

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:~~

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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~~

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

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BILL ANALYSIS

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

SB 554 (Wolk) - Delta levee maintenance

Version: January 4, 2016	Policy Vote: N.R.&W. 9 - 0
Urgency: No	Mandate: No
Hearing Date: January 19, 2016	Consultant: Marie Liu

This bill meets the criteria for referral to the Suspense File.

Bill

Summary: SB 554 would make permanent the state's 75% maximum cost share for Delta levee maintenance costs in excess of \$1,000 per mile.

Fiscal

Impact: Annual cost pressures in the millions of dollars (General Fund) to fund local projects to improve and maintain levees

Background: The Delta Levees Maintenance Subventions Program provides state funding to local agencies for the rehabilitation and maintenance of levees in the Sacramento-San Joaquin Delta. In 1996, the Legislature established the reimbursement rate to be temporarily up to 75% of any costs incurred in excess of \$1,000 per mile depending on the agency's ability to pay. This rate was to be reduced to 50% on July 1, 2006. Legislative intent language also suggested a \$2 million annual limit on reimbursements to each agency beginning on July 1, 2006.

However, the Legislature subsequently extended this date several times so that the higher reimbursement rates are currently authorized until July 1, 2018.

The sunset extensions have been made under various justifications, including that such levee improvements are important measures to protect the state's drinking water supply and other infrastructure.

Proposed Law: This bill would permanently delete the sunset date and would instead set the upper limit on the state's cost share at 75%. This bill would also delete the legislative intent language regarding the 50% reimbursement rate and the \$2 million annual limit.

Staff Comments: Funding history. The funding for the Delta Levee Maintenance and Subventions Program has come from multiple sources through the year, including the General Fund. Since 1997, the funding from the program has come from voter-approved general obligation bonds (Prop 50, Prop 84, and Prop 1E), which are repaid by the General Fund. Over the past ten years, annual program funding has ranged between \$5.7 and \$16.3 million. Reimbursements to a single agency have rarely exceeded \$2 million annually.

Remaining funding. According to DWR, there is \$85 million from Proposition 84 and \$70 million from Proposition 1E available for Delta levees. Historically 40% of these funds have been spent for the Subventions Program with the remaining amount going towards special projects. Based on historical spending, these bonds monies will be able to support the Subventions Program for another 5 to 10 years.

Staff notes that Proposition 1 provided \$295 million to reduce the risk of levee failure and flood in the Delta, of which local assistance through the subventions program is an eligible use.

What has been the state cost share of delta levee projects historically? According to DWR, the state has been paying approximately 75% of eligible project costs. Ineligible project costs include items such as salaries, non-patrol road roadway repairs, and the first \$1,000 per mile costs. When all costs are considered, the state pays an average of 70% of the costs with the local districts paying the remainder.

Existing law requires that Department of Water Resources (DWR) assess the local agency's ability to pay for the levee maintenance or improvement when determining the reimbursement rate. In its initial assessment of program participants in 1997-98, DWR found that all local districts qualified for full 75% reimbursement given their agricultural economic base. In 2007, the Subventions Program did another full review of local agencies' ability to pay. In a letter to the Central Valley Flood Protection Board dated October 28, 2013, DWR states, "The [2007] study verified that agricultural islands continue to qualify for full 75-percent State reimbursement. The study also revealed that non-agricultural islands may have the ability to pay a higher share; however, with the downturn in the economy in 2008, it was determined that the non-agricultural islands should not conduct a comprehensive ability to pay study at the time. The economic downturn and continuing economic slump through today have reinforced the wisdom of that decision."

The letter further states that DWR reviews annual applications for significant changes of land use or economic conditions and while the 2013-14 applications revealed no significant changes, a closer look into the ability to pay may be warranted as the economy continues to improve and local districts gain greater financial stability.