

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1278

Introduced by Senator Wolk

February 23, 2012

An act to amend ~~Section 65007~~ Section 65302.9 of, and to amend, repeal, and add Section 65865.5 of, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1278, as amended, Wolk. Planning and zoning: ~~levees; flood protection: Sacramento-San Joaquin Valley.~~

(1) Existing law requires each city and county within the Sacramento-San Joaquin Valley to amend its general plan, as specified, within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board. Existing law requires the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies to collaborate with cities or counties by providing the cities and counties with information and other technical assistance to assist with complying with these requirements.

This bill would additionally require the Department of Water Resources to provide financial assistance to cities and counties, to the extent funding is available for that purpose.

(2) Existing law prohibits a city or county within the Sacramento-San Joaquin Valley from entering into a development agreement for property that is located in a flood hazard zone unless the city or county makes specified findings, including, among others, that certain conditions have been imposed by the city or county.

This bill would, until January 1, 2017, authorize a city or county to make a finding that the city or county does not have access to information regarding the urban level of protection for the property, and the property is located outside a flood hazard zone that is subject to depths of flooding greater than 3 feet during a 200-year flood, thereby authorizing the city or county to enter into a development agreement for that property.

~~The Planning and Zoning Law defines the term “project levee” to mean, for purposes of that law, any levee that is part of the facilities of the State Plan of Flood Control.~~

~~This bill would define the term “nonproject levee” to mean, for purposes of that law, any levee that is not part of the facilities of the State Plan of Flood Control.~~

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

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

1 SECTION 1. Section 65302.9 of the Government Code is
2 amended to read:

3 65302.9. (a) Within 24 months of the adoption of the Central
4 Valley Flood Protection Plan by the Central Valley Flood
5 Protection Board pursuant to Section 9612 of the Water Code,
6 each city and county within the Sacramento-San Joaquin Valley,
7 shall amend its general plan to contain all of the following:

8 (1) The data and analysis contained in the Central Valley Flood
9 Protection Plan, including, but not limited to, the locations of the
10 facilities of the State Plan of Flood Control, the locations of other
11 flood management facilities, the locations of the real property
12 protected by those facilities, and the locations of flood hazard
13 zones.

14 (2) Goals, policies, and objectives, based on the data and
15 analysis identified pursuant to paragraph (1), for the protection of
16 lives and property that will reduce the risk of flood damage.

17 (3) Feasible implementation measures designed to carry out the
18 goals, policies, and objectives established pursuant to paragraph
19 (2).

20 (b) (1) To assist each city or county in complying with this
21 section, the Central Valley Flood Protection Board, the Department
22 of Water Resources, and local flood agencies shall collaborate

1 with cities or counties by providing them with information and
2 other technical assistance.

3 (2) *To assist each city or county in complying with this section,*
4 *the Department of Water Resources shall provide financial*
5 *assistance to cities and counties to the extent funding is available*
6 *for that purpose.*

7 (c) In implementing this section, each city and county, both
8 general law and charter, within the Sacramento-San Joaquin Valley,
9 shall comply with this article, including, but not limited to, Sections
10 65300.5, 65300.7, 65300.9, and 65301.

11 (d) Notwithstanding any other provision of law, this section
12 applies to all cities, including charter cities, and counties within
13 the Sacramento-San Joaquin Valley. The Legislature finds and
14 declares that flood protection in the Sacramento and San Joaquin
15 Rivers drainage areas is a matter of statewide concern and not a
16 municipal affair as that term is used in Section 5 of Article XI of
17 the California Constitution.

18 *SEC. 2. Section 65865.5 of the Government Code is amended*
19 *to read:*

20 65865.5. (a) Notwithstanding any other provision of law, after
21 the amendments required by Sections 65302.9 and 65860.1 have
22 become effective, the legislative body of a city or county within
23 the Sacramento-San Joaquin Valley shall not enter into a
24 development agreement for property that is located within a flood
25 hazard zone unless the city or county finds, based on substantial
26 evidence in the record, one of the following:

27 (1) The facilities of the State Plan of Flood Control or other
28 flood management facilities protect the property to the urban level
29 of flood protection in urban and urbanizing areas or the national
30 Federal Emergency Management Agency standard of flood
31 protection in nonurbanized areas.

32 (2) The city or county has imposed conditions on the
33 development agreement that will protect the property to the urban
34 level of flood protection in urban and urbanizing areas or the
35 national Federal Emergency Management Agency standard of
36 flood protection in nonurbanized areas.

37 (3) The local flood management agency has made adequate
38 progress on the construction of a flood protection system that will
39 result in flood protection equal to or greater than the urban level
40 of flood protection in urban or urbanizing areas or the national

1 Federal Emergency Management Agency standard of flood
2 protection in nonurbanized areas for property located within a
3 flood hazard zone, intended to be protected by the system. For
4 urban and urbanizing areas protected by project levees, the urban
5 level of flood protection shall be achieved by 2025.

6 *(4) The city or county does not have access to information*
7 *regarding the urban level of protection for the property and the*
8 *property is located outside of a flood hazard zone that is subject*
9 *to depths of flooding greater than three feet during a 200-year*
10 *flood.*

11 (b) The effective date of amendments referred to in this section
12 shall be the date upon which the statutes of limitation specified in
13 subdivision (c) of Section 65009 have run or, if the amendments
14 and any associated environmental documents are challenged in
15 court, the validity of the amendments and any associated
16 environmental documents has been upheld in a final decision.

17 (c) This section does not change or diminish existing
18 requirements of local flood plain management laws, ordinances,
19 resolutions, or regulations necessary to local agency participation
20 in the national flood insurance program.

21 *(d) This section shall remain in effect only until January 1, 2017,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before January 1, 2017, deletes or extends that date.*

24 SEC. 3. Section 65856.5 is added to the Government Code, to
25 read:

26 65856.5. (a) Notwithstanding any other provision of law, after
27 the amendments required by Sections 65302.9 and 65860.1 have
28 become effective, the legislative body of a city or county within
29 the Sacramento-San Joaquin Valley shall not enter into a
30 development agreement for property that is located within a flood
31 hazard zone unless the city or county finds, based on substantial
32 evidence in the record, one of the following:

33 (1) The facilities of the State Plan of Flood Control or other
34 flood management facilities protect the property to the urban level
35 of flood protection in urban and urbanizing areas or the national
36 Federal Emergency Management Agency standard of flood
37 protection in nonurbanized areas.

38 (2) The city or county has imposed conditions on the
39 development agreement that will protect the property to the urban
40 level of flood protection in urban and urbanizing areas or the

1 national Federal Emergency Management Agency standard of
2 flood protection in nonurbanized areas.

3 (3) The local flood management agency has made adequate
4 progress on the construction of a flood protection system that will
5 result in flood protection equal to or greater than the urban level
6 of flood protection in urban or urbanizing areas or the national
7 Federal Emergency Management Agency standard of flood
8 protection in nonurbanized areas for property located within a
9 flood hazard zone, intended to be protected by the system. For
10 urban and urbanizing areas protected by project levees, the urban
11 level of flood protection shall be achieved by 2025.

12 (b) The effective date of amendments referred to in this section
13 shall be the date upon which the statutes of limitation specified in
14 subdivision (c) of Section 65009 have run or, if the amendments
15 and any associated environmental documents are challenged in
16 court, the validity of the amendments and any associated
17 environmental documents has been upheld in a final decision.

18 (c) This section does not change or diminish existing
19 requirements of local flood plain management laws, ordinances,
20 resolutions, or regulations necessary to local agency participation
21 in the national flood insurance program.

22 (d) This section shall become operative on January 1, 2017.

23 ~~SECTION 1. Section 65007 of the Government Code is~~
24 ~~amended to read:~~

25 ~~65007. As used in this title, the following terms have the~~
26 ~~following meanings, unless the context requires otherwise:~~

27 (a) ~~“Adequate progress” means all of the following:~~

28 (1) ~~The total project scope, schedule, and cost of the completed~~
29 ~~flood protection system have been developed to meet the~~
30 ~~appropriate standard of protection.~~

31 (2) (A) ~~Revenues that are sufficient to fund each year of the~~
32 ~~project schedule developed in paragraph (1) have been identified~~
33 ~~and, in any given year and consistent with that schedule, at least~~
34 ~~90 percent of the revenues scheduled to be received by that year~~
35 ~~have been appropriated and are currently being expended.~~

36 (B) ~~Notwithstanding subparagraph (A), for any year in which~~
37 ~~state funding is not appropriated consistent with an agreement~~
38 ~~between a state agency and a local flood management agency, the~~
39 ~~Central Valley Flood Protection Board may find that the local~~

1 flood management agency is making adequate progress in working
2 toward the completion of the flood protection system.

3 (3) ~~Critical features of the flood protection system are under~~
4 ~~construction, and each critical feature is progressing as indicated~~
5 ~~by the actual expenditure of the construction budget funds.~~

6 (4) ~~The city or county has not been responsible for a significant~~
7 ~~delay in the completion of the system.~~

8 (5) ~~The local flood management agency shall provide the~~
9 ~~Department of Water Resources and the Central Valley Flood~~
10 ~~Protection Board with the information specified in this subdivision~~
11 ~~sufficient to determine substantial completion of the required flood~~
12 ~~protection. The local flood management agency shall annually~~
13 ~~report to the Central Valley Flood Protection Board on the efforts~~
14 ~~in working toward completion of the flood protection system.~~

15 (b) ~~“Central Valley Flood Protection Plan” has the same~~
16 ~~meaning as that set forth in Section 9612 of the Water Code.~~

17 (e) ~~“Developed area” has the same meaning as that set forth in~~
18 ~~Section 59.1 of Title 44 of the Code of Federal Regulations.~~

19 (d) ~~“Flood hazard zone” means an area subject to flooding that~~
20 ~~is delineated as either a special hazard area or an area of moderate~~
21 ~~hazard on an official flood insurance rate map issued by the Federal~~
22 ~~Emergency Management Agency. The identification of flood~~
23 ~~hazard zones does not imply that areas outside the flood hazard~~
24 ~~zones, or uses permitted within flood hazard zones, will be free~~
25 ~~from flooding or flood damage.~~

26 (e) ~~“Nonproject levee” means any levee that is not part of the~~
27 ~~facilities of the State Plan of Flood Control.~~

28 (f) ~~“Nonurbanized area” means a developed area or an area~~
29 ~~outside a developed area in which there are fewer than 10,000~~
30 ~~residents.~~

31 (g) ~~“Project levee” means any levee that is part of the facilities~~
32 ~~of the State Plan of Flood Control.~~

33 (h) ~~“Sacramento-San Joaquin Valley” means lands in the bed~~
34 ~~or along or near the banks of the Sacramento River or San Joaquin~~
35 ~~River, or their tributaries or connected therewith, or upon any land~~
36 ~~adjacent thereto, or within the overflow basins thereof, or upon~~
37 ~~land susceptible to overflow therefrom. The Sacramento-San~~
38 ~~Joaquin Valley does not include lands lying within the Tulare Lake~~
39 ~~basin, including the Kings River.~~

1 (i) ~~“State Plan of Flood Control” has the same meaning as that~~
2 ~~set forth in subdivision (j) of Section 5096.805 of the Public~~
3 ~~Resources Code.~~

4 (j) ~~“Tulare Lake basin” means the Tulare Lake Hydrologic~~
5 ~~Region as defined in the California Water Plan Update 2009,~~
6 ~~prepared by the Department of Water Resources pursuant to~~
7 ~~Chapter 1 (commencing with Section 10004) of Part 1.5 of Division~~
8 ~~6 of the Water Code.~~

9 (k) ~~“Urban area” means a developed area in which there are~~
10 ~~10,000 residents or more.~~

11 (l) ~~“Urbanizing area” means a developed area or an area outside~~
12 ~~a developed area that is planned or anticipated to have 10,000~~
13 ~~residents or more within the next 10 years.~~

14 (m) ~~“Urban level of flood protection” means the level of~~
15 ~~protection that is necessary to withstand flooding that has a~~
16 ~~1-in-200 chance of occurring in any given year using criteria~~
17 ~~consistent with, or developed by, the Department of Water~~
18 ~~Resources.~~