

**Introduced by Senator De León**

February 22, 2012

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An act to add Section 831.22 to, and to add and repeal Section 12805.7 of, the Government Code, and to amend Section 2 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915), relating to the Los Angeles River.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1201, as introduced, De León. Los Angeles River.

(1) The Tort Claims Act provides for the liability and immunity of a governmental entity for its acts or omissions that cause harm to persons. The act provides that neither a public entity nor a public employee is liable for an injury caused by the plan or design for the construction of, or an improvement to, public property where the plan or design has been approved in advance by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give approval, or where the plan or design is prepared in conformity with standards previously approved, if the court makes specified determinations.

This bill, for purposes of that act, would require stretches of navigable rivers with unpaved riverbeds to be deemed to be in a natural condition and unimproved notwithstanding that the river has been channelized or otherwise modified. That provision would be applicable to causes of action based upon acts or omissions occurring on or after January 1, 2012.

(2) Existing law establishes in state government the Natural Resources Agency, consisting of various departments, including the Department of Fish and Game and the State Lands Commission.

The Los Angeles County Flood Control Act establishes the Los Angeles County Flood Control District and authorizes the district to control and conserve the flood, storm, and other wastewater of the district.

This bill, until January 1, 2016, would establish in state government the Los Angeles River Interagency Access Council, with membership to include the above agencies, the California Environmental Protection Agency, and certain municipalities, and to be chaired by the Secretary of the Natural Resources Agency, to coordinate the actions of state and local agencies with jurisdiction over, or otherwise involved in developing and administering public access and safety policies for, the Los Angeles River.

The bill would amend the Los Angeles County Flood Control Act to include in the objects and purposes of the district to provide for public use of navigable waterways under the district's control that are suitable for recreational and educational purposes.

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. (a) The United States Environmental Protection  
2 Agency's July 2010 designation of the Los Angeles River as a  
3 "Traditional Navigable Water" under the federal Clean Water Act  
4 (33 U.S.C. Sec. 1251 et seq.), combined with the demonstrated  
5 recreational navigability of the river, means that the river is subject  
6 to Section 4 of Article X of the California Constitution, which  
7 guarantees the public a right of access to the navigable waters of  
8 the state, and therefore the river must be held in trust for the public  
9 and managed for public access and use.
- 10 (b) The public's interest in use of the Los Angeles River for  
11 recreational and educational purposes continues to increase  
12 dramatically. However, since the river was channelized, it has been  
13 managed for flood control purposes without adequate provision  
14 for public access and use.
- 15 (c) The current regulation and inconsistent enforcement of public  
16 access to the Los Angeles River by multiple state and federal  
17 agencies is inadequate to ensure the public's right of access to the  
18 river in a safe manner, particularly considering the lack of a  
19 comprehensive safety warning system.

(d) The California Tort Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) does not provide immunity to government agencies and officials that diligently exercise their responsibilities in managing the river for public access and use comparable to that provided by the Legislature for other recreation areas.

SEC. 2. Section 831.22 is added to the Government Code, to read:

831.22. (a) Stretches of navigable rivers with unpaved riverbeds shall be deemed to be in a natural condition and unimproved notwithstanding that the river has been channelized or otherwise modified.

(b) Notwithstanding subdivision (a), this section does not limit liability that would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of the existence of any condition that constitutes a hazard to health or safety in the river area, including, but not limited to, flooding danger, known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the activity out of which the damage or injury arose.

(2) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the river area out of which the damage or injury arose.

(3) An act of gross negligence by a public entity or a public employee that is the proximate cause of the injury.

(c) This section shall only be applicable to causes of action based upon acts or omissions occurring on or after January 1, 2012.

SEC. 3. Section 12805.7 is added to the Government Code, to read:

12805.7. (a) There is hereby established in state government the Los Angeles River Interagency Access Council to coordinate the actions of state and local agencies with jurisdiction over, or otherwise involved in developing and administering public access and safety policies for, the Los Angeles River with membership as follows:

(1) The Los Angeles County Flood Control District.

(2) The State Lands Commission.

(3) The California Environmental Protection Agency.

1 (4) The Department of Fish and Game.

2 (5) The City of Los Angeles.

3 (6) The City of Long Beach.

4 (7) Any other local government, upon request of that local  
5 government.

6 (b) The Secretary of the Natural Resources Agency or his or  
7 her designee shall chair the council.

8 (c) The council shall do all of the following:

9 (1) Designate areas of the Los Angeles River suitable for public  
10 use, considering both recreational and educational activities as  
11 well as public safety.

12 (2) Identify and eliminate barriers to public use.

13 (3) Provide for coordinated permitting for such uses for which  
14 a permit shall be deemed necessary.

15 (4) Provide safety warning systems and signage to ensure the  
16 safety of public users.

17 (5) Address environmental justice concerns regarding access to  
18 the Los Angeles River.

19 (d) This section shall remain in effect only until January 1, 2016,  
20 and as of that date is repealed, unless a later enacted statute, that  
21 is enacted before January 1, 2016, deletes or extends that date.

22 SEC. 4. Section 2 of the Los Angeles County Flood Control  
23 Act (Chapter 755 of the Statutes of 1915), as amended by Section  
24 1 of Chapter 602 of the Statutes of 2010, is amended to read:

25 Sec. 2. The objects and purposes of this act are to provide for  
26 the control and conservation of the flood, storm and other waste  
27 waters of said district, and to conserve these waters for beneficial  
28 and useful purposes by spreading, storing, retaining or causing to  
29 percolate into the soil within the district, or to save or conserve in  
30 any manner, all or any of these waters, and to protect from damage  
31 from flood or storm waters, the harbors, waterways, public  
32 highways and property in the district, *and to provide for public*  
33 *use of navigable waterways under the district's control that are*  
34 *suitable for recreational and educational purposes.*

35 The Los Angeles County Flood Control District is hereby  
36 declared to be a body corporate and politic, and has all the  
37 following powers:

38 1. To have perpetual succession.

1     2. To sue and be sued in the name of the district in all actions  
2 and proceedings in all courts and tribunals of competent  
3 jurisdiction.

4     3. To adopt a seal and alter it at pleasure.

5     4. To take by grant, purchase, gift, devise or lease, hold, use,  
6 enjoy, and to lease or dispose of real or personal property of every  
7 kind within or without the district necessary to the full exercise of  
8 its power.

9     5. To acquire or contract to acquire lands, rights-of-way,  
10 easements, privileges and property of every kind, and construct,  
11 maintain and operate any and all works or improvements within  
12 or without the district necessary or proper to carry out any of the  
13 objects or purposes of this act, and to complete, extend, add to,  
14 repair or otherwise improve any works or improvements acquired  
15 by it as herein authorized. Construction or improvement of existing  
16 facilities may involve landscaping and other aesthetic treatment  
17 in order that the facility will be compatible with existing or planned  
18 development in the area of improvement.

19     6. To exercise the right of eminent domain, either within or  
20 without the district, to take any property necessary to carry out  
21 any of the objects or purposes of this act.

22     7. To incur indebtedness, and to issue bonds in the manner  
23 herein provided.

24     7a. To borrow money from the United States of America, any  
25 agency or department thereof, or from any nonprofit corporation,  
26 organized under the laws of this state, to which the Reconstruction  
27 Finance Corporation, a corporation organized and existing under  
28 and by virtue of an act of Congress, entitled "Reconstruction  
29 Finance Corporation Act," or other agency, or department, of the  
30 United States government, has authorized, or shall hereafter  
31 authorize, a loan to enable nonprofit corporation to lend money to  
32 the Los Angeles County Flood Control District, for any flood  
33 control work authorized under this act, and to repay the same, in  
34 annual installments, over a period of not to exceed twenty (20)  
35 years, with interest at a rate of not to exceed four and one-fourth  
36 per centum (4 ¼%) per annum, payable semiannually, and, without  
37 the necessity of an election when authorized by resolution of the  
38 board of supervisors, as evidences of that indebtedness, the district  
39 is hereby authorized to execute and deliver a note, or a series of  
40 notes, or bonds, or other evidences of indebtedness, signed by the

1 chairperson of the board of supervisors of the district, which notes,  
2 bonds, or other evidences of indebtedness, shall be negotiable  
3 instruments if so declared in the resolution of the board of  
4 supervisors providing for their issuance, and notes, bonds, or other  
5 evidences of indebtedness, may have interest coupons attached to  
6 evidence interest payments, signed by the facsimile signature of  
7 the chairperson of the board. All applications for these loans shall  
8 specify the particular flood control work or projects for which the  
9 funds will be expended, and when received, the money shall be  
10 deposited in a special fund, and shall be expended for those  
11 purposes only which are described and referred to in the  
12 applications. If a surplus remains after the completion of the work,  
13 the surplus shall be applied to the payment of the note, notes,  
14 bonds, or other evidences of indebtedness, executed as aforesaid,  
15 for the loan including interest coupons. The board of supervisors  
16 shall annually levy a tax upon the taxable real property of the  
17 district, clearly sufficient to pay the interest and installments of  
18 principal, as the same shall become due and payable, under any  
19 loan made pursuant to the authority of this section, and to create  
20 and maintain a reserve fund to assure the prompt payment thereof,  
21 as may be provided by resolution of the board of supervisors.  
22 However, the amount of taxes levied in any year, pursuant to this  
23 subsection, shall, pro tanto, reduce the authority of the board of  
24 supervisors, during any year, to levy taxes under Section 14 of this  
25 act, but this proviso shall not be a limitation upon the power and  
26 duty to levy and collect taxes under this subsection.  
27 Notwithstanding any other provisions of law, interest earned on  
28 funds representing the proceeds of bonds of the district shall be  
29 deposited and retained in the reserve fund of the district to meet  
30 the principal and interest falling due on these bonds.

31 Notwithstanding anything in this subsection to the contrary, the  
32 total amount the district may borrow under the authority of any or  
33 all of the provisions of this subsection is limited to and shall not  
34 exceed in the aggregate the sum of four million five hundred  
35 thousand dollars (\$4,500,000).

36 7b. The power granted in the next preceding subsection is hereby  
37 extended to authorize the issuance and sale of bonds or other  
38 evidences of indebtedness of the district to the County of Los  
39 Angeles and the purchase thereof by the county in accordance with  
40 "An act authorizing the investment and reinvestment and

1 disposition of any surplus moneys in the treasury of any county,  
2 city and county, incorporated city or town or municipal utility  
3 district or flood control district,” approved April 23, 1913, as  
4 amended; all subject to the provisions and limitations of the next  
5 preceding subsection relative to the disposition and use of funds,  
6 interest rate, period of repayment, tax rate and mode of issuance.  
7 The total amount of bonds or other evidence of indebtedness, in  
8 the aggregate, which the district may issue and sell under the  
9 authority of subsection 7a and of this subsection is limited to and  
10 shall not exceed four million five hundred thousand dollars  
11 (\$4,500,000).

12 8. To cause taxes to be levied and collected for the purpose of  
13 paying any obligation of the district in the manner provided in this  
14 section.

15 8a. To impose a fee or charge, in compliance with the applicable  
16 provisions of Article XIII D of the California Constitution, to pay  
17 the costs and expenses of carrying out projects and providing  
18 services to improve water quality and reduce stormwater and urban  
19 runoff pollution in the district in accordance with criteria  
20 established by the ordinance adopted pursuant to subsection 8c.  
21 Any fee that is imposed pursuant to this subsection shall be levied  
22 and collected together with, and not separately from, taxes for  
23 county purposes, and the revenues derived from the fees shall be  
24 paid into the county treasury to the credit of the district, and the  
25 board of supervisors shall expend these funds to pay for costs and  
26 expenses in accordance with this subsection.

27 8b. The district shall allocate the revenues derived from any fee  
28 or charge imposed pursuant to subsection 8a as follows:

29 (A) Ten percent shall be allocated to the district for  
30 implementation and administration of water quality programs, as  
31 determined by the district, including activities such as planning,  
32 water quality monitoring, and any other related activities, and for  
33 payment of the costs incurred in connection with the levy and  
34 collection of the fee and the distribution of the funds generated by  
35 imposition of the fee, as established by the ordinance adopted  
36 pursuant to subsection 8c.

37 (B) Forty percent shall be allocated to cities within the  
38 boundaries of the district and to the County of Los Angeles, in the  
39 same proportion as the amount of fees collected within each  
40 jurisdiction and within the unincorporated territories, to be

1 expended by those cities within the cities' respective jurisdictions  
2 and by the County of Los Angeles within the unincorporated  
3 territories that are within the boundaries of the district, for water  
4 quality improvement programs, as established by the ordinance  
5 adopted pursuant to subsection 8c.

6 (C) Fifty percent shall be allocated to nine watershed authority  
7 groups that shall be authorized by the ordinance adopted pursuant  
8 to subsection 8c, in the same proportion as the amount of fees  
9 collected within each watershed, to implement collaborative water  
10 quality improvement plans or programs in the watersheds as  
11 established by the ordinance adopted pursuant to subsection 8c.  
12 Those nine watershed authority groups shall be established for the  
13 Ballona Creek, Dominguez Channel, Upper Los Angeles River,  
14 Lower Los Angeles River, Rio Hondo, Upper San Gabriel River,  
15 Lower San Gabriel River, Santa Clara River, and Santa Monica  
16 Bay watersheds. The watershed authority groups shall be  
17 established pursuant to Article 1 (commencing with Section 6500)  
18 of Chapter 5 of Division 7 of Title 1 of the Government Code. The  
19 implementation of a collaborative water quality improvement plan  
20 or program by a watershed authority group shall require the consent  
21 of any watershed authority group member whose jurisdiction  
22 comprises more than 40 percent of the total land area in a  
23 watershed.

24 8c. The governing board of the district shall adopt an ordinance  
25 to implement the authority granted pursuant to subsections 8a and  
26 8b.

27 9. To make contracts, and to employ for temporary services  
28 only, expert appraisers, consultants and technical advisers, and to  
29 do all acts necessary for the full exercise of all powers vested in  
30 the district, or any of the officers thereof, by this act.

31 10. To grant or otherwise convey to counties, cities and counties,  
32 cities or towns easements for street and highway purposes, over,  
33 along, upon, in, through, across or under any real property owned  
34 by the Los Angeles County Flood Control District.

35 11. To remove, carry away and dispose of any rubbish, trash,  
36 debris or other inconvenient matter that may be dislodged,  
37 transported, conveyed or carried by means of, through, in, or along  
38 the works and structures operated or maintained hereunder and  
39 deposited upon the property of the district or elsewhere.



1 12. To pay premiums on bonds of contractors required under  
2 any contract if the amount payable to the contractor exceeds five  
3 million dollars (\$5,000,000); provided, that the specifications in  
4 these cases shall specifically so provide and state that the bidder  
5 shall not include in his or her bids the cost of furnishing the  
6 required bonds.

7 13. To lease, sell or dispose of any property (or any interest  
8 therein) whenever in the judgment of the board of ~~supervisors~~  
9 *supervisors* of the property, or any interest therein or part thereof,  
10 is no longer required for the purposes of the district, or may be  
11 leased for any purpose without interfering with the use of the same  
12 for the purposes of the district, and to pay any compensation  
13 received therefor into the general fund of the district and use the  
14 same for the purposes of this act. However, nothing herein shall  
15 authorize the board of supervisors or other governing body of the  
16 district or any officer thereof to sell, lease or otherwise dispose of  
17 any water, water right, reservoir space or storage capacity or any  
18 interest or space therein except to public agencies for recreational  
19 purposes when the use is not inconsistent with the use thereof by  
20 the district for flood control and water conservation purposes; or  
21 except as provided by Section 17 of this act. However, the district  
22 may grant and convey to the United States of America, or to any  
23 federal agency authorized to accept and pay for the land or interests  
24 in land, all lands and interests in land, now owned or hereafter  
25 acquired, lying within any channel, dam or reservoir site, improved  
26 or constructed, in whole or in part, with federal funds, upon  
27 payment to the district of sums equivalent to actual expenditures  
28 made by it in acquiring the lands and interests in land so conveyed  
29 and deemed reasonable by the Secretary of War and the Chief of  
30 Engineers.

31 14. To provide, by agreement with other public agencies or  
32 private persons or entities or otherwise, for the recreational use of  
33 the lands, facilities, and works of the district which shall not  
34 interfere, or be inconsistent, with the primary use and purpose of  
35 the lands, facilities, and works by the district.

36 15. In addition to its other powers, the district shall have the  
37 power to preserve, enhance, and add recreational features to its  
38 properties and upon a finding by the board of supervisors that the  
39 acquisition is necessary for those purposes, to acquire, preserve,  
40 enhance, and add recreational features to lands or interests in lands

1 contiguous to its properties, for the protection, preservation, and  
2 use of the scenic beauty and natural environment for the properties  
3 or the lands and to collect admission or use fees for the recreational  
4 features where deemed appropriate.

5 The district by or through its board of supervisors, or other board  
6 or officers at any time succeeding to the duties or functions of its  
7 board of supervisors, is hereby authorized and empowered to  
8 warrant and defend the title to all land and interests therein so  
9 conveyed to the United States of America or to any agency and  
10 its respective assigns; to covenant and agree to indemnify and keep  
11 indemnified and to hold and save harmless and exonerated the  
12 United States of America or any agency, to which lands or any  
13 interest therein are so conveyed by the district, from and against  
14 all demands, claims, liabilities, liens, actions, suits, charges, costs,  
15 loss, damages, expenses and attorneys' fees of whatsoever kind  
16 or nature, resulting from, arising out of or occasioned by any defect  
17 or defects whatsoever in the title to any land or interest in land so  
18 conveyed by the district; to reimburse and save harmless and  
19 exonerated the United States of America or any agency for any  
20 and all amounts, paid, and expenses incurred, in the compromise  
21 or settlement of any demands, claims, liabilities, liens, actions,  
22 suits, charges, costs, loss, damages, expenses and attorneys' fees  
23 of whatsoever kind or nature, resulting from, arising out of or  
24 occasioned by any claim to or defect or defects whatsoever in the  
25 title to any land or interests in land so conveyed by the district; to  
26 pay all just compensation, costs and expenses, which may be  
27 incurred in any condemnation proceeding deemed necessary by  
28 the United States of America or that agency, in order to perfect  
29 title to any land or interests in land, including without limitation  
30 all attorneys' fees, court costs and fees, costs of abstracts and other  
31 evidences of title, and all other costs, expenses or damages incurred  
32 or suffered by the United States of America or that agency; and  
33 consent is hereby given to the bringing of suit or other legal  
34 proceedings against the district by the United States of America  
35 or that agency, as the case may be, in the proper district court of  
36 the United States, upon any cause of action arising out of any  
37 conveyance, contract or covenant made or entered into by the  
38 district pursuant to the authority granted in this act, or to enforce  
39 any claims, damages, loss or expenses arising out of or resulting

- 1 from any defect whatsoever in the title to the land or any interest
- 2 therein or any claims of others in or to the land or interest therein.

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