

AMENDED IN SENATE JANUARY 4, 2016

SENATE BILL

No. 554

Introduced by Senator Wolk

February 26, 2015

An act to ~~add Section 167 to amend Section 12987.5 of, and to amend and repeal Section 12986 of,~~ the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 554, as amended, Wolk. ~~California Water Commission: disqualifying financial interest: removal from office. Delta levee maintenance.~~

Existing law establishes a delta levee maintenance program pursuant to which a local agency may request reimbursement for costs incurred in connection with the maintenance or improvement of project or nonproject levees in the Sacramento-San Joaquin Delta. Existing law declares legislative intent to reimburse eligible local agencies under this program, until July 1, 2018, in an amount not to exceed 75% of those costs that are incurred in excess of \$1,000 per mile of levee. Existing law, until July 1, 2018, authorizes the board to provide funds to an eligible local agency under this program in the form of an advance in an amount that does not exceed 75% of the estimated state share. Existing law, on and after July 1, 2018, declares the intent of the Legislature to reimburse eligible local agencies under this program in an amount not to exceed 50% of those costs that are incurred in any year for the maintenance and improvement of levees.

This bill would declare legislative intent to reimburse up to 75% of those costs incurred in any year for the maintenance or improvement of levees in excess of \$1,000 per mile of levee and would authorize the

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board to advance funds in an amount that does not exceed 75% of the estimated state share to an eligible local agency.

~~Existing law, the Political Reform Act of 1974, prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know, that he or she has a financial interest. Existing law provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or as specified.~~

~~This bill would remove a member of the California Water Commission from office if after trial a court finds that the commission member has knowingly participated in any commission decision in which the member has a disqualifying financial interest in the decision.~~

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. Section 12986 of the Water Code, as amended by
2 Section 3 of Chapter 549 of the Statutes of 2012, is amended to
3 read:

4 12986. (a) It is the intent of the Legislature to reimburse an
5 eligible local agency pursuant to this part for costs incurred in any
6 year for the maintenance or improvement of project or nonproject
7 levees as follows:

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

11 (2) Not more than 75 percent of any costs incurred in excess of
12 one thousand dollars (\$1,000) per mile of project or nonproject
13 levee shall be reimbursed.

14 (3) (A) As part of the project plans approved by the board, the
15 department shall require the local agency or an independent
16 financial consultant to provide information regarding the agency's
17 ability to pay for the cost of levee maintenance or improvement.
18 Based on that information, the department may require the local

1 agency or an independent financial consultant to prepare a
2 comprehensive study on the agency's ability to pay.

3 (B) The information or comprehensive study of the agency's
4 ability to pay shall be the basis for determining the maximum
5 allowable reimbursement eligible under this part. Nothing in this
6 paragraph shall be interpreted to increase the maximum
7 reimbursement allowed under paragraph (2).

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

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

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

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

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

27 (c) Reimbursements made pursuant to this section shall reflect
28 the priorities of, and be consistent with, the Delta Plan established
29 pursuant to Chapter 1 (commencing with Section 85300) of Part
30 4 of Division 35.

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

35 *SEC. 2. Section 12986 of the Water Code, as amended by*
36 *Section 2 of Chapter 549 of the Statutes of 2012, is repealed.*

37 ~~12986. (a) It is the intent of the Legislature to reimburse from~~
38 ~~the General Fund an eligible local agency pursuant to this part for~~
39 ~~costs incurred in any year for the maintenance or improvement of~~
40 ~~project or nonproject levees as follows:~~

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

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

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

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

8 *SEC. 3. Section 12987.5 of the Water Code is amended to read:*

9 12987.5. (a) In an agreement entered into under Section 12987,
10 the board may provide for an advance to the applicant in an amount
11 not to exceed 75 percent of the estimated state share. The
12 agreement shall provide that no advance shall be made until the
13 applicant has incurred costs averaging one thousand dollars
14 (\$1,000) per mile of levee.

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

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

27 *SECTION 1. Section 167 is added to the Water Code, to read:*

28 167. (a) A member of the commission shall not participate in
29 any commission decision in which the member has a disqualifying
30 financial interest in the decision within the meaning of Section
31 87103 of the Government Code.

32 (b) Upon the request of any person, or on the Attorney General's
33 own initiative, the Attorney General may file a complaint in the
34 Superior Court for the County of Sacramento alleging that a
35 commission member has knowingly violated this section and the
36 facts upon which the allegation is based and asking that the member
37 be removed from office. Further proceedings shall be in accordance
38 as near as may be with rules governing civil actions. If after trial
39 the court finds that the commission member has knowingly violated

1 ~~this section, it shall pronounce judgment that the member be~~
2 ~~removed from office.~~

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BILL ANALYSIS

Date of Hearing: June 14, 2016

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Marc Levine, Chair

SB 554 (Wolk) - As Amended January 4, 2016

SENATE VOTE: 39-0

SUBJECT: Delta levee maintenance

SUMMARY: Makes permanent the current 75% reimbursement rate for Sacramento-San Joaquin Delta (Delta) levee maintenance costs in excess of \$1,000 per mile. Specifically, this bill:

- 1)Eliminates the July 1, 2018, sunset on the current authorization of a 75% state cost-share in the Delta levee maintenance or improvement program.
- 2)Eliminates the effective date for returning to a 50% state cost-share.
- 3)Eliminates the July 1, 2018, sunset on advance reimbursement.

EXISTING LAW:

- 1)Establishes the Delta Levee Maintenance Subventions Program (Subventions Program) administered jointly by the Central Valley Flood Protection Board (CVFPB) and the Department of Water Resources (DWR) to provide reimbursement to local agencies for a portion of the costs of maintaining or improving project or non-project levees.
- 2)Since 1996, has maintained the following reimbursement rate for the Subventions Program of:
 - \$0 for the first \$1,000 per mile of levee, and
 - up to 75% of eligible costs in excess of the \$1,000 per mile, based on an assessment of the agency's ability to pay.
- 1)On July 1, 2018, reverts the reimbursement rate for the Subventions Program to:
 - \$0 for the first \$1,000 per mile of levee,
 - up to 50% of eligible costs in excess of the \$1,000 per mile, based on an assessment of the agency's ability to pay, and

caps the maximum annual reimbursement per agency at \$2 million.

- 1) Establishes the Delta Levees Special Flood Control Project Program (Flood Control Project Program) to fund levee improvements that have identifiable public benefits. Includes the Subventions Program and the Special Flood Control Project Program in the Flood Control Project Program.
- 2) Establishes the Delta Stewardship Council (Council) to maintain a Delta Plan that is the long-term management plan for the Delta. Requires the Delta Plan to, among other things, recommend priorities for state investments in levee operation, maintenance, and improvements.
- 3) Requires Delta levee investments through the Subventions Program and the Special Flood Control Project Program to be consistent with the Delta Plan.

FISCAL EFFECT: According to the Senate Appropriations Committee, over the past ten years, annual program funding has ranged between \$5.7 million and \$16.3 million. In recent years, funding for the program has come from voter-approved general obligation bonds (Proposition 50, Proposition 84, and Proposition 1E), which are repaid by the General Fund.

COMMENTS: This bill makes permanent the current 75% reimbursement rate for Delta levee maintenance costs in excess of \$1,000 per mile.

- 1) Author's statement: By continuing the current cost share formula, SB 554 ensures that Delta reclamation districts can afford to maintain and improve Delta levees. Maintenance of the Delta levees is important to reduce flood risk and ensure the Delta can continue to serve its many valuable uses - as fertile farmland, a water conveyance, and a rich estuary ecosystem.
- 2) Background: The Delta is the hub of the California water system, and is the most valuable estuary and wetland ecosystem on the west coast of the Americas. Much of Delta land is subsiding such that it has been called California's sinking heart. Most of the primary Delta is below sea level and the central Delta is deeply subsided, resting 15 feet or more below sea level.

There are significant state interests protected by Delta levees including conveyance for the State Water Project and the Central Valley Project, highways, utilities, agriculture, recreational assets, fisheries, and wildlife.

- 3) Limited funds, competing priorities: There are just over 1,100 miles of levees that protect 141 Delta islands. The majority of those levees are locally owned (non-project levees). Since the 1970's the state has committed approximately \$700 million to levee operations, maintenance and improvements. Recent estimates for needed Delta levee improvements range from \$1.3 billion to \$3 billion. Even if that level of investment were to occur there would still be a risk of levee failure in the Delta, as increasing risks of earthquake, flood, and sea level rise are mounting and levees on deeply subsided islands cannot reasonably be built to withstand all risks.

Attempts have been made to focus state investments in Delta levees, but to date there are no clear priorities for state spending on levees in the Delta. Additionally, the standard to which a levee must be maintained is variable, with uncertainty as to what is necessary to qualify for federal disaster assistance. Discretion on how to spend state money on Delta levees has been left to the DWR and the CVFPB. The DWR has developed guidelines, but essentially, any agency that has the ability to come up with financing has had their projects funded in recent years. According to a 2012 Public Policy Institute of California (PPIC) study and a Council evaluation of levee investments we have not seen the highest level of investments in levees that would best protect the Delta and state interest, but have seen high levels of investment in levees that have been identified as being a poor cost benefit investment for the state.

- 4) Development of priorities and who should pay: In 2005, AB 1200 (Laird) required the DWR to assess the risk of Delta levee failure and evaluate how best to address such risks. At the time, this was consistent with the DWR's plan to develop a Delta Risk Management Strategy (DRMS) to identify which levees had greatest value to state interests to justify state investment. In 2009, SB 1 x7 (Simitian), the Delta Reform Act, became law. In part, the Delta Reform Act required the Council to include a Delta Levees Investment Strategy (DLIS) in its Delta Plan. The DLIS is expected to be completed within the next calendar year.

Moving forward, there is a question of who should pay what level for levee maintenance. The key issue is that most levee miles (730 miles) are privately owned. Existing law requires local agencies applying for Subventions Program funding to provide information on the agency's ability to pay. The last time the ability to pay was analyzed was in 2007. That study

found that agricultural districts should qualify for a 75% reimbursement while non-agricultural districts may have an ability to pay a higher share.

- 5) Real improvements: Despite some of the questions highlighted above, the Subventions Program has resulted in significant improvements in the stability of Delta levees. Delta levee failures have declined significantly since the 1980's, and in 2010, the PPIC called the Subventions Program "the most important state investments in Delta levees".
- 6) Sunset date? If the desire of the committee is to maintain the current 75% reimbursement rate until the Council adopts a DLIS for state investments in Delta levees, some delay may be appropriate. Even if the Council were to adopt the DLIS by late 2016 or early 2017, it may be challenging to make any necessary statutory changes to the Delta subventions program before the July 1, 2018, reduction in the reimbursement rate. Further, if the committee wishes to require a more substantive analysis of a local agency's ability to pay, an evaluation by the Council or another independent body should be required.

If the committee wishes to keep pressure on the Council to develop and adopt the DLIS for State investments in Delta flood management, extending the current 75% reimbursement rate indefinitely might not be prudent. Further, an indefinite extension may predetermine a level of funding across all levees that is inconsistent with what the DLIS would identify, and in doing so may undermine the development of the DLIS.

It is not immediately clear what an appropriate extension should be. However, given the Council indicates that it is close to completion of the DLIS, a shorter extension may be more appropriate than a longer one.

7) Prior and Related Legislation:

- a) AB 1200 (Laird), Chapter 573, Statutes of 2005, required study of levee risks and development of levee funding priorities.
- b) SB 1 x7 (Simitian), Chapter 5, Statues of the 7th Extraordinary Session of 2009-2010, established the Sacramento-San Joaquin Delta Reform Act requiring Delta management to meet coequal goals of environmental and water supply sustainability.
- c) AB 798 (Wolk), Chapter 548, Statutes of 2006, provided a

4-year extension on the 75% reimbursement rate for the Subventions Program.

d) SB 808 (Wolk), Chapter 23, Statutes of 2010, provided a 3-year extension on the 75% reimbursement rate for the Subventions Program.

e) SB 200 (Wolk), Chapter 549, Statutes of 2012, provided a 5-year extension on the 75% reimbursement rate for the Subventions Program.

1)Support Arguments: The Subventions Program has dramatically improved flood control and increased the reliability of water conveyance in the Delta by utilizing a very efficient process of partnering with local flood control agencies for levee maintenance and improvements. Local agencies fund 100% of the work up front, and the state reimburses a percentage, creating an incentive for the local agencies to perform the work in the most cost effective and efficient manner possible. Levees will always require some degree of maintenance, supervision and upkeep, just like any other element of state or local infrastructure. Ensuring that the Subvention Program becomes a permanent resource for local governments that partner with state agencies is critical, appropriate, and timely.

2)Opposing Arguments: This bill provides an opportunity to advance the beneficiaries-pay principle in the Delta with appropriate analysis and deliberation. The Legislature's clear intent in the 1990's was to reduce the state's financial exposure on the Subvention's Program from 75% to 50% within 10 years. Since that time, three bills have passed to temporarily extend the subsidy while waiting for the state to reassess the direction it will pursue in protecting the Delta. This bill, however, seeks to extend the higher level of subsidy in perpetuity, in contradiction to the rationales of previous legislation. Prior to any further legislative action to extend the state cost-share, an outside entity should conduct an affordability and benefits assessment for the Subventions Program.

REGISTERED SUPPORT/ OPPOSITION:

Support

Association of Water Agencies

Bethel Island Municipal Improvement District

California Central Valley Flood Control Association

Collinsville Levee District

Contra Costa County Board of Supervisors

Delta Counties Coalition

Delta Protection Commission

East Bay Municipal Utility District

Reclamation District No. 3

Reclamation District No. 150

Reclamation District No. 548

Reclamation District No. 756

Reclamation District No. 799

Reclamation District No. 2025

Reclamation District No. 2026

Reclamation District No. 2028

Reclamation District No. 2029

Reclamation District No. 2041

Reclamation District No. 2060

Reclamation District No. 2065

Sacramento County Board of Supervisors

San Joaquin County Board of Supervisors

Solano County Board of Supervisors

Solano County Farm Bureau

Oppose (unless amended)

Calleguas Municipal Water District

Cucamonga Valley Water District

Eastern Municipal Water District

Inland Empire Utilities Agency

Las Virgenes Municipal Water District

Long Beach Water Commission

Mesa Water District

Metropolitan Water District of Southern California

Upper San Gabriel Valley Municipal Water District

Walnut Valley Water District

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319-2096