

WATER CODE - WAT

DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES [10000 - 12999]

(Heading of Division 6 amended by Stats. 1957, Ch. 1932.)

PART 6. WATER DEVELOPMENT PROJECTS [12570 - 12949.6]

(Part 6 added by Stats. 1953, Ch. 196.)

CHAPTER 4. Watershed Protection Flood Prevention Projects [12850 - 12875]

(Chapter 4 added by Stats. 1955, Ch. 1886.)

ARTICLE 1. Short Title [12850- 12850.]

(Article 1 added by Stats. 1955, Ch. 1886.)

12850.

Chapter 4 of this part shall be known and may be cited as "The California Watershed Protection and Flood Prevention Law."

(Added by Stats. 1955, Ch. 1886.)

ARTICLE 2. Definitions [12851 - 12854]

(Article 2 added by Stats. 1955, Ch. 1886.)

12851.

The definitions in this article govern the construction of this chapter.

(Added by Stats. 1955, Ch. 1886.)

12853.

"Lands, easements and rights of way" includes lands and rights or interests in lands whereon channel improvements and channel rectifications, debris dams and water retarding structures are located; lands, rights, or interests in lands necessary in connection with the construction, operation, or maintenance of such channel improvements and rectifications, debris dams and water retarding structures, including those necessary for flooding and flowage purposes, debris basins, spoil areas, borrow pits, or for access roads; and including the cost of the

relocation, reconstruction, or replacement of existing improvements, structures, or utilities rendered necessary by such channel improvements and rectifications, debris dams and water retarding structures.

(Added by Stats. 1955, Ch. 1886.)

12854.

“Local organizations” means any county, city, state agency or public district.

(Added by Stats. 1955, Ch. 1886.)

ARTICLE 3. Declaration of Policy [12860 - 12861]

(Article 3 added by Stats. 1955, Ch. 1886.)

12860.

It is hereby declared that the people of the State have a primary interest in the control and conservation of floodwaters and the prevention of erosion, sediment damages and other damages by floodwaters in the watersheds of the rivers and streams of this State.

(Added by Stats. 1955, Ch. 1886.)

12861.

It is hereby declared that recurrent floods on rivers and streams of this State, causing loss of life and damage to property, disruption of commerce, interruption of transportation and communications, and wasting of water, are detrimental to the peace, health, safety and welfare of the people of the State. The control and prevention of such floods and the loss and damage caused thereby and the conservation and protection of the State’s land and water resources are proper functions and activities of the State, in cooperation with counties, cities, state agencies and public districts, and in cooperation with the United States, or any of its departments or agencies.

(Added by Stats. 1955, Ch. 1886.)

ARTICLE 4. Declaration of Intent [12865 - 12868]

(Article 4 added by Stats. 1955, Ch. 1886.)

12865.

It is the intention of the Legislature that it will be the policy of the State to pay the costs of local cooperation required by acts of Congress for the following types of watershed projects:

- (a) "Pilot plant" or "experimental projects" in this State, whether commenced prior to the effective date of this chapter or not, authorized by the Department of Agriculture Appropriation Act for the fiscal year ending June 30, 1954 (Chapter 251, Public Law 156, Eighty-third Congress, First Session, approved July 28, 1953) to be carried out pursuant to Public Law 46, Seventy-fourth Congress.
- (b) Any project in this State undertaken, whether prior to the effective date of this chapter or not, pursuant to the Watershed Protection and Flood Prevention Act (Public Law 566, Chapter 656, Eighty-third Congress, Second Session).

(Added by Stats. 1955, Ch. 1886.)

12866.

The costs of local cooperation which the State will assume pursuant to Section 12865 shall be limited to the costs of lands, easements and rights of way.

(Added by Stats. 1955, Ch. 1886.)

12866.1.

It is also declared to be the policy of the state that the state shall not provide financial assistance for relocation, reconstruction, or replacement of existing improvements, structures, or utilities for which the owner has no legal right to be compensated for such relocation, reconstruction or replacement.

(Added by Stats. 1973, Ch. 893.)

12866.2.

Notwithstanding any other provisions of this chapter, the following policy shall apply to projects approved by the appropriate committees of the Congress and by the Department of Agriculture after November 10, 1969:

- (a) The state shall pay 75 percent of the costs of lands and rights or interests in lands whereon channel improvements and channel rectifications, debris dams and water-retarding structures are located and of lands, rights, or interests in lands necessary in connection with the construction, operation, or maintenance

of such channel improvements and rectifications, debris dams and water-retarding structures, including those necessary for flowage purposes, spoil areas, borrow pits, or for access roads, apportioned to the benefits resulting from the reduction of flood damage.

(b) The local agency shall pay 25 percent of the costs of lands and rights or interests in lands whereon channel improvements and channel rectifications, debris dams and water-retarding structures are located and of lands, rights, or interests in lands necessary in connection with the construction, operation, or maintenance of such channel improvements or rectifications, debris dams and water-retarding structures, including those necessary for flowage purposes, spoil areas, borrow pits, or for access roads, apportioned to the benefits resulting from the reduction of flood damage and all of such costs apportioned to the benefits resulting from increased or higher utilization of land.

(c) The state shall pay 90 percent of the costs of the relocation, reconstruction, or replacement of existing improvements, structures, or utilities rendered necessary by the project, apportioned to the benefits resulting from the reduction of flood damage.

(d) The local agency shall pay 10 percent of the costs of the relocation, reconstruction, or replacement of existing improvements, structures, or utilities rendered necessary by the project, apportioned to the benefits resulting from the reduction of flood damage and all of such costs apportioned to the benefits resulting from increased or higher utilization of land.

(e) The state's portion of the costs under subdivisions (a) and (c) shall be determined by the department at or prior to the time the report recommending federal authorization is submitted to the Congress. In the case of projects already having federal authorization, the state's portion of such costs shall be determined by the department at the time state authorization is sought by the local agency. The state's portion shall not be changed unless there are major project changes made in the plan of improvement, in which case the department, prior to the next appropriation of state funds for the project, shall review the project and make such new determinations as it deems justified by the project changes.

(f) When a project approved prior to November 10, 1969, is so modified that it becomes subject to the provisions of Section 12873, the policy described in this section shall be applied to any portion of the modified project which the department determines to be beyond the scope of the originally authorized project.

(Amended by Stats. 1974, Ch. 1054.)

12866.3.

The local agency may receive credit against its share of the costs of lands, easements, and rights-of-way as determined in subdivisions (b) and (d) of Section 12866.2 for lands required for the project which were acquired not more than five years prior to federal authorization of the project. The amount of this credit shall be determined by the department by applying the percentage representing the state portion of the costs of lands, easements, and rights-of-way as determined in subdivision (a) of Section 12866.2 to the actual costs of the local agency in the case of acquisition by purchase or condemnation, and to the fair market value at the time the title is transferred in the case of acquisition free of charge.

(Amended by Stats. 1974, Ch. 1054.)

12866.4.

Whenever specifically authorized by the Legislature, the department may lend the local agency the funds necessary to pay the local portion of the costs of lands, easements, and rights-of-way determined in subdivisions (b) and (d) of Section 12866.2, less any credit for previously acquired lands determined under Section 12866.3. The state loan may not exceed a period of 10 years and the rate of interest on the loan shall be the current rate for the state's Pooled Money Investment Account. The loan shall be repaid in annual installments beginning one year after the loan is made. The annual loan payment shall be deducted from the state's annual tax subvention to the local agency, if any. In the event that the local agency does not receive tax subventions from the state adequate to make the loan payment and becomes in default of the loan payments, the local agency, notwithstanding any other provisions of any statute limiting its tax ceiling, shall levy sufficient taxes to repay the loan. Notwithstanding any other provisions of law, any local agency authorized to participate in the construction of watershed protection projects is authorized to accept the loans authorized pursuant to this section.

(Amended by Stats. 1974, Ch. 1054.)

12867.

The State shall pay the costs of lands, easements and rights of way for projects described in subsection (a) of Section 12865 only if, or to the extent that:

(a) The Secretary of Agriculture and local organizations have agreed on a plan for works of improvement pursuant to the authorization made by the Department of Agriculture Appropriation Act for the fiscal year ending June 30, 1954.

(b) Local organizations have given assurances as required by the Secretary of Agriculture relative to local participation.

(c) The department finds in its judgment that the benefits of the proposed works of improvement for an entire project or for a portion or portions thereof which constitute complete and usable independent units will reasonably exceed the costs of the entire project or of such portion or portions thereof. Cost figures based upon a reconnaissance-type survey may be used for such purpose providing the department finds that all elements of cost reasonably appear to be included and the cost figures appear reasonably accurate for the purpose of supporting a finding that total costs will be less than the total benefits for an entire project or for such portion or portions thereof that may be under consideration.

(d) The department recommends to the Legislature that an appropriation of funds be made for the entire project or for such portion or portions thereof as constitute complete and usable independent units for reallocation for payment of the costs of lands, easements and rights of way which it finds have already been incurred or which it is anticipated will be incurred during the next fiscal year.

(Amended by Stats. 1957, Ch. 1932.)

12868.

The State shall pay the costs of lands, easements and rights of way for projects described in subsection (b) of Section 12865 only if, or to the extent that:

(a) The Secretary of Agriculture and local organizations have agreed on a plan for works of improvement pursuant to Public Law 566, Eighty-third Congress, Second Session.

(b) Local organizations have given the required assurances to the Secretary of Agriculture that they will:

- (1) Acquire without cost to the Federal Government such land, easements, or rights of way as will be needed in connection with works of improvement installed with federal assistance;
- (2) Assume such proportionate share of the cost of installing any works of improvement involving federal assistance as may be determined by the secretary to be equitable in consideration of anticipated benefits from such improvements;
- (3) Make arrangements satisfactory to the secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture;
- (4) Acquire, or provide assurance that landowners have acquired, such water rights, pursuant to state law, as may be needed in the installation and operation of the work of improvement.

(5) Obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

(c) The Secretary of Agriculture has determined that the benefits to be derived from the proposed works of improvement will exceed the cost.

(d) The Secretary of Agriculture has transmitted a copy of the plan and justification therefor to the Congress through the President and, where applicable, to the Secretary of the Interior and the Secretary of the Army, as required by said Public Law 566.

(e) The department finds in its judgment that the benefits of the proposed works of improvement for an entire project will reasonably exceed the costs thereof. Cost figures based upon a reconnaissance-type survey may be used for such purpose providing the department finds that all elements of cost reasonably appear to be included and the cost figures appear reasonably accurate for the purpose of supporting a finding that total costs will be less than the total benefits.

(f) The department recommends to the Legislature that an appropriation of funds be made for the project for reallocation for payment of the costs of lands, easements and rights of way which it finds have already been incurred or which it is anticipated will be incurred during the next fiscal year.

(Amended by Stats. 1959, Ch. 1269.)

ARTICLE 5. Procedure for Allocation [12870 - 12875]

(Article 5 added by Stats. 1955, Ch. 1886.)

12870.

When local organizations have agreed with the Secretary of Agriculture upon a plan for works of improvement pursuant to the authorization contained in said Department of Agriculture Appropriation Act or in said Public Law 566 and desire financial assistance from the State pursuant to this chapter, they shall file an application with the department requesting the department to recommend to the Legislature that an appropriation of funds be made for the next fiscal year.

(Amended by Stats. 1957, Ch. 1932.)

12871.

The department shall make such a recommendation to the Legislature if it finds that the requirements of Section 12867 or Section 12868 have been met.

(Amended by Stats. 1957, Ch. 1932.)

12872.

The findings of the department required by subsection (d) of Section 12867 or of subsection (f) of Section 12868 shall be based upon current cost estimates or actual costs incurred or expended.

(Amended by Stats. 1957, Ch. 1932.)

12873.

The findings of the department required by subsection (c) of Section 12867 or by subsections (a) to (e) of Section 12868 need be made only once, at the time the department first recommends an entire project or such portion or portions thereof as constitute complete and usable independent units to the Legislature, and need not be made again each year thereafter in which the department recommends an allocation of funds therefor. If conditions change so as in the judgment of the department to warrant new or different findings, the department may however make additional or contrary findings, and make recommendations thereon to the Legislature.

(Amended by Stats. 1957, Ch. 1932.)

12874.

Money appropriated to the department for reallocation to local organizations shall be reallocated to local organizations upon order of the department after application therefor has been made to it by such local organizations showing the necessity, purpose and use to be made of the money or showing that such organizations have made necessary advances or incurred obligations for the purpose of expediting projects for which the allocation is made and giving such other information as the department may require. Such application may be filed with or as a part of the application for recommendation to the Legislature for appropriation of funds. Expenditures of the reallocated sums shall be reported to the department as and when required by it. The reports shall give such information as the department may require.

(Amended by Stats. 1959, Ch. 1269.)

12875.

The department may refuse to make any order for the reallocation of any of the funds if the provisions of this chapter are violated.

(Amended by Stats. 2001, Ch. 745, Sec. 230.8. Effective October 12, 2001.)