



- Board of Directors  
*Legislation Committee*

5/10/2011 Board Meeting

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**8-11**

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## **Subject**

Express support for AB 467 (Eng, D–Monterey Park) - Environment: Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006

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## **Description**

Assembly Bill 467, as amended March 31, 2011 ([Attachment 1](#)), by Assembly Member Mike Eng, Chair of the Assembly Committee on Banking and Finance, would amend Section 75101 of the Public Resources Code regarding Proposition 84 grants used to prevent or reduce contamination of groundwater. The amendment would allow grant recipients to retain repayments recovered from parties responsible for the contamination to fund ongoing or additional groundwater cleanup activities of the grantee's jurisdiction.

## **Background**

In November of 2006, voters approved Proposition 84, the Safe Drinking Water, Water Quality and Water Supply, Flood Control, River and Coastal Protection Bond Act of 2006, providing \$5.388 billion in general obligation bonds to fund projects and expenditures. Proposition 84 established Section 75025 of the Public Resources Code that makes available \$60 million to the Department of Public Health (DPH) for the purpose of loans and grants for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water. Additionally, Section 75025 states the DPH shall require repayment for costs that are subsequently recovered from parties responsible for the contamination. Also, Section 75025 states that the Legislature may enact legislation necessary to implement this section.

Thereafter, implementation provisions were enacted on September 30, 2008 when then-Governor Schwarzenegger signed into law SB 732 (Steinberg) that, among other things, added Section 75101 to the Public Resources Code providing implementation provisions for Section 75025 that required DPH to do the following: (1) develop guidelines in collaboration with the Department of Toxic Substances Control (DTSC) and the State Water Resources Control Board (SWRCB); and (2) in collaboration with these same two agencies, develop and adopt regulations governing the repayment of costs that are subsequently recovered from parties responsible for the contamination.

Under current law, grants or loans under Section 75025 may only be used for a project's capital costs and cannot be used for costs for cleanup or treatment. Also, current law is silent on the uses of the funds received through repayment of costs that are subsequently recovered from parties responsible for contamination and does not specifically address what fund(s) are to receive such recovered costs.

## **Legislative Analysis**

AB 467 would amend Section 75101 of the Public Resources Code as follows:

- Changes DPH responsibilities such that DPH, in collaboration with DTSC and SWRCB, would now "develop guidelines" (rather than "developing and adopting regulations") governing the repayment costs that are subsequently recovered from parties responsible for the contamination.

- Adds language that such guidelines would also authorize grantees to retain repayments from the responsible parties to fund ongoing or additional groundwater cleanup activities in the grantee's jurisdiction.
- Adds a declaration that a grantee that recovers costs from a party responsible for the contamination and retains the repayments for ongoing or additional activities to clean up contaminated groundwater in furtherance of the program prescribed by DPH and consistent with the developed guidelines shall be deemed to be in compliance with Section 75025 of the original Proposition 84.

The proponents of the bill argue that the funds recovered from the parties responsible for the contamination would be more efficiently used if they could be retained by the local grantees and used within its jurisdiction for actual treatment and remediation at specific sites or for cleanup work in "orphan" locations – sites where the parties responsible for contamination are unknown, unwilling, or unable to pay for needed remedial actions. The proponents continue that cleanup activities would be more timely by avoiding delays inherent in awaiting a legislative appropriation to permit DPH to award another round of grants.

Additionally, the proponents argue that if the recovered funds were to be deposited in a DPH administered fund, DPH will incur costs to administer a new grant award cycle and will likely assess administrative cost to re-award the funds. The proponents state that these costs are typically budgeted at 5 percent of the total amount for the administering department (DPH) and additional administrative costs are charged by other involved administering agencies such as the State Controller's Office and the Department of Finance. As background, SB X2 1 (Perata), chaptered September 30, 2008, required that \$50.4 million of the funds from Section 75025 be available for immediate projects needed to protect public health and be encumbered by June 2010. The proponents of AB 467 have noted that if the recovered funds were to be administered by the state at a 5-percent administrative fee, local cleanup efforts statewide could lose a minimum of \$2.5 million (5 percent) if the full \$50.4 million in grant awards is subsequently recovered.

In an April 5, 2011, bill analysis of AB 467, staff for the Assembly Committee on Environmental Safety and Toxic Materials raised the question as to whether this is a modification to Proposition 84. The staff noted that the voter approved Proposition 84 included specific language requiring the repayment of funds from those persons or businesses that caused the toxic contamination, mandating that DPH require repayment of the subject funds. Further, the staff stated regarding AB 467 that, "While the language of Proposition 84 allows the Legislature to enact legislation to implement the programs, on the other hand it is not clear if the repayment requirements of the original bond act would be met under the provisions of the bill."

Proponents of the bill argue that AB 467 neither repeals nor amends any provision of Proposition 84, noting that, "Whether the repaid funds return to the State or are used at the local level in furtherance of the goals expressed in Proposition 84 Section 75025, the intent of and effect of the bond language has not been amended." They further state that AB 467 only revises the implementation procedures and does not amend the proposition itself.

The bill is supported by member agency Upper San Gabriel Valley Municipal Water District (Upper District) and by the San Gabriel Basin Water Quality Authority.

### **Impacts to Metropolitan**

There are no direct impacts to Metropolitan's facilities but there could be direct impacts to Metropolitan's groundwater storage programs with member agencies. Metropolitan does not operate facilities to produce groundwater as a source of drinking water (and thus has not applied for such DPH grants under Proposition 84), but Metropolitan does store imported water in local groundwater basins through agreements with member agencies. Success of these conjunctive use and replenishment storage programs is directly related to the existing basin groundwater quality. Enactment of AB 467, as amended, will allow local agencies that are recipients of these DPH grants to retain repayments recovered from those responsible for the contamination, providing a potentially significant source of additional revenue for ongoing and additional groundwater treatment and remediation. Improved groundwater quality could improve the reliability of Metropolitan groundwater storage programs. Greater availability of groundwater as a resource through increased funding of treatment and remediation of contaminated sites will benefit the region and provide increased water supply reliability within Metropolitan's service area.

## Policy

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By Minute Item 46191, dated April 12, 2005, the Board adopted Drinking Water Quality Policy Principles.

By Minute Item 42820, dated February 10, 1998, the Board adopted the Source Water Quality Protection Policy Principles.

By Minute Item 41222, dated January 10, 1995, the Board adopted Groundwater Management Policy Principles.

## California Environmental Quality Act (CEQA)

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

## Board Options

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### Option #1

Adopt the CEQA determination and authorize the General Manager to express Metropolitan's support for AB 467, as amended March 31, 2011.

**Fiscal Impact:** None to Metropolitan. As identified by the bill's proponents, with local retention of the recovered funds from those parties responsible for groundwater contamination, there is a potential savings of about \$2.5 million through avoided state administrative fees at about 5 percent, assuming all the \$50.4 million in grant awards is subsequently recovered from the responsible parties.

**Business Analysis:** Allowing the use of recovered funds for ongoing and additional treatment and remediation activities could provide a potentially significant source of additional revenues for local agencies to operate and maintain groundwater cleanup facilities.

### Option #2

Take no position on AB 467, as amended March 31, 2011

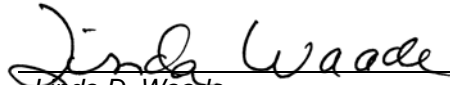
**Fiscal Impact:** None to Metropolitan. Funds recovered from those parties responsible for groundwater contamination could be collected and deposited into DPH administered funds, thereby incurring a state administration fee of about 5 percent, or potentially \$2.5 million, before such funds could be returned to local agencies through additional rounds of grant funding.

**Business Analysis:** Funds could be collected and deposited into DPH funds, resulting in inefficient use of recovered funds through application of a state administrative fee of approximately 5 percent and through additional rounds of grant funding would be necessary in order for such funds to flow back to the local agencies. Additionally, DPH may impose requirements that such grant funding from these recovered funds be used only for capital projects, thereby preventing local agencies from applying such funding for operating and maintaining groundwater cleanup facilities.

**Staff Recommendation**

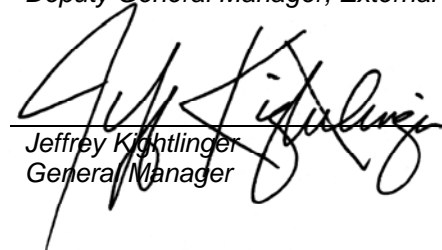
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Option #1

  
Linda D. Waade  
Deputy General Manager, External Affairs

5/4/2011

Date

  
Jeffrey Kightlinger  
General Manager

5/4/2011

Date

**Attachment 1 – Assembly Bill 467 (as amended 3/31/11)**

Ref# ea12612110

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 467**

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**Introduced by Assembly Member Eng**  
**(Principal coauthor: Assembly Member Roger Hernández)**  
(Coauthor: Senator Hernandez)  
(Coauthors: Senators Hernandez and Huff)

February 15, 2011

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An act to amend Section 75101 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 467, as amended, Eng. Environment: Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative statute approved by the voters at the November 7, 2006, statewide general election, makes approximately \$5.4 billion in bond funds available for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements. The bond act makes \$60,000,000 available to the State Department of Public Health for the purpose of loans and grants for projects to prevent or reduce contamination of groundwater that serves as a source of drinking water and requires the department to require repayment for costs that are subsequently recovered from parties responsible for the contamination. Existing law requires the State Department of Public Health, in collaboration with the Department of Toxic Substances Control and the State Water Resources Control Board, to develop and adopt regulations

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governing the repayment of costs that are subsequently recovered from parties responsible for the contamination of groundwater.

This bill would instead require the State Department of Public Health, in collaboration with those agencies, to develop guidelines governing this repayment that would allow grantees to retain repayments to fund ongoing or additional groundwater cleanup activities. *The bill would make a declaration concerning the compliance of those grantees with the bond act.*

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 75101 of the Public Resources Code is  
2 amended to read:

3 75101. (a) For the purposes of implementing Section 75025,  
4 the State Department of Public Health shall do all of the following:

5 (1) Develop guidelines pursuant to Section 75100 in  
6 collaboration with the Department of Toxic Substances Control  
7 and the state board.

8 (2) (A) In collaboration with the Department of Toxic  
9 Substances Control and the state board, develop guidelines  
10 governing the repayment of costs that are subsequently recovered  
11 from parties responsible for the contamination and that authorize  
12 grantees to retain repayments from the responsible parties to fund  
13 ongoing or additional groundwater cleanup activities in the  
14 grantee's jurisdiction.

15 (B) *A grantee that recovers costs from a party responsible for*  
16 *the contamination and retains the repayments for ongoing or*  
17 *additional activities to clean up contaminated groundwater in*  
18 *furtherance of the program prescribed by the State Department*  
19 *of Public Health and consistent with guidelines developed under*  
20 *subparagraph (A) shall be deemed to be in compliance with Section*  
21 *75025.*

22 (b) For the purposes of implementing subdivision (a) of Section  
23 75050, the Department of Fish and Game, when funding a natural  
24 community conservation plan, shall fund only the development of  
25 a natural community conservation plan that is consistent with the  
26 Natural Community Conservation Planning Act (Chapter 10

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- 1 (commencing with Section 2800) of Division 3 of the Fish and
- 2 Game Code).
- 3 (c) The San Francisco Bay Area Conservancy may use the funds
- 4 made available pursuant to subdivision (c) of Section 75060 to
- 5 restore the salt ponds in the south San Francisco Bay and to create
- 6 trails and visitor facilities for public use in that area.

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