

**Sierra County
Board of Supervisors'
Agenda Transmittal &
Record of Proceedings**

MEETING DATE: May 17, 2016	TYPE OF AGENDA ITEM: <input type="checkbox"/> Regular <input type="checkbox"/> Timed <input checked="" type="checkbox"/> Consent
DEPARTMENT: Department of Public Works and Transportation	
APPROVING PARTY: Tim H. Beals	
PHONE NUMBER: 530-289-3201	

AGENDA ITEM: Letter opposing Senate Bill 1170 (Wieckowski) which would prohibit a public entity from delegating to a contractor the development of Stormwater Pollution Prevention Plans (SWPPPs) on public works projects.

SUPPORTIVE DOCUMENTS ATTACHED: Memo Resolution Agreement Other
Action Alert from CSAC.

BACKGROUND INFORMATION: SB 1170 (Wieckowski) will likely add significant new costs and inefficiencies in the delivery of essential public infrastructure by prohibiting the delegation of preparation of SWPPPs to contractors, which must take into consideration all conditions (everything from erosion and sediment controls to portable restrooms), at construction sites that potential to affect stormwater quality. Most agencies do not have the resources to employ personnel with expertise in the area of SWPPPs, Sierra County notwithstanding.

FUNDING SOURCE: NA
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND:
AMOUNT: \$ N/A

ARE ADDITIONAL PERSONNEL REQUIRED? <input type="checkbox"/> Yes, -- -- <input checked="" type="checkbox"/> No	IS THIS ITEM ALLOCATED IN THE BUDGET? <input type="checkbox"/> Yes <input type="checkbox"/> No IS A BUDGET TRANSFER REQUIRED? <input type="checkbox"/> Yes <input type="checkbox"/> No
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SPACE BELOW FOR CLERK'S USE

BOARD ACTION: <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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COMMENTS:

CLERK TO THE BOARD

DATE

SIERRA COUNTY

Board of Supervisors
P.O. Drawer D
Downieville, California 95936
Telephone (530) 289-3295
Fax (530) 289-2830
17 May, 2016



Honorable Bob Wieckowski
Chair, Senate Environmental Quality Committee
State Capitol
Sacramento, CA 95814

RE: Opposition to Senate Bill 1170 (Wieckowski)

Dear Senator Wieckowski:

On May 17, 2016 the Sierra County Board of Supervisor approved this letter and joined with the California State Association of Counties, and numerous organizations to oppose SB 1170 (Wieckowski) related to stormwater pollution prevention. As currently written, SB 1170 would add significant new costs and promote inefficiency in the planning, approval, construction, and maintenance of an extensive range of essential public infrastructure.

Senate Bill 1170 would prohibit a public entity, charter city, or charter county from delegating to a contractor the development of a plan, as defined, used to prevent or reduce water pollution or runoff on a public works contract, except as provided. The bill would also prohibit a public entity, charter city, or charter county from requiring a contractor on a public works contract that includes compliance with a plan to assume responsibility for the completeness and accuracy of a plan developed by that entity.

Sierra County, along with many other small agencies, is completely committed to the prevention of stormwater pollution. Sierra County is also very limited in personnel and does not have the resources nor the workload to justify employment of additional qualified personnel with expertise in the development of SWPPPs. Therefore Sierra County relies on the ability to contract with general contractors who have the expertise and who are on the job site hence more readily able to meet and mitigate immediately changing conditions. This is the most efficient and cost effective scenario for managing prevention and mitigating stormwater pollution.

On behalf of the Sierra County Board of Supervisors, I thank you for your consideration.

Sincerely,

SIERRA COUNTY BOARD OF SUPERVISORS

By:

LEE ADAMS
Chair

cc: Hon. Brian Dahle, California State Assembly
Hon. Ted Gains, California State Senative
Members, Senate Environmental Quality Committee
Rural County Representatives of California
California State Association of Counties

Miriam Dines

From: Faith Conley [fconley@counties.org]
Sent: Friday, April 29, 2016 12:39 PM
Subject: ACTION ALERT: SB 1170 - Stormwater Pollution Prevention Plans
Attachments: image003.jpg; Coalition Draft SB 1170 (Wieckowski) Sen. Environmental Quality Committe....pdf

Importance: High

To: County Public Works Directors

From: Faith Conley, Legislative Representative, CSAC
Betsy Hammer, Legislative Analyst, CSAC

Dear Public Works Directors:

[Senate Bill 1170](#), by Senator Bob Wieckowski, would prohibit a public entity from delegating to a contractor the development of Stormwater Pollution Prevention Plans (SWPPPs) on a public works project. As you are aware, SWPPPs must be written, amended and certified by qualified personnel who are knowledgeable in the principles and practice of erosion and sediment controls and possess the skills necessary to assess conditions at the construction site that could impact stormwater quality. Public agencies rely on the expertise of qualified SWPPP developers (QSDs) to conduct this work as most agencies do not have the resources nor the regular workload required to employ such personnel throughout the year. Contractors work on multiple construction projects over time, or even simultaneously. Accordingly, many contractors develop preexisting relationships with QSDs or employ them within their own organization. Since SWPPPs are currently created in accordance with the general contractor's construction plans and, as construction progresses on public works projects, the SWPPPs must often be modified to accommodate the ever-changing conditions of a construction site, it's clear that the general contractor is in the most optimal position to create the construction plan and contract for a corresponding SWPPP since he or she can incorporate the best construction sequence.

Rather than maintain this sensible approach to SWPPP development, SB 1170 instead creates confusion and conflict within the public works process by further disconnecting the entity responsible for its development from the entity that performs the actual work related to SWPPP. Essentially, public agencies will now be asked to separately plan and contract for, among other things, security of the general contractor's equipment on the job site, number of portable restrooms and other functions connected to the performance of a construction project.

CSAC strongly opposes SB 1170 as we believe it would add significant new costs and inefficiencies in the delivery of essential public infrastructure; additionally, current incentives for contractors to ensure that SWPPPs are effective that are driven by the contractor bearing the risk of a SWPPP violation will disappear with this bill and increase the burden on unprepared local agencies, potentially resulting in illegal pollutant discharges, fines for public agencies and water quality problems.

SB 1170 is moving through the legislative process with little to no opposition despite efforts from a large, public coalition **CSAC requests that counties oppose SB 1170 and contact their legislators with opposition to the measure**. The bill will be heard next in the Senate Appropriations Committee and the analysis of the bill can be found [here](#). Attached is CSAC's letter of opposition.



Faith Conley

Legislative Representative

Employee Relations and Administrative Services

California State Association of Counties

1100 K Street, Suite 101 | Sacramento, CA | 95814

Office: 916.650.8117 | Cell: 916.494.4089

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL**No. 1170**

Introduced by Senator Wieckowski
(Coauthor: Senator Hill)
 (Coauthor: Assembly Member Alejo)

February 18, 2016

An act to add Section 7107.5 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1170, as amended, Wieckowski. Public contracts: water pollution prevention plans: delegation.

Existing law prohibits a local public entity, charter city, or charter county from requiring a bidder on a public works contract to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except as specified.

Existing law requires the State Water Resources Control Board and the 9 California regional water quality control boards to prescribe waste discharge requirements in accordance with the National Pollutant Discharge Elimination System (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Existing law regulates the discharge of pollutants in stormwater associated with construction activity to waters of the United States from construction sites that disturbs one or more acres of land surface, or that is part of a common plan of development or sale that disturbs more than one acre of land surface.

This bill would prohibit a public entity, charter city, or charter county from delegating to a contractor the development of a plan, as defined, used to prevent or reduce water pollution or runoff on a public works contract, except as provided. The bill would also prohibit a public entity, charter city, or charter county from requiring a contractor on a public works contract that includes compliance with a plan to assume responsibility for the completeness and accuracy of a plan developed by that entity. *The bill would provide that these prohibitions do not apply to contracts that use specified procurement methods.* The bill would also declare that this is a matter of statewide concern. The bill would state that its provisions are declaratory of existing law, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

P2 1 SECTION 1. Section 7107.5 is added to the Public Contract
 2 Code, to read:
 3 7107.5. (a) As used in this section, the following definitions

4 shall apply:

5 (1) "Plan" means a stormwater pollution prevention plan, water
6 pollution control program, or any other plan required by a regional
7 water quality control board to prevent or reduce water pollution
8 or runoff on a public works project, pursuant to State Water
9 Resources Control Board Order No. 2009-0009-DWQ.

10 (2) "Plan developer" means a qualified stormwater pollution
11 prevention plan developer or a qualified stormwater pollution
12 prevention plan practitioner as those terms are defined in Appendix
13 5 of State Water Resources Control Board Order No.
14 2009-0009-DWQ.

15 (b) (1) (A) A public entity, charter city, or charter county shall
16 not delegate to a contractor the development of a plan on a public
17 works contract.

P3 1 (B) Subparagraph (A) shall not apply to a contract for
2 architectural or engineering services relating to the development
3 of a plan on a public works contract.

4 (C) This section does not restrict a public entity, charter city,
5 or charter county from contracting with a duly licensed architect
6 or engineer for the design of a plan.

7 (2) A public entity, charter city, or charter county shall not
8 require a contractor on a public works contract that includes
9 compliance with a plan to assume responsibility for the
10 completeness and accuracy of the plan developed by that entity.

11 ~~(c) Subdivision (b) shall apply regardless of the project delivery
12 method required in a public works contract.~~

13
14 *(c) Subdivision (b) shall apply to all public works contracts
15 except contracts that use the following statutorily authorized
16 procurement methods:*

17 *(1) Design-build.*

18 *(2) Best value.*

19 *(3) Construction manager at-risk contracts where the
20 construction manager is authorized to retain a plan developer for
the project owners.*

21 (d) Nothing in this section shall be construed to prohibit a local
22 public entity, charter city, or charter county from requiring a bidder
23 or contractor on a public works contract to review any applicable
24 plan and report any errors or omissions noted to the public entity
25 or its plan developer. The review by the contractor shall be limited
26 to the contractor's capacity as a contractor and not as a licensed
27 design professional or plan developer.

28 SEC. 2. The Legislature finds and declares that it is of statewide
29 concern to require a public entity, charter city, or charter county
30 to be responsible for the development of, and completeness and
31 accuracy of, a plan to prevent or reduce water pollution or runoff
32 on a public works project.

33 SEC. 3. The addition of Section 7107.5 to the Public Contract
34 Code made by this act does not constitute a change in, but is
35 declaratory of, existing law, including, but not limited to, Chapter
36 7 (commencing with Section 6700) of Division 3 of the Business
37 and Professions Code, Title 12 (commencing with Section 2772)
38 of Part 4 of Division 3 of the Civil Code, and Section 1104 of the

39 Public Contract Code.

P4 1 SEC. 4. The Legislature finds that there is no mandate
2 contained in this act that will result in costs incurred by a local
3 agency or school district for a new program or higher level of
4 service which require reimbursement pursuant to Section 6 of
5 Article XIII B of the California Constitution and Part 7
6 (commencing with Section 17500) of Division 4 of Title 2 of the
7 Government Code.

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