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BGR's Spotlight on Local Government Issues

Amended SB 79 Still Threatens Levee Boards' Independence

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Last week, the Senate transportation committee voted to send an amended version of the controversial Senate Bill 79 to the full Senate for its consideration. The bill, as originally drafted, would have given the governor greater control over the appointment process for the two regional flood protection authorities in the New Orleans area. The amendments eliminated changes to the appointment process and instead proposed a new process for removing board members.

The bill as amended would give the governor sweeping new powers to remove board members from office. The expanded removal power would severely compromise the boards' independence and reverse reforms intended to depoliticize and professionalize governance of levee districts in the New Orleans area after the catastrophic levee failures in 2005.

Currently, state law requires a governor, upon the request of a flood protection authority, to remove a board member for failure to perform his duties or attend meetings. The amended bill would allow a governor, in his sole discretion, to remove a member for breach of duty, nonattendance or "violation of state law or public policy." It would also allow the board to do the same.

The amended bill suffers from serious problems. First, the concept of "public policy" is so broad and vague that it could lead to the removal of a board member for a wide variety of legitimate board actions. Second, in contrast to current law, the bill would enable the governor to act unilaterally. Third, the bill provides no process for board members to defend themselves against an accusation of wrongdoing or to challenge their removal. The governor would effectively serve as the prosecutor, judge and jury.

Allowing a governor to unilaterally remove board members on grounds as vague as violation of public policy exposes the two flood authorities' boards to ongoing political pressure and intervention from the governor. It would strike at the independence of the flood protection authorities. With the threat of removal hanging over their heads, board members may give greater weight to what the governor wants than what they believe is the best course of action to protect the people and property in the levee districts they oversee.

Undermining the boards' independence by allowing the governor to dismiss board members on vague grounds could also adversely affect the quality of the board members. The authorities' independence and professionalism has helped attract highly qualified scientists and other experts to serve on the flood protection boards, including some from other parts of the country. Such experts would be less likely to commit their talents knowing that they would be under a governor's thumb.

In issuing this report, BGR is not taking a position on the Southeast Louisiana Flood Protection Authority – East's lawsuit against energy companies.¹ It is focusing on a bill that affects the long-term independence and governance of the regional flood protection authorities.

The devastating toll taken by the 2005 levee failures and the risk that it could all happen again prompted voters statewide to demand a different approach to flood protection in the New Orleans area. Creating independent, professional boards was an essential element of the reforms. SB 79 would destroy that independence by vastly increasing the governor's influence over the boards' decision-making processes. The bill should be rejected.

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¹ Bd. of Comm'rs. of the Southeast La. Flood Protection Auth. – East v. Tenn. Gas Pipeline Co., No. 13-6911, (Civ. Dist. Ct., Orleans Parish, filed July 24, 2013).