



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

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Staff Report
May 1, 2007

Honorable Members of the
Law and Legislation Committee

**Title: Legislative Position: Assembly Bills 5 and 70 Relating to Flood Prevention
and Flood Liability.**

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support if amended position on AB 5 and an oppose position on AB 70.

Contact: Dave Brent, Engineering Manager, (916) 808 -1420.

Presenters: Dave Brent and Gary Reents

Department: Utilities

Division: Administration

Organization No: 3311

Description/Analysis

Issue: AB 5 would require the Department of Water Resources to prepare, and submit to the Legislature no later than January 1, 2011, the Central Valley Flood Protection Plan (CVFPP) for the Sacramento-San Joaquin Valley. The plan would be required to include a description of structural and nonstructural means for improving the performance and elimination of deficiencies of flood protection facilities, including the facilities of the State Plan of Flood Control, as defined. Until the state adopts a final plan, the Department or the Reclamation Board, as applicable, would be authorized to implement flood protection improvements for urban areas protected by the State Plan of Flood Control if the Director of the Department makes certain written determinations.

In January 2009, in preparation of the CVFPP, the Department would be required to submit to the Legislature an overall strategy for flood protection that would describe the components of the proposed CVFPP. AB 5 mandates that this strategy include undefined minimum flood protection standards and limits on further development in areas where flooding is expected to exceed three feet.

While the minimum urban flood protection standard is undefined in the proposed legislation, language within the bill makes it clear that the current federal standards are not sufficient.

AB 5 would also authorize a local agency to prepare a local plan of flood protection that includes specified components such as a strategy to meet minimum flood protection standards, identification of needed improvements and the cost, an evacuation plan, long-term funding strategy, an ordinance that mandates flood insurance, and annual notification of homeowners as to the level of flood protection and the level of flood risk. After legislative approval of the CVFPP in 2011, local agencies would not be allowed to approve new development within a flood hazard zone until a local plan of flood protection is adopted. Each local plan would be required to be submitted to the department to ensure consistency with the Central Valley Flood Protection Plan.

AB 70 would subject a local public entity to joint liability with the state to the extent that the local public entity increases the state's exposure to liability for property damage by approving new development in a previously undeveloped area, i.e. open space or agricultural land, that is protected by a state flood control project. This joint liability would apply whether or not a local public entity directly participates in the operation or maintenance of the state flood control project.

Policy Considerations: AB 5 begins the much needed process of developing a Central Valley Flood Protection Plan for the Sacramento-San Joaquin Valley. It also authorizes and provides funding to local agencies to develop local flood protection plans. Staff supports the State's efforts for a coordinated Central Valley Flood Protection Plan and individual local plans, however, staff does not support the requirement on locals to adopt an ordinance that mandates flood insurance. Locals can mandate flood insurance, however, a local government does not have a mechanism in place to enforce such a mandate. Without the ability to enforce this mandate it is ineffective. The requirement of mandatory insurance is best suited at the State level. The State is in a better position to enforce mandatory flood insurance, i.e. by require mortgage loaning institutions to make flood insurance a requirement of a buyer.

While staff supports increasing the level of urban flood protection, the legislation's definition of an urban level of flood protection is very ambiguous and the unspecified limitations on development in areas where flooding would exceed three feet could be problematic.

AB 70 would subject a local land use agency that has no responsibility for a failed state flood control facility to joint liability with the state to the extent that the local public agency increases the state's exposure to liability for property damage by approving new development in a previously undeveloped area. The City opposes any attempt to shift liability for flood damages to local land use planning agencies that have no responsibility for the operation and maintenance (O&M) of a flood control project. A local land use agency should not be liable for the failure

of a flood control project unless it is the O&M agency and it is found to be negligent.

AB 70 seeks to overturn current law. To date, the courts have rightly found only entities that have played some role in the design, maintenance, or operation of a failed flood control project liable. Additionally, the courts have specifically held that liability does not attach to a local public agency where that entity's sole affirmative action was the issuance of permits and approval of a subdivision map.

Environmental Considerations: None.

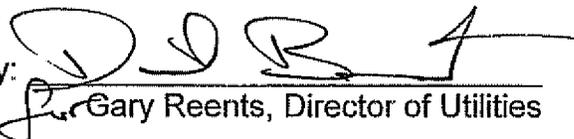
Rationale for Recommendation: Staff is recommending a support if amended position on AB 5. AB 5 would result in a coordinated effort to develop both a Central Valley Flood Protection Plan as well as local plans of flood protection. However, the requirement to mandate flood insurance is inappropriately placed at the local level rather than appropriately placed at the state level; the parameters of an urban level of flood protection need to be better defined; and, the limitation on development in areas expected to flood greater than 3 feet apparently regardless of the level of flood protection is problematic for Sacramento and the Central Valley.

Staff is recommending an oppose position on AB 70 because basing liability not on fault, but on the increase in the state's exposure to liability, is inappropriate.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: 
Dave Brent, Engineering Manager

Approved by: 
Gary Reents, Director of Utilities

Recommendation Approved:

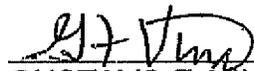

GUSTAVO F. VINA
Assistant City Manager

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May 1, 2007

The Honorable Lois Wolk
California State Assembly
State Capitol
Sacramento, CA 94249-0008
ATTN: Legislative Director

Subject: Support AB 5 if Amended (AB 5 April 17, 2007 Version) – Flood Protection.

Dear Assembly Member Wolk,

On behalf of the City of Sacramento, I am writing to inform you that we have taken a support if amended position on AB 5. We believe that AB 5 is an important step in the right direction. AB 5 would result in a coordinated effort to develop both a Central Valley Flood Protection Plan as well as local plans of flood protection. However, we have the following concerns; the requirement to mandate flood insurance is inappropriately placed at the local level rather than appropriately placed at the state level, the parameters of an urban level of flood protection need to be better defined, and the limitation on development in areas expected to flood greater than 3 feet regardless of the level of flood protection is problematic for the City of Sacramento and the Central Valley.

Thank you for introducing this legislation and your attention to our concerns. Please contact Gary Reents at (916) 808-1433 or Dave Brent at (916) 808-1420 if you have any questions.

Sincerely,

SANDY SHEEDY, Chair
Law and Legislation Committee

cc: Senator Darrell Steinberg
Senator Dave Cox
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

Attachment 2

May 1, 2007

The Honorable Dave Jones
California State Assembly
State Capitol
Sacramento, CA 94249-0009
ATTN: Legislative Director

Subject: Oppose AB 70 – Flood Liability

Dear Assembly Member Jones,

On behalf of the City of Sacramento, I am writing to inform you that we have taken an oppose position on AB 70. AB 70 would subject a local land use agency that has no responsibility for the failed flood control facility to joint liability and the state's right of contribution to the extent that the local public agency increases the state's exposure to liability for property damage by approving new development in a previously undeveloped area. The City opposes any attempt to shift liability for flood damages to local land use planning agencies that have no responsibility for the operation and maintenance (O&M) of a flood control project. A local land use agency should not be liable for the failure of a flood control project unless it is the O&M agency and it is found to be negligent.

AB 70 seeks to overturn current law. To date, the courts have rightly found only entities that have played some role in the design, maintenance, or operation of a failed flood control project liable. Additionally, the courts have specifically held that liability does not attach to a local public agency where that entity's sole affirmative action was the issuance of permits and approval of a subdivision map.

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SANDY SHEEDY, Chair
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David Jones, Emanuels and Jones and Associates

AMENDED IN ASSEMBLY APRIL 17, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Wolk

December 4, 2006

An act to add Chapter 4 (commencing with Section 8200) to Part 1 of, and to add Chapter 6 (commencing with Section 8470) to Part 2 of, Division 5 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Wolk. ~~Flood protection: local: Central Valley: plans: protection.~~

The Department of Water Resources performs various flood management activities through out the state. Existing law authorizes the Reclamation Board to engage in various flood management activities along the Sacramento River and the San Joaquin River, their tributaries, and related areas.

This bill would require the department to prepare, and submit to the Legislature no later than January 1, 2011, the Central Valley Flood Protection Plan for the Sacramento-San Joaquin Valley. The bill would require the department to transmit copies of the plan to local agencies in the Sacramento-San Joaquin Valley. The department would be required to update the plan every 5 years. The plan would be required to include a description of structural and nonstructural means for improving the performance and elimination of deficiencies of flood protection facilities, including the facilities of the State Plan of Flood Control, as defined.

Until the state adopts a final plan, the department or the board, as applicable, would be authorized to implement flood protection

improvements for urban areas protected by the State Plan of Flood Control if the director of the department makes certain written determinations. The bill would require the department to investigate, develop, and establish a floodway or bypass, acquire land, or construct one or more facilities to reduce flood stage in the San Joaquin River Watershed. The bill would prohibit the board from approving any change or alteration to facilities of the State Plan of Flood Control until the state adopts the Central Valley Flood Protection Plan unless the board makes a specified written determination. The bill would require the department to develop and submit to the Legislature, no later than January 1, 2009, an overall strategy for flood protection in the Central Valley.

The bill would authorize a local agency to prepare a local plan of flood protection that includes specified components. Each local plan would be required to be submitted to the department to ensure consistency with the Central Valley Flood Protection Plan. The bill would establish the Local Flood Protection Plan Assistance Fund in the State Treasury. The bill would authorize the department to expend the money in the fund, upon appropriation by the Legislature, to assist local agencies in the development of local plans of flood protection. Unless a local agency adopts a local plan of flood protection, a city or county in the Sacramento-San Joaquin Valley, on and after the date on which the city or county receives a copy of the Central Valley Flood Protection Plan, would be prohibited from approving new development within a flood hazard zone.

~~Existing law prescribes various responsibilities of state agencies, counties, cities, districts, and landowners with respect to levees. Existing law regulates the inspection, improvement, and maintenance of project and nonproject delta levees, as those terms are defined. Under existing law, the Department of Water Resources and the Reclamation Board administer various flood control programs.~~

~~This bill would require an unspecified entity to create the Central Valley Flood Protection Plan to address flood protection in the Central Valley. The bill would authorize local agencies to create a local plan of flood protection meeting the requirements of the bill, and would require priority for state funds to be given to local agencies that have adopted a local plan of flood protection. The bill would create the Local Flood Protection Plan Assistance Fund to, upon appropriation by the Legislature, assist local agencies by awarding grants to those agencies to conduct necessary activities in the development of a local flood~~

protection plan. The bill would prohibit local governments in the central valley from approving new developments within high-risk flood-prone areas, unless unspecified conditions are met to ensure appropriate levels of flood protection.

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. *The Legislature hereby finds and declares all of*
2 *the following:*

3 (a) *In the Central Valley, the State of California has worked*
4 *closely with the United States Army Corps of Engineers and local*
5 *agencies to develop, construct, operate, and maintain flood control*
6 *projects. Unlike in most of the rest of the state, the state is the*
7 *primary nonfederal partner of the federal government in Central*
8 *Valley flood system development. Local governments, particularly*
9 *cities and counties, traditionally have had a more limited role in*
10 *providing flood protection to their citizens.*

11 (b) *In light of the Hurricane Katrina disaster, the recent failure*
12 *of a Sacramento-San Joaquin Delta levee, and a state court holding*
13 *the state liable for failed Central Valley levees, the state needs to*
14 *develop and adopt a comprehensive flood management policy for*
15 *the Central Valley. In November 2006, California voters approved*
16 *the issuance of an unprecedented amount of general obligation*
17 *bonds for infrastructure, including almost \$5 billion for flood*
18 *protection. While these bond funds will allow California to fix its*
19 *aging flood infrastructure, that amount only begins to address the*
20 *state's funding requirements to create a sustainable flood*
21 *protection system for the Central Valley.*

22 (c) *The challenge of protecting Californians from a flood in the*
23 *Central Valley has changed. The flood protection system in the*
24 *Central Valley was designed to wash gold-rush era sediment*
25 *downstream and out to sea, with narrow channels created by levees*
26 *of varying quality. The flood protection system, established in*
27 *1911, worked so well that the sediment has washed out and*
28 *low-level flood flows now wash away the levees. Two minor floods*
29 *in 2006 created 71 new sites of critical levee erosion, which will*
30 *require substantial funding for repair. Decisions as to future*

1 expenditure of flood funding therefore need to reflect these new
2 challenges.

3 (d) The governmental context for protecting Californians from
4 floods also has changed. A 2003 decision by a state court of appeal
5 held the state responsible for not having a reasonable plan for
6 protecting Sacramento Valley residents and businesses from floods.
7 Since Hurricane Katrina, the United States Army Corps of
8 Engineers has received less funding for flood protection in the
9 Central Valley, and has relied on state funding for its work. The
10 Federal Emergency Management Agency has begun preparing
11 new flood maps that will show more Central Valley communities
12 at higher risk of flooding. Central Valley cities and counties have
13 developed a greater awareness of the flood risk that their residents
14 face.

15 (e) California has invested billions of dollars in its existing
16 flood protection facilities, but those facilities have rapidly
17 deteriorated in recent years. Those facilities have served California
18 well in the past, but their continued success may be questioned
19 under the rapidly changing conditions in the Central Valley. The
20 current flood protection system does not have the capacity to
21 convey a substantial amount of floodwater without the threat of
22 damage to growing urban centers. Climate change is likely to
23 exacerbate flood conditions. The state needs to continue repairing
24 the current system, as it considers how to reformulate its plan for
25 flood protection in the Central Valley.

26 (f) A comprehensive Central Valley flood protection policy
27 includes all of the following central principles:

28 (1) Flood risk management must be approached on a systemwide
29 basis, taking into account varied land uses and flood protection
30 needs.

31 (2) Land use planning must be integrated with flood risk
32 management.

33 (3) Regional planning must be encouraged.

34 (4) Flood management systems must be designed to address
35 climate change.

36 (5) Flood protection projects that offer multiple or regional
37 benefits must be supported, including those that restore natural
38 flood-plain processes or integrate regional water management.

39 (6) Communities should have accurate information to make
40 safer decisions.

1 *SEC. 2. Chapter 4 (commencing with Section 8200) is added*
2 *to Part 1 of Division 5 of the Water Code, to read:*

3
4 *CHAPTER 4. LOCAL PLANS OF FLOOD PROTECTION*
5

6 8200. *This chapter shall be known, and may be cited, as the*
7 *Local Flood Protection Planning Act.*

8 8201. (a) *A local agency may prepare a local plan of flood*
9 *protection in accordance with this chapter.*

10 (b) *A local plan of flood protection shall include all of the*
11 *following:*

12 (1) *A strategy to meet minimum flood protection standards,*
13 *established pursuant to subdivision (a) of Section 8474, for urban,*
14 *rural, and small communities, including planning for residual*
15 *flood risk and system resiliency.*

16 (2) *Identification of all types of flood hazards.*

17 (3) *Identification and risk assessment of the various facilities*
18 *that provide flood protection for flood hazard areas, for current*
19 *and future land uses.*

20 (4) *Identification of current and future flood corridors.*

21 (5) *Identification of needed improvements and costs of those*
22 *improvements to the flood protection facilities that are necessary*
23 *to meet flood protection standards for urban, rural, and small*
24 *communities.*

25 (6) *An emergency response and evacuation plan for flood-prone*
26 *areas.*

27 (7) *A strategy to achieve multiple benefits, including flood*
28 *protection, groundwater recharge, ecosystem health, and reduced*
29 *maintenance costs over the long term.*

30 (8) *A long-term funding strategy for improvement and ongoing*
31 *maintenance and operation of flood protection facilities.*

32 (9) *Approval of an ordinance to mandate flood insurance and*
33 *annually notify homeowners as to the level of flood protection and*
34 *the level of flood risk.*

35 (c) *Prior to the adoption of a local plan of flood protection*
36 *pursuant to this chapter, the local agency shall submit the plan to*
37 *the department to ensure consistency with the Central Valley Flood*
38 *Protection Plan prepared pursuant to Section 8472.*

1 (d) Priority for state funds shall be given to local agencies that
2 have adopted a local plan of flood protection pursuant to this
3 chapter.

4 8202. (a) There is hereby established in the State Treasury
5 the Local Flood Protection Plan Assistance Fund, which shall be
6 administered by the department.

7 (b) Upon appropriation by the Legislature, the money in the
8 fund may be expended by the department to assist local agencies
9 by awarding grants to those agencies to develop local plans of
10 flood protection in accordance with this chapter.

11 8203. (a) The Legislature finds and declares all of the
12 following:

13 (1) In the Central Valley, the state has assumed the primary
14 responsibility for protecting its citizens from floods. The state has
15 worked closely with the United States Army Corps of Engineers
16 to develop, construct, and maintain flood control projects.

17 (2) Local governments have the primary responsibility for
18 planning and approving various land uses within their jurisdiction.
19 The land use planning function, however, is often disconnected
20 from the operations of state or local agencies that protect the
21 jurisdiction from floods. As a result, land use decisions are based
22 on limited information regarding flood management and protection.

23 (3) In order to connect local government land use decisions
24 with state flood management policies, financing, and facilities, it
25 is necessary for local government land use decisions to include
26 confirmation that new developments will enjoy sufficient protection
27 from flood hazards.

28 (4) The current federal flood standard is not sufficient in
29 protecting urban areas in high-risk flood prone areas of the Central
30 Valley.

31 (b) Unless a local agency adopts a local plan of flood protection
32 in accordance with this chapter, a city or county in the
33 Sacramento-San Joaquin Valley shall not, on and after the date
34 on which the city or county receives a copy of the Central Valley
35 Flood Protection Plan pursuant to subdivision (d) of Section 8472,
36 approve new development within a flood hazard zone, as defined
37 in Section 8471.

38 SEC. 3. Chapter 6 (commencing with Section 8470) is added
39 to Part 2 of Division 5 of the Water Code, to read:

1 *CHAPTER 6. CENTRAL VALLEY FLOOD PROTECTION*

2
3 8470. *This chapter shall be known, and may be cited, as the*
4 *Central Valley Flood Protection Planning Act.*

5 8471. *Unless the context otherwise requires, the definitions*
6 *set forth in this section govern the construction of this part.*

7 (a) *"Board" means the Reclamation Board.*

8 (b) *"Central Valley Flood Protection Plan" or "plan" means*
9 *the plan prepared pursuant to this chapter and includes the State*
10 *Plan of Flood Control as defined in subdivision (j) of Section*
11 *5096.805 of the Public Resources Code.*

12 (c) *"Facilities of the State Plan of Flood Control" has the same*
13 *meaning as set forth in subdivision (e) of Section 5096.805 of the*
14 *Public Resources Code.*

15 (d) *"Flood hazard zone" means an area subject to flooding that*
16 *is delineated as either a special hazard area or an area of moderate*
17 *or minimal hazard on an official flood insurance rate map issued*
18 *by the Federal Emergency Management Agency.*

19 (e) *"Levee flood protection zone" means the area, as determined*
20 *by the board or the department, that is protected by a project levee.*

21 (f) *"One hundred-year standard" means protection that is*
22 *sufficient to withstand flooding that has a 1-in-100 chance of*
23 *occurring in any given year, consistent with federal law.*

24 (g) *"Project levee" has the same meaning as set forth in*
25 *subdivision (g) of Section 5096.805 of the Public Resources Code.*

26 (h) *"Sacramento-San Joaquin Valley" means any lands in the*
27 *bed or along or near the banks of the Sacramento River or San*
28 *Joaquin River, or any of their tributaries or connected therewith,*
29 *or upon any land adjacent thereto, or within any of the overflow*
30 *basins thereof, or upon any land susceptible to overflow therefrom.*

31 (i) *"Urban area" means any contiguous area in which more*
32 *than 10,000 residents are protected by project levees.*

33 8472. (a) *It shall be the policy of the state that flood protection*
34 *for Sacramento-San Joaquin Valley communities shall be provided,*
35 *to the extent reasonably achievable, pursuant to the Central Valley*
36 *Flood Protection Plan prepared pursuant to this chapter. The state*
37 *acknowledges that flood protection cannot be guaranteed to any*
38 *particular level, as the nature of Central Valley floods and*
39 *development continue to change, and residual flood risks remain,*

1 *after flood protection improvements have been achieved, for areas*
2 *in Central Valley flood plains.*

3 *(b) The department shall prepare the Central Valley Flood*
4 *Protection Plan for the Sacramento-San Joaquin Valley in*
5 *accordance with this chapter. The plan shall include a description*
6 *of both structural and nonstructural means for improving the*
7 *performance and elimination of deficiencies of levees, weirs,*
8 *bypasses, and facilities, including facilities of the State Plan of*
9 *Flood Control, and, wherever feasible, a description of actions*
10 *intended to meet multiple objectives, including each of the*
11 *following:*

12 *(1) Reduce the risk to human life, health, and safety from*
13 *flooding.*

14 *(2) Expand the capacity of the flood protection system in the*
15 *Sacramento-San Joaquin Valley to either reduce floodflows or*
16 *convey floodwaters away from urban areas.*

17 *(3) Link the flood protection system with the water supply*
18 *system.*

19 *(4) Connect state flood protection decisions to local land use*
20 *decisions for improvement of flood protection capability.*

21 *(5) Improve flood protection for urban areas to a level exceeding*
22 *the federal minimum 100-year standard, including increased*
23 *reliance on upstream floodway corridors.*

24 *(6) Provide sufficient flood protection for small communities*
25 *and rural areas to a standard deemed appropriate by the*
26 *department.*

27 *(7) Promote natural dynamic hydrologic and geomorphic*
28 *processes.*

29 *(8) Reduce damage from flooding.*

30 *(9) Increase and improve the quantity, diversity, and connectivity*
31 *of riparian, wetland, flood plain, and shaded riverine aquatic*
32 *habitats, including the agricultural and ecological values of these*
33 *lands.*

34 *(10) Minimize the flood management system operation and*
35 *maintenance requirements.*

36 *(11) Promote the recovery and stability of native species*
37 *populations and overall biotic community diversity.*

38 *(12) Identify opportunities and incentives for expanding or*
39 *increasing use of floodway corridors.*

1 (13) Provide a feasible, comprehensive, and long-term financing
2 plan for implementing the plan.

3 (14) Identify the responsibilities of federal, state, regional, and
4 local agencies for flood protection in the Sacramento-San Joaquin
5 Valley.

6 (15) Identify opportunities for reservoir reoperation in
7 conjunction with groundwater flood storage.

8 (c) A local plan of flood protection prepared and adopted
9 pursuant to Chapter 4 (commencing with Section 8200) of Part 1
10 shall be consistent with the Central Valley Flood Protection Plan.

11 (d) The department shall complete and submit to the Legislature,
12 no later than January 1, 2011, the Central Valley Flood Protection
13 Plan, to accomplish the purposes identified in this section. The
14 department shall transmit copies of the plan to local agencies in
15 the Sacramento-San Joaquin Valley.

16 (e) The department shall update the plan every five years, in
17 years ending with 6 or 1, to include all of the following:

18 (1) Completed improvements.

19 (2) Needed improvements.

20 (3) Proposed projects.

21 (4) Operational changes.

22 (5) Hydrologic changes.

23 (6) A performance analysis of the minimum flood protection
24 standards.

25 8473. (a) Until the state adopts the Central Valley Flood
26 Protection Plan, the department or the board, as applicable, may
27 implement flood protection improvements for urban areas protected
28 by facilities of the State Plan of Flood Control if the director
29 determines, in writing, that all of the following apply:

30 (1) The improvements are necessary to address an urgent and
31 significant risk of flooding and require state funding before the
32 completion of the Central Valley Flood Protection Plan prepared
33 pursuant to this chapter.

34 (2) The improvements will reduce or avoid risk to human life
35 in one or more urban areas and do not transfer significant flood
36 risks to other urban areas.

37 (3) The improvements will not impair or impede future changes
38 to regional flood protection or the Central Valley Flood Protection
39 Plan.

1 (4) *The improvements will be maintained by a local agency with*
2 *a record of good maintenance of existing facilities of the State*
3 *Plan of Flood Control.*

4 (5) *The affected cities, counties, or other public agencies have*
5 *sufficient revenue resources for the operation and maintenance of*
6 *the facility.*

7 (6) *Upon the allocation of funds for a project, the proposed*
8 *project is ready for implementation.*

9 (7) *The improvements may provide public benefits in addition*
10 *to flood protection.*

11 (8) *The improvements comply with existing law.*

12 (b) *The flood protection improvements authorized by this section*
13 *may include improvements to specific facilities of the State Plan*
14 *of Flood Control or acquisition of flood easements in lands*
15 *adjacent to facilities of the State Plan of Flood Control to increase*
16 *levels of flood protection for urban areas in accordance with*
17 *subdivision (b) of Section 5096.821 of the Public Resources Code.*

18 (c) *The department shall investigate, develop, and establish a*
19 *floodway or bypass, acquire land, or construct one or more*
20 *facilities to significantly reduce flood stage in the San Joaquin*
21 *River Watershed.*

22 (d) *Until the state adopts the Central Valley Flood Protection*
23 *Plan, the board shall not approve any change or alteration to*
24 *facilities of the State Plan of Flood Control unless it determines,*
25 *in writing, that the change or alteration is not a significant change*
26 *or alteration.*

27 8474. *In connection with the preparation of the Central Valley*
28 *Flood Protection Plan in accordance with this chapter, the*
29 *department shall develop and submit to the Legislature, no later*
30 *than January 1, 2009, an overall strategy for flood protection in*
31 *the Central Valley, which shall describe the components and*
32 *objectives of the proposed Central Valley Flood Protection Plan,*
33 *including but not limited to, all of the following:*

34 (a) *Minimum flood protection standards for urban, rural, and*
35 *small communities.*

36 (b) *Methods for expanding the capacity of the flood system,*
37 *including, but not limited to, the use of bypasses, floodway*
38 *corridors, and flood plain storage.*

39 (c) *Facilities of the State Plan of Flood Control.*

1 (d) Potential changes to reservoir operations in cooperation
2 with reservoir operators and affected communities.

3 (e) Emergency response planning in high-risk flood prone areas.

4 (f) Projects that achieve multiple benefits, including flood
5 protection, groundwater recharge, cost savings, and ecosystem
6 health.

7 (g) Areas where flooding is expected to exceed three feet in
8 depth and further development should be limited.

9 (h) Integration of the flood protection and water supply systems.

10 (i) A map showing levee flood protection zones.

11 8476. Neither the state, nor any of its agencies, departments
12 or employees, shall be subject to civil liability in connection with
13 the preparation or implementation of the Central Valley Flood
14 Protection Plan that would not otherwise exist before January 1,
15 2008. This chapter does not constitute any change in the law under
16 *Paterno v. State of California* (2003) 113 Cal.App.3d 998.

17 SECTION 1. Chapter 4 (commencing with Section 8200) is
18 added to Part 1 of Division 5 of the Water Code, to read:

19

20 CHAPTER 4. LOCAL PLANS OF FLOOD PROTECTION

21

22 8200. This chapter shall be known and may be cited as the
23 Local Flood Protection Planning Act.

24 8201. For the purposes of this chapter, "local agency"
25 means _____.

26 8202. (a) A local agency may prepare a local plan of flood
27 protection in accordance with this chapter.

28 (b) A local plan of flood protection shall include all of the
29 following:

30 (1) A plan to meet or include a strategy to meet minimum flood
31 protection standards for urban, rural, and small communities within
32 the jurisdiction of the local agency.

33 (2) Identification and assessment of the various facilities that
34 provide flood protection for flood prone areas, including project
35 levees, nonproject levees, setback levees, upstream flood control
36 dams, bypasses, watershed management, and other facilities.

37 (3) Identification of current and future flood corridors and any
38 necessary future flood protection facilities.

39 (4) Identification of needed improvements to the existing flood
40 protection facilities necessary to meet flood protection standards

1 for urban, rural, and small communities within the jurisdiction of
2 the local agency.

3 ~~(5) An emergency response and evacuation plan for flood-prone
4 areas.~~

5 ~~(6) A strategy to achieve multiple benefits including flood
6 protection, groundwater recharge, cost savings, and ecosystem
7 health.~~

8 ~~(7) A long-term funding strategy for improvement and ongoing
9 maintenance and operation of flood protection facilities.~~

10 ~~(8) Approval of an ordinance to mandate flood insurance and
11 annually notify homeowners as to the level of flood protection and
12 the level of flood risk.~~

13 ~~(c) Prior to the adoption of the local plan of flood protection,
14 the local agency shall submit the plan to the Department of Water
15 Resources or the Reclamation Board to assure consistency with
16 the Central Valley Flood Protection Plan created pursuant to
17 Section 8472.~~

18 ~~(d) Priority for state funds shall be given to local agencies that
19 have adopted a local plan of flood protection.~~

20 ~~8203. (a) There is hereby created the Local Flood Protection
21 Plan Assistance Fund, which shall be administered by the
22 Department of Water Resources.~~

23 ~~(b) Upon appropriation by the Legislature, the money in the
24 fund may be used by the department to assist local agencies by
25 awarding grants to those agencies to conduct necessary activities
26 in the development of a local flood protection plan in accordance
27 with this chapter.~~

28 ~~SEC. 2. Chapter 6 (commencing with Section 8470) is added
29 to Part 2 of Division 5 of the Water Code, to read:~~

30

31 ~~CHAPTER 6. CENTRAL VALLEY FLOOD PROTECTION~~

32

33 ~~8470. This chapter shall be known and may be cited as the
34 Central Valley Flood Protection Planning Act.~~

35 ~~8471. For the purposes of this chapter, the following terms
36 have the following meanings:~~

37 ~~(a) "Rural" means _____.~~

38 ~~(b) "Small community" means _____.~~

39 ~~(c) "Urban" means _____.~~

1 ~~8472. (a) The _____ shall create the Central Valley Flood~~
2 ~~Protection Plan to address flood protection in the central valley.~~

3 ~~(b) The Central Valley Flood Protection Plan shall include~~
4 ~~minimum flood protection standards for urban, rural, and small~~
5 ~~communities.~~

6 ~~(c) The Central Valley Flood Protection Plan shall acknowledge~~
7 ~~and identify the various facilities that provide flood protection for~~
8 ~~flood-prone areas, including project levees, nonproject levees,~~
9 ~~setback levees, upstream flood control dams, bypasses, watershed~~
10 ~~management, and other facilities.~~

11 ~~(d) The Central Valley Flood Protection Plan shall include~~
12 ~~emergency response planning in high-risk flood-prone areas.~~

13 ~~(e) The Central Valley Flood Protection Plan shall recognize~~
14 ~~and encourage projects that achieve multiple benefits including~~
15 ~~flood protection, groundwater recharge, cost savings, and~~
16 ~~ecosystem health.~~

17 ~~(f) The Central Valley Flood Protection Plan shall include a~~
18 ~~long-term funding strategy.~~

19 ~~8473. (a) The Legislature finds and declares all of the~~
20 ~~following:~~

21 ~~(1) In the Central Valley, the state has assumed the primary~~
22 ~~responsibility for protecting its citizens from floods. The state has~~
23 ~~worked closely with the United States Army Corps of Engineers~~
24 ~~to develop, construct, and maintain flood control projects.~~

25 ~~(2) Local governments have the primary responsibility for~~
26 ~~planning and approving various land uses within their jurisdiction.~~
27 ~~The land-use planning function, however, is often disconnected~~
28 ~~from the operations of state or local agencies that protect the~~
29 ~~jurisdiction from floods. As a result, land-use decisions are based~~
30 ~~on limited information regarding flood management and protection.~~

31 ~~(3) In order to connect local government land-use decisions with~~
32 ~~state flood management policies, financing, and facilities, it is~~
33 ~~necessary for local government land-use decisions to include~~
34 ~~confirmation that new developments will enjoy sufficient protection~~
35 ~~from flood hazards.~~

36 ~~(4) The current federal flood standard is not sufficient in~~
37 ~~protecting urban areas in high-risk flood-prone areas of the central~~
38 ~~valley.~~

39 ~~(b) Unless the conditions set forth in _____ are met to ensure~~
40 ~~appropriate levels of flood protection, local governments in the~~

1 ~~central valley shall not approve new developments within high-risk~~
2 ~~flood prone areas:~~

3

4

5 **CORRECTIONS:**

6 **Text—Pages 4, 6, 7, 8, and 10.**

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AMENDED IN ASSEMBLY APRIL 11, 2007
AMENDED IN ASSEMBLY FEBRUARY 21, 2007
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 70

Introduced by Assembly Member Jones

December 4, 2006

An act to add Section 8307 to the Water Code, relating to flood liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 70, as amended, Jones. Flood liability.

Existing law, under various circumstances, subjects a public entity or an employee of a public entity to liability for property damage or personal injury caused by or from floods or floodwaters.

This bill would provide that liability for property damage or personal injury shall rest jointly with all state and local public entities that participate in the design, construction, operation, or maintenance of a flood control project when the flood control project fails to function as intended and causes property damage or personal injury in areas historically subject to flooding. The bill would provide that the state is entitled to a right of contribution against any local public entity whose actions, or failure to act, contributes to the failure of a flood control project when that failure causes property damage or personal injury and a judgment has been entered against the state. The bill would subject a local public entity to joint liability and the state's right of contribution *with the state* to the extent that the local public entity increases the state's exposure to liability for property damage by approving new

development in a previously undeveloped area, as defined, *that is protected by a state flood control project.*

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

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

1 SECTION 1. ~~(a)~~ The Legislature finds and declares that recent
2 court rulings have upheld liability on the part of the state under
3 theories of inverse condemnation or various tort causes of action
4 for property damage or personal injury caused by the failure of
5 state and local flood control projects.

6 ~~(b) It is the intent of the Legislature that the state and local~~
7 ~~public entities share liability for property damage or personal injury~~
8 ~~associated with a failure of a flood control project.~~

9 SEC. 2. Section 8307 is added to the Water Code, to read:

10 ~~8307. (a) If a flood control project fails to function as intended,~~
11 ~~and causes property damage or personal injury in areas historically~~
12 ~~subject to flooding, liability for that damage or injury shall rest~~
13 ~~jointly with all state and local public entities that participate in the~~
14 ~~design, construction, operation, or maintenance of the flood control~~
15 ~~project. Liability shall be equitably apportioned according to the~~
16 ~~extent to which the public entity has the power to control and~~
17 ~~correct the aspect of the flood control project that causes the failure~~
18 ~~and resulting property damage or personal injury.~~

19 ~~(b) If the failure of a flood control project causes property~~
20 ~~damage or personal injury, and a judgment has been entered against~~
21 ~~the state or a state agency determined to be liable for the damage~~
22 ~~or injury, the state is entitled to a right of contribution against any~~
23 ~~local public entity whose actions, or failure to act, contributes to~~
24 ~~the failure of the flood control project. The right of contribution~~
25 ~~shall apply whether the action against the state or state agency is~~
26 ~~brought in tort or inverse condemnation.~~

27 ~~(e) (1)~~

28 ~~8307. (a) Whether or not a local public entity directly~~
29 ~~participates in the operation or maintenance of a state flood control~~
30 ~~project, it is subject to joint liability and the state's right of~~
31 ~~contribution with the state to the extent that the local public entity~~
32 ~~increases the state's exposure to liability for property damage by~~

1 approving new development in a previously undeveloped area *that*
2 *is protected by a state flood control project.*

3 ~~(2) For the purpose of this subdivision, an undeveloped area~~

4 *(b) For the purposes of this section:*

5 *(1) "State flood control project" means any flood control works*
6 *within the Sacramento River Flood Control Project described in*
7 *Section 8350, and of flood control projects in the Sacramento River*
8 *and San Joaquin River watersheds authorized pursuant to Article*
9 *2 (commencing with Section 12648) of Chapter 2 of Part 6 of*
10 *Division 6.*

11 *(2) "Undeveloped area" means an area devoted to "agricultural*
12 *use," as defined in Section 51201 of the Government Code, or*
13 *"open space land," as defined in Section 65560 of the Government*
14 *Code.*

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