

Senate Bill No. 276

CHAPTER 641

An act to amend Sections 12670.14 and 12670.16 of the Water Code, relating to water.

[Approved by Governor October 13, 2007. Filed with
Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 276, Steinberg. Flood control projects.

Existing law adopts and authorizes, at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the Department of Water Resources or the Reclamation Board, the federally authorized project for flood control along the American and Sacramento Rivers, as modified, and the Folsom Dam modification project, as modified by a prescribed report prepared by the Sacramento Area Flood Control Agency.

This bill would, for the purposes of those authorizations, describe the project for flood control along the American and Sacramento Rivers as further modified to include a specified 200-year level of flood protection. The bill would describe the Folsom Dam modification project as further modified by a specified report adopted by Congress. The bill would specify the extent of state and local participation in specified flood control projects administered by the Sacramento Area Flood Control Agency.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Sacramento was founded over 150 years ago in a flood plain at the confluence of the Sacramento and American Rivers. Commercially dependent on river transport, the city suffered from flood disasters because of inadequate flood protection. Construction of the present day levee system and Folsom Dam have spared modern Sacramento from catastrophic flooding. However, the record floods of 1986 and 1997 exposed significant deficiencies in this flood control system, making the state capital region the most at-risk urban area in the country.

(b) Since 1986, the State of California has participated in a cost-sharing partnership with the federal government and the Sacramento Area Flood Control Agency that has produced substantial investments in improved flood protection for the people and property occupying the historic flood plain,

including the State Capitol and more than 1,300 other government-owned buildings and infrastructure.

(c) Although the state capital region is now better protected than at any time in its history, intensive development of the flood plain has significantly increased the potential consequences of an uncontrolled flood and heightened the state's interest in continuing to invest in a defined cost-shared program to provide the region with an adequate level of flood protection. Without state funding, federal and local flood control investments will not be secured, the risk of flooding will remain unacceptably high, and the region's economic development and environmental health will be imperiled.

(d) The Congress and the President of the United States have recognized the national importance of improving the state capital's flood protection system by authorizing projects in the Defense Appropriations Act of 1993, the Water Resources Development Act of 1996, the Water Resources Development Act of 1999, and the Energy and Water Development Appropriations Act of 2004.

(e) In 2000, in response to the Legislature's expressed desire to develop a long-term policy to guide the state's participation in future flood management projects, Assembly Bill 1147 was passed by the Legislature, signed by Governor Gray Davis, and enacted as Chapter 1071 of the Statutes of 2000.

(f) The legislation added Section 12670.14 to the Water Code. This section authorized flood control projects for the protection of specific areas within the Sacramento region against a catastrophic flood event, including the project for flood control along the American and Sacramento Rivers, the project for flood control in the Natomas and North Sacramento area, and the project to modify Folsom Dam.

(g) The legislation also added Section 12585.7 to the Water Code. Section 12585.7 changed the formula for the sharing of the nonfederal capital costs of all projects authorized by the Legislature on or after January 1, 2002, two years after the effective date of the legislation.

(h) The project for flood control along the American and Sacramento Rivers, including improvements to the Natomas levees, and the project to modify Folsom Dam were authorized by both the state and federal governments prior to January 1, 2002. Subsequently, in order to address changing engineering standards and conditions, the United States Army Corps of Engineers recommended, and Congress approved, postauthorization changes to these projects.

(i) In April 2007, the Sacramento Area Flood Control Agency secured the support of property owners in the Sacramento region for the imposition of a special benefit assessment to fund the local share of the cost of the levee improvement projects along the American and Sacramento Rivers, including the Natomas area, and the project to modify Folsom Dam to provide the Sacramento region with at least a 200-year level of flood protection based on current estimates of the runoff likely to be produced by such a flood event.

(j) This act modifies existing state authorizations for these projects to ensure that the historic federal-state-local cost-sharing partnership which has sustained these projects is continued and project construction moves forward as quickly as possible. The constructed projects will increase the ability of the existing flood control system to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods.

(k) As evidenced by the environmental impact reports certified in connection with these projects, including the hydrology and hydraulics impact analysis set forth in the environmental impact report prepared by the Sacramento Area Flood Control Agency with regard to local funding mechanisms for comprehensive flood control improvements for the Sacramento area dated February 2007, the increase in flood protection associated with improving the American and Sacramento River levees and modifying Folsom Dam will be accomplished without altering or otherwise impairing the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project. Accordingly, these improvements will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project. Thus, it is not necessary or appropriate to require these projects to include hydraulic mitigation.

(l) The projects authorized in Section 12670.14 of the Water Code will increase the ability of the existing flood control system in the lower Sacramento Valley to protect heavily urbanized areas within the City of Sacramento and the Counties of Sacramento and Sutter against very rare floods without altering the design flows and water surface elevations prescribed as part of the Sacramento River Flood Control Project or impairing the capacity of other segments of the Sacramento River Flood Control Project to contain these design flows and to maintain water surface elevations. Accordingly, the projects authorized in that section will not result in significant adverse hydraulic impacts to the lands protected by the Sacramento River Flood Control Project and neither the Reclamation Board nor any other state agency shall require the authorized projects to include hydraulic mitigation for these protected lands.

SEC. 2. Section 12670.14 of the Water Code is amended to read:

12670.14. The following projects in areas within the City of Sacramento and the Counties of Sacramento and Sutter are adopted and authorized at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the department or the Reclamation Board:

(a) The project for flood control in the Natomas and North Sacramento areas adopted and authorized by Congress in Section 9159 of the Department of Defense Appropriations Act of 1993 (Public Law 102-396) substantially in accordance with the recommendations of the Chief of Engineers in the report entitled "American River Watershed Investigation" dated July 1, 1992.

(b) The project for flood control along the American and Sacramento Rivers adopted and authorized by Congress in Section 101(a)(1) of the Water Resources Development Act of 1996 substantially in accordance with the recommendations of the Chief of Engineers in the report entitled “American River Watershed Project, California” dated June 27, 1996, as modified by Congress in Section 366 of the Water Resources Development Act of 1999, and as further modified to include the project features necessary to provide a 200-year level of flood protection along the American and Sacramento Rivers and within the Natomas Basin as described in the final engineer’s report dated April 19, 2007, adopted by the Sacramento Area Flood Control Agency.

(c) The project to modify Folsom Dam adopted and authorized by Congress in Section 101(a)(6) of the Water Resources Development Act of 1999, as described in the United States Army Corps of Engineers Supplemental Information Report for the American River Watershed Project, California, dated March 1996, as modified by the report entitled “Folsom Dam Modification Report, New Outlets Plan,” dated March 1998, prepared by the Sacramento Area Flood Control Agency, and as further modified by the Post-Authorization Change Report, American River Watershed Project (Folsom Dam Modification and Folsom Dam Raise Projects), dated March 2007, adopted by Congress in Section 3023 of the Water Resources Development Act of 2007.

(d) (1) The project for flood control, environmental restoration, and recreation along south Sacramento County streams adopted and authorized by Congress in Section 101(a)(7) of the Water Resources Development Act of 1999 as described in the report of the Chief of Engineers entitled “South Sacramento County Streams, California” dated October 6, 1998.

(2) Notwithstanding Section 12657, at the discretion of the Reclamation Board, the Sacramento Area Flood Control Agency may provide, for the project described in paragraph (1), the assurances of local cooperation satisfactory to the Secretary of the Army, in accordance with Section 12657, in lieu of assurances by the Reclamation Board.

SEC. 3. Section 12670.16 of the Water Code is amended to read:

12670.16. (a) Notwithstanding any other provision of law, the Sacramento Area Flood Control Agency’s share of the nonfederal capital costs of the projects for flood control authorized in Section 12670.14 shall be calculated in accordance with Section 12585.5, and the agency shall be reimbursed pursuant to Section 12585.5 for any costs of project features that the agency advances on behalf of the department or Reclamation Board if either of the following requirements is met:

(1) The advances are made in response to a federal request for payment of the nonfederal share of the cost of the project.

(2) If the advances are made for project features that have not yet been authorized by Congress, the Reclamation Board has received a written determination by the federal government that the project features will likely be authorized by Congress and, if so authorized, the advances will be eligible for credit toward the nonfederal share of the cost of these features.

(b) Prior to any reimbursement pursuant to subdivision (a), the agency shall execute an agreement with the department under which it agrees to indemnify and hold the state harmless from damages due to the construction, operation, or maintenance of those projects and agrees to operate, maintain, repair, replace, and rehabilitate those projects, or provide the agreement of its appropriate member agency to do so.