

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 9. DELTA LEVEE MAINTENANCE [12980 - 12995]

(Part 9 added by Stats. 1973, Ch. 717.)

12980.

As used in this part:

- (a) "Board" means the Central Valley Flood Protection Board.
- (b) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.
- (c) "Local agency" means any city, county, district, or other political subdivision of the state which is authorized to maintain levees.
- (d) "Net long-term habitat improvement" means enhancement of riparian, fisheries, and wildlife habitat.
- (e) "Nonproject levee" means a local flood control levee in the delta that is not a project facility under the State Water Resources Law of 1945, as shown on page 38 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993.
- (f) "Project levee" means a federal flood control levee, as shown on page 40 of the Department of Water Resources "Sacramento-San Joaquin Delta Atlas," dated 1993, that is a project facility under the State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6), 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 in Section 29728 of the Public Resources Code.

(Amended by Stats. 2012, Ch. 549, Sec. 1. Effective January 1, 2013.)

12981.

- (a) The Legislature finds and declares that the delta is endowed with many invaluable and unique resources and that these resources are of major statewide significance.
- (b) The Legislature further finds and declares that the delta's uniqueness is particularly characterized by its hundreds of miles of meandering waterways and the many islands adjacent thereto; that, in order to preserve the delta's invaluable resources, which include highly productive agriculture, recreational

assets, fisheries, and wildlife environment, the physical characteristics of the delta should be preserved essentially in their present form; and that the key to preserving the delta's physical characteristics is the system of levees defining the waterways and producing the adjacent islands. However, the Legislature recognizes that it may not be economically justifiable to maintain all delta islands.

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

(Amended by Stats. 1996, Ch. 601, Sec. 11. Effective January 1, 1997.)

12982.

The Legislature further finds and declares that while most of the delta's levees are privately owned and maintained they are being subjected to varied multiple uses and serve to benefit many varied segments and interests of the public at large, and that as a result of the varied multiple uses of such levees, added maintenance costs are being borne by adjacent landowners.

(Added by Stats. 1973, Ch. 717.)

12983.

The Legislature further finds and declares that there is an urgent need for a higher degree of levee maintenance and rehabilitation generally throughout the delta and that the state has an interest in providing technical and financial assistance for delta levee maintenance and rehabilitation.

The Legislature also finds and declares that, because of the instability of delta soils, the effect of winds, tides, and floodflows, and the unique problems of erosion, seepage, and subsidence, the same security against levee failure and flooding cannot be achieved by protective works in the delta as in areas less vulnerable to these problems. Although the rehabilitation and maintenance of delta levees is an important undertaking, a significant risk of levee failure will still persist.

The purpose of the state's approval of plans and inspection of works, which duties are set forth in this part, is to ensure that subvention funds are properly expended and that delta levees are effectively rehabilitated and maintained, and the state does not thereby assume any responsibility for the safety of any delta levee against failure.

(Amended by Stats. 1986, Ch. 824, Sec. 1. Effective September 15, 1986.)

12984.

The department shall develop and submit to the board, for adoption by the board, criteria for the maintenance and improvement of nonproject levees. The criteria shall vary as required to meet specific conditions and shall be multipurpose in nature, and include environmental considerations, when feasible. The criteria shall embody and implement both of the following:

- (a) The short-term mitigation plan set forth in the "Flood Hazard Mitigation Plan for the Sacramento-San Joaquin Delta," prepared by the department for the Office of Emergency Services, dated September 15, 1983, or as amended.
- (b) The "Vegetation Management Guidelines for Local Nonproject Delta Levees" dated April 1994, or any successor guidelines.

(Amended by Stats. 1996, Ch. 601, Sec. 12. Effective January 1, 1997.)

12985.

Prior to adoption of any such criteria, the board shall hold public hearings and may revise the criteria as it determines necessary.

(Added by Stats. 1973, Ch. 717.)

12986.

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

- (1) No costs incurred shall be reimbursed if the entire cost incurred per mile of project or nonproject levee is one thousand dollars (\$1,000) or less.
- (2) Not more than 75 percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of project or nonproject levee shall be reimbursed.
- (3) (A) As part of the project plans approved by the board, the department shall require the local agency or an independent financial consultant to provide information regarding the agency's ability to pay for the cost of levee maintenance or improvement. Based on that information, the department may require the local agency or an independent financial consultant to prepare a comprehensive study on the agency's ability to pay.
- (B) The information or comprehensive study of the agency's ability to pay shall be the basis for determining the maximum allowable reimbursement eligible

under this part. Nothing in this paragraph shall be interpreted to increase the maximum reimbursement allowed under paragraph (2).

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

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

(6) All final costs allocated or reimbursed under a plan shall be approved by the Central Valley Flood Protection Board for project and nonproject levee work.

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

(b) Upon completion of its evaluation pursuant to Sections 139.2 and 139.4, by January 1, 2008, the department shall recommend to the Legislature and the Governor priorities for funding under this section.

(c) Reimbursements made pursuant to this section shall reflect the priorities of, and be consistent with, the Delta Plan established pursuant to Chapter 1 (commencing with Section 85300) of Part 4 of Division 35.

(d) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2019, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended (as amended by Stats. 2011, Ch. 296) by Stats. 2012, Ch. 549, Sec. 3. Effective January 1, 2013.

Inoperative July 1, 2018. Repealed as of January 1, 2019, by its own provisions. See later operative version, as amended by Sec. 2 of Ch. 549.)

12986.

(a) It is the intent of the Legislature to reimburse from the General Fund an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of project or nonproject levees as follows:

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

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

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

(b) This section shall become operative on July 1, 2018.

(Amended (as amended by Stats. 2010, Ch. 23, Sec. 2) by Stats. 2012, Ch. 549, Sec. 2. Effective January 1, 2013.

Section operative July 1, 2018, by its own provisions.)

12987.

(a) Local agencies maintaining project or nonproject levees shall be eligible for reimbursement pursuant to this part upon submission to and approval by the board of plans for the maintenance and improvement of the project or nonproject levees, including plans for the annual routine maintenance of the levees, in accordance with the criteria adopted by the board.

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

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

(d) After the memorandum of understanding required pursuant to Section 12307 is amended as required by Section 78543, the Department of Fish and Game shall also make a written determination as part of its review and approval of a plan or project pursuant to Section 12314 and this section that the proposed expenditures are consistent with a net long-term habitat improvement program and have a net benefit for aquatic species in the delta. The memorandum of understanding in effect prior to the amendments required by Section 78543 shall remain in effect with regard to levee projects and plans until the memorandum of understanding is amended.

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

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

(Amended by Stats. 1996, Ch. 601, Sec. 15. Effective January 1, 1997.)

12987.5.

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

(b) Advances made under subdivision (a) shall be subtracted from amounts to be reimbursed after the work has been performed. If the department finds that work has not been satisfactorily performed or where advances made actually exceed reimbursable costs, the local agency shall promptly remit to the state all amounts advanced in excess of reimbursable costs. If advances are sought, the board may require a bond to be posted to ensure the faithful performance of the work set forth in the agreement.

(c) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2019, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2012, Ch. 549, Sec. 4. Effective January 1, 2013. Inoperative July 1, 2018. Repealed as of January 1, 2019, by its own provisions.)

12988.

Upon the completion in any year of the maintenance or improvement work, including annual routine maintenance work, as specified in the plans approved by the board, the local agency shall notify the department, and the department shall inspect the completed work. The department, upon completion of such inspection, shall submit to the board a report as to its findings. Upon a finding that the work has been satisfactorily completed in accordance with the approved plans, the board shall certify for reimbursement 75 percent of any costs incurred

per mile of levee if the entire cost incurred per mile of levee is greater than one thousand dollars (\$1,000).

(Amended by Stats. 1996, Ch. 601, Sec. 17. Effective January 1, 1997.)

12989.

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

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

(Amended by Stats. 1996, Ch. 601, Sec. 18. Effective January 1, 1997.)

12990.

Whenever the department finds that the annual routine maintenance work specified in the plans approved by the board is not being performed in accordance with the agreement entered into between the local agency and the board, the department may establish a maintenance area in accordance with the provisions of Chapter 4.5 (commencing with Section 12878) of Part 6 of this division, as nearly as the same may be applicable, except that the work to be performed shall be the routine annual maintenance work for the nonproject levee as specified in the plans approved by the board. Upon the formation of a maintenance area, the department shall thereafter annually maintain the nonproject levee in accordance with such plans and subject to the provisions of Chapter 4.5 (commencing with Section 12878) of Part 6 of this division, as nearly as the same may be applicable.

(Added by Stats. 1973, Ch. 717.)

12991.

The board is authorized to make, from time to time, such rules and regulations as may be necessary to carry out, and as are consistent with, this part.

(Added by Stats. 1973, Ch. 717.)

12992.

Before any plan is approved, agreement entered into, or moneys advanced or reimbursed under this part, the local agency shall first enter into an agreement with the board indemnifying and holding and saving the State of California, the board, the department, any other agency or department of the state, and their employees free from any and all liability for damages, except that caused by gross negligence, that may arise out of the approvals, agreements, inspections, or work performed under this part.

Any funds appropriated for any of the purposes of this part may be used to satisfy any judgment against the state covered by this section, pending indemnification by the local agency.

(Added by Stats. 1988, Ch. 28, Sec. 9. Effective March 14, 1988.)

12993.

Applicants shall apply for federal disaster assistance, whenever eligible, under Public Law 93-288. If, and to the extent that, it is determined that the work performed does not qualify for federal disaster assistance, the applicant may apply for reimbursement under Section 12986, and the costs shall be deemed incurred by the applicant in the year in which the latter application is filed.

(Added by Stats. 1988, Ch. 28, Sec. 10. Effective March 14, 1988.)

12994.

(a) The Legislature finds and declares all of the following:

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

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

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

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

(1) In an emergency, as defined by Section 21060.3 of the Public Resources Code, that requires immediate levee work to protect public benefits in the delta, the department may use funds pursuant to this part without prior approval of a plan by the board or the Department of Fish and Wildlife, in which case the requirements of Sections 12314 and 12987, and the memorandum of

understanding pursuant to Section 12307, shall be carried out as soon as possible.

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

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

(C) As soon as feasible after the emergency repair, the department shall submit a report to the board describing the levee work, costs incurred, and plans for future work at the site, including any necessary mitigation.

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

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

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

(B) Criteria for eligible emergency levee work.

(C) Definition of an emergency levee site.

(D) Documentation requirements.

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

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

(3) Establish a multiagency emergency response team, consisting of representatives from the department, the board, the Department of Fish and Wildlife, the California Conservation Corps, the Office of Emergency Services, the Federal Emergency Management Agency, the United States Army Corps of

Engineers, and the United States Fish and Wildlife Service to advise on methods to ensure that levee emergencies will be resolved as quickly and safely as possible.

(Amended by Stats. 2013, Ch. 352, Sec. 531. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

12995.

(a) The Legislature hereby finds and declares both of the following:

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

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

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

(Added by Stats. 1996, Ch. 601, Sec. 20. Effective January 1, 1997.)