total costs of the emergency repair at a site
31 or shall fund an appropriate share of the costs as approved
32 by the board and based upon information of the local
33 agency's ability to pay for the repairs.

34 (B) Department contracts executed for emergency
35 levee work under this section shall be exempted from
36 Department of General Services approval required
37 under the Public Contract Code.

38 (C) As soon as feasible after the emergency repair, the
39 department shall submit a report to the board describing



1 the levee work, costs incurred, and plans for future work
2 at the site, including any necessary mitigation.

3 (D) This section is intended to supplement
4 emergency services provided by the state or the United
5 States. Nothing in this section overrides or supersedes the
6 authority of the Director of the Office of Emergency
7 Services under the California Emergency Services Act
8 (Chapter 7 (commencing with Section 8550) of Division
9 1 of Title 2 of the Government Code) or the Natural
10 Disaster Assistance Act (Chapter 7.5 (commencing with
11 Section 8680) of Division 1 of Title 2 of the Government
12 Code).

13 (2) Prepare and submit to the board for adoption a
14 delta emergency response plan for levee failures. The
15 plan is exempt from Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3 of Title 2 of the
17 Government Code. The plan may include
18 recommendations of the multiagency response team
19 established pursuant to paragraph (3) and may include,
20 but not be limited to, the following:

21 (A) Standardized contracts for emergency levee work
22 to be executed by the department, local agencies, or
23 other appropriate entities.

24 (B) Criteria for eligible emergency levee work.

25 (C) Definition of an emergency levee site.

26 (D) Documentation requirements.

27 (E) Proposals for complying with the federal
28 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
29 seq.) and the California Endangered Species Act
30 (Chapter 1.5 (commencing with Section 2050) of
31 Division 3 of the Fish and Game Code) in an emergency.

32 (F) Stages of emergency response that may occur in
33 various situations.

34 (3) Establish a multiagency emergency response
35 team, consisting of representatives from the department,
36 the board, the Department of Fish and Game, the
37 California Conservation Corps, the Office of Emergency
38 Services, the Federal Emergency Management Agency,
39 the United States Army Corps of Engineers, and the
40 United States Fish and Wildlife Service to advise on



1 methods to ensure that levee emergencies will be
2 resolved as quickly and safely as possible.

3 SEC. 20. Section 12995 is added to the Water Code, to
4 read:

5 12995. (a) The Legislature hereby finds and declares
6 both of the following:

7 (1) There is an urgent need for rehabilitation and
8 improvement of delta levees, and that the United States
9 Army Corps of Engineers has a crucial and continuing
10 role in that work.

11 (2) The department and the board have been
12 cooperating with the United States Army Corps of
13 Engineers in a feasibility study for rehabilitation and
14 improvement of the levees in the delta. That feasibility
15 study identified a federal interest in levee rehabilitation
16 and improvements due to benefits to navigation,
17 commerce, the environment, and flood damage
18 reduction.

19 (b) The department and the board may cooperate
20 with the United States Army Corps of Engineers to
21 develop and implement delta levee rehabilitation,
22 improvement, and realignment, and to enhance the
23 environment.

24 SEC. 21. This act shall become operative only if
25 Senate Bill 900 of the 1995–96 Regular Session is enacted
26 and approved by the voters in the November 5, 1996,
27 general election.

