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Re-Engineered Appointment Process Would Weaken Levee Board Reforms

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In the wake of the catastrophic levee failures following Hurricane Katrina, state voters overwhelmingly approved a constitutional amendment allowing the Legislature to establish regional flood protection authorities to govern the New Orleans area's balkanized levee districts. Lawmakers created two authorities and required that their boards be composed primarily of professionals and experts in flood control and related fields – all appointed through an apolitical process.

As a result, the sometimes ill-qualified political appointees who sat on the old levee boards have been replaced primarily by professionals and scientific experts, such as hydrologists, geologists, civil engineers and accountants. The reforms have brought sorely needed professionalism, technical expertise and focus to the critical task of protecting residents from flooding.

Unfortunately, this progress is threatened by proposed legislation that would re-introduce politics into the appointment process for levee board members. Senate Bill 79 (SB 79) would give the governor the power to repeatedly reject all nominees to fill a board vacancy and require the nominating committee to keep submitting new nominees until the governor found one to his liking. The bill also would require the committee to provide the governor with more nominees from which to choose. These changes would weaken a nominating process designed to set politics aside and ensure that the most highly competent individuals oversee the area's flood protection.

Background and Analysis

Prior to Katrina, the area's levee boards were composed primarily of members appointed by the governor from names submitted by legislators. Qualification requirements for a board member were limited to residency and being a qualified voter. Too often in the selection of board members, political connections took precedence over knowledge

of flood control. In some cases, levee boards lost focus and spent too much time managing assets that had nothing to do with flood protection.

The levee failures sparked a grassroots push for reform, resulting in a 2006 constitutional amendment allowing the Legislature to consolidate and professionalize levee boards in the state's coastal zone. The amendment's companion legislation established two multi-parish flood protection authorities in the New Orleans area. The Southeast Louisiana Flood Protection Authority – East (East Authority) covers all or portions of five parishes on the east bank. It governs five levee districts. The Southeast Louisiana Flood Protection Authority – West (West Authority) covers the west banks of two parishes and governs two levee districts.

The Legislature established expertise or professional requirements for most board members. Five of the East Authority's nine board members must be engineers or professionals in related fields, such as geotechnical, hydrological or environmental science. Of these, one must be a civil engineer. Two other members must be professionals in a discipline other than those listed above, with at least 10 years experience. The two remaining members do not have to meet any professional requirements. The board must include one, but no more than one, member from each of the five parishes in the authority's jurisdiction. The other four members must reside outside its jurisdiction.

Three of the West Authority's seven board members must be engineers or professionals in related fields. Of these, one must be a civil engineer. Three other members must be professionals in another discipline, with at least 10 years experience and a baccalaureate degree. The remaining member can meet either of these two sets of criteria. The board must include two, but no more than two, members from the west bank of each of the two parishes in the authority's jurisdiction. The other three members must reside outside its jurisdiction.

State law requires the governor to appoint board members from nominees submitted by a nominating committee. The committee has 11 members when submitting names for the East Authority and two additional members when submitting names for the West Authority. The committee's 11 core members are representatives from various professional, engineering, scientific, academic and public policy organizations.¹ The committee must submit one nominee for hard-to-fill seats reserved for en-

¹ The two additional committee members for nominations to the West Authority's board are a member of the Harvey Canal Industrial Association and the president of Our Lady of Holy Cross College, or his designee.

gineers or professionals in related fields, and two nominees for other seats. Appointments are subject to confirmation by the Senate.

SB 79 would require the nominating committee to provide the governor with three nominees for each vacancy. It also would require the committee to rate them based on their qualifications. The increase in the number of nominees, in conjunction with the strict geographic distribution requirements, would risk diluting the quality of the nominees, especially for seats reserved for engineering and scientific experts. For instance, if the committee had to replace a St. Bernard Parish resident who was the lone civil engineer on the East Authority's board, the seat would have to be filled by another civil engineer from St. Bernard. The committee might have trouble finding one such person who was both highly qualified and willing to serve, let alone three.

SB 79 also would allow a governor to reject all of the nominees. The nominating committee would then have 45 days to submit another slate of nominees, all of whom would have to be new submissions. The governor could keep rejecting slates until he found a nominee to his liking. If at any time the committee ran out of nominees or otherwise failed to provide a nominee, the governor could fill the vacancy with someone who had not been vetted by the committee, provided the person met the basic qualifications.

This would vastly increase the governor's control over the composition of the flood protection boards and allow political considerations to creep back into the selection process. It could send a message to the nominating committee that it should focus on submitting nominees that the governor finds desirable, rather than simply focusing on who would add the most value to the board. This could strike at the very purpose of the nominating committee: to have a panel of experts use their professional judgment in selecting nominees.

Conclusion

As the levee failures in 2005 made all too clear, the very survival of the New Orleans area depends on reliable flood protection. The efforts to consolidate and professionalize governance of the area's levee boards are essential to help ensure that public safety is not compromised by politics. By giving a governor too much control over the composition of the boards, SB 79 would weaken existing safeguards. It should be rejected. We simply cannot afford to turn back the clock to a failed, politics-based approach for selecting levee board members.

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