

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 781 (Daly)
Version: March 4, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Flood control projects: County of Orange: subvention funds

DIGEST

This bill authorizes the state to provide subvention funds, as prescribed, to the County of Orange for a specified flood control project upon a determination by the Department of Water Resources that the project meets specified requirements, and exempts the state from liability for any damages that may result from the project by authorizing the funds.

EXECUTIVE SUMMARY

Current law authorizes the state to authorize the appropriation of funds for local flood management projects, when such projects have been partially funded by the federal government and on the condition that the Department of Water Resources approves the project. This bill would grant such an authorization for an appropriation to the County of Orange to help fund the Westminster-East Garden Grove Flood Risk Management Project, which was partially funded by the federal government at the end of 2020. The bill provides that the state assumes no liability for damages that may result by either approving or making the appropriation for the project; and requires that, as a condition of the receipt of the funds for the local project, the County of Orange must enter into an agreement with the Department of Water Resources agreeing to indemnify and hold and save harmless the state and its officers, agents, and employees for any and all liability for damages that may result from the project. These provisions ensure that the state and its employees will not be liable for damages arising from a project managed and operated by the county.

This bill is sponsored by the County of Orange and supported by the Association of California Water Agencies. There is no known opposition. This bill passed out of the Senate Natural Resources and Water Committee with a vote of 9-0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Water Resources Development Act of 2020 (WRDA), which authorized the construction of numerous water resources projects, including the Westminster-East Garden Grove Flood Risk Management project, of which approximately \$315 million of the \$1.23 billion would be paid for by the federal government. (P.L. 116-260.)

Existing state law:

- 1) Declares that the people of the State have a primary interest in the control and conservation of flood waters, prevention of damage by flood waters, the washing away of river and stream banks by floods, and that the prevention of damage by flood waters is the proper function and activity of the state, in cooperation with counties, cities, state agencies, public district, and the federal government. (Wat. Code, §§ 12578-12579.)
- 2) Authorizes the state to provide financial assistance for a flood management project if the project meets all of the following conditions:
 - a) The project qualifies for federal assistance and is federally authorized by Congress.
 - b) The total annual benefit of providing protection from flood damages exceeds the annual cost allocable to flood management, and the project is designed to produce the greatest feasible reduction in flood damages in the most efficient manner practicable, with due regard for environmental and recreational considerations and local economic conditions.
 - c) The local agency sponsoring the project is in compliance with federal requirements relating to flood management plans.
 - d) The project avoids, minimizes, or mitigates impacts to environmental and recreational values.
 - e) To the extent the plan has multipurpose objectives, the local agency sponsoring the project shall accommodate other partners to cover the costs of the other objectives that are compatible to the primary flood management purpose. (Wat. Code, § 12582.7)
- 3) Provides that the state shall pay specified percentages of the cost of flood management projects approved subject to the above, as specified. (Wat. Code, §§ 12585.2, 12585.5.)
- 4) Authorizes state financing for a number of flood management projects consistent with the above provisions. (Wat. Code, §§ 12648-12749.99.)

This bill:

- 1) Authorizes the state to provide subvention funds to the County of Orange for construction of the Westminster-East Garden Grove Flood Risk Management project upon appropriation by the Legislature and a determination by the Department of Water Resources (DWR) that the project meets requirements in existing law.
- 2) Provides that the state assumes no damages that may result from the project by (1) authorizing the provision of subvention funds in accordance with this bill, or (2) the appropriation of the Legislature of the subvention funds upon the recommendation and advice of the DWR.
- 3) Provides that the County of Orange may receive subvention funds only if it enters into an agreement with the DWR pursuant to which the county agrees to indemnify and hold and save harmless the state and its officers, agents, and employees for any and all liability for damages that may result from the project.
 - a) Defines "liability for damages" to include liability for damages relating to the construction or operation of the project or the failure of the project to operate as intended.

COMMENTS

1. Author's comment

According to the author:

This bill adds the Westminster-East Garden Grove Flood Risk Management Project in the County of Orange to the list of eligible projects to receive state flood subvention funding. Once completed, the project will lead to increased flood protection, provide flood control improvements, prevent approximately \$4 billion in damage from a 100-year flood event, and alleviate home and business owners in the affected communities from paying flood insurance premiums totaling over \$13 million annually.

2. This bill authorizes the state to provide subvention funds for the Westminster-East Garden Grove Flood Risk Management project, subject to conditions including that the County indemnify the state from all liability for damages arising from the project

This bill will allow the state to provide financial assistance to help Orange County fund the construction costs of the Westminster-East Garden Grove Flood Risk Management project (the Project). The United States Army Corps of Engineers completed a feasibility

report for the Project in April 2020.¹ According to the report, the Westminster watershed is approximately 87 square miles and is almost entirely urbanized; flooding exceeds the existing drainage channel infrastructure in the relevant area at between 5-year and 10-year storm events.² Overbank flooding also impacts traffic in the project area, causing delays on local routes and major routes such as Interstate 405.³ The main drainage channels were originally built in the 1950s and 1960s; the combination of increased urbanization and the associated increase of impermeable area since then increased the risks to people and structures from flooding.⁴ In December 2020, the United States Congress approved the Project for \$315 million in federal funding, leaving an approximately \$910 million nonfederal share of the cost needing to be covered by other sources.⁵

According to Orange County, the sponsor of the bill, it has identified \$443 million in local funds over the next 20 years to contribute towards the nonfederal share, leaving a shortfall of roughly \$467 million. This bill would authorize the state to provide subvention funds to contribute to the Project, upon an appropriation from the Legislature in consultation with the DWR, and on the condition that the state will assume no liability in connection with the Project. Specifically, the bill provides that (1) the state assumes no liability that may arise from authorizing or appropriating funds for the Project, and (2) Orange County must enter into an agreement with the DWR pursuant to which Orange County agrees to indemnify and hold and save harmless the state and its officers, agents, and employees for any and all liability for damages that may result from the Project. These provisions appear to be required by existing law, which provides that, prior to receiving any payment or reimbursement for flood management projects as provided, the local agency must enter into an agreement with the DWR to indemnify and hold and save harmless the state, and its officers, agents, and employees, from any and all liability for damages arising from projects for which the local agency has assumed the obligations of maintenance and operation.⁶ Similar liability limitations exist in numerous funding authorizations for similar flood management projects.⁷ Such liability waivers thus ensure that the state and its employees do not end up liable for damages arising from a locally managed and operated project.

¹ U.S. Army Corps of Engineers, *Integrated Feasibility Report, Environmental Impact Statement/Environmental Impact Report for Westminster, East Garden Grove, CA Flood Risk Management Study* (Apr. 2020), available at <https://www.lrc.usace.army.mil/Portals/36/docs/projects/Westminster/2020/Westminster%20East%20Garden%20Grove%20Flood%20Risk%20Management%20Study%20-%20Final%20Report.pdf> [last visited Jul. 2, 2021].

² *Id.*, at p. ES-i.

³ *Ibid.*

⁴ *Id.* at p. 16.

⁵ P.L. 116-260, Div. AA.

⁶ Wat. Code, §§ 12462-12643, 12828.

⁷ *E.g.*, Wat. Code, §§ 12749.93-12749.99.

3. Arguments in support

According to bill sponsor County of Orange:

The Westminster-East Garden Grove Flood Risk Management Project is located within the Westminster watershed in western Orange County. Flood control channels within the Westminster watershed receive local storm water runoff and vary in age, size, geometry, and lining material. Over the past decades, urbanization of the Westminster watershed has increased the potential for flood-related damages, and impacts associated with the overtopping of channel systems during short-duration, high-intensity rainfall events. Urbanization has also increased the total amount of the impermeable area, resulting in higher volumes of stormwater being directed to the flood control channels due to limited infiltration opportunities. Once completed, the project will provide flood control improvements, lead to increased flood protection, prevent approximately \$4 billion in damage from a 100-year flood event, and alleviate home and business owners in the affected communities from paying flood insurance premiums totaling over \$13 million.

In 2020, federal authorization was received for the Westminster-East Garden Grove Flood Risk Management project through the [WRDA]. This project has a current estimated cost of \$1.25 billion, with a federal cost share of \$315 million and a local share of \$910 million. Orange County's current 20-year plan has identified \$443 million in revenue to fund the local share, leaving a gap of approximately \$467 million needed to bring the project to completion. As with all WRDA flood control projects, state legislation is required to make the Westminster-East Garden Grove project eligible to receive state flood subvention funding.

AB 781 would make the Westminster-East Garden Grove project eligible to receive state flood subvention funding. State funding would contribute between 50 percent and 70 percent of Orange County's cost share for the National Economic Development components and further close the funding gap needed to bring this project to completion.

SUPPORT

County of Orange (sponsor)
Association of California Water Agencies

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 881 (Wieckowski, Ch. 685, Stats. 2018) added the South San Francisco Bay Shoreline Project of the Santa Clara Valley Water District to the list of flood control projects authorized to receive state flood control subventions reimbursements

SB 619 (Strickland, Ch. 195, Stats. 2009) added the Lower Mission Creek project, which is in the County of Santa Barbara, to the list of approved projects to receive state subventions funding.

PRIOR VOTES:

Senate Natural Resources and Water Committee (Ayes 9, Noes 0)
Assembly Floor (Ayes 78, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Water, Parks and Wildlife Committee (Ayes 15, Noes 0)
