

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1736 (Juan Carrillo) – As Amended March 9, 2023

SUBJECT: Water replenishment districts: competitive bidding.

SUMMARY: Authorizes a water replenishment district (district) to negotiate a contract for work if no bids are received, as specified.

EXISTING LAW:

- 1) Requires, for any improvement or unit of work done by district personnel, the estimated cost of the work to not exceed \$25,000, except under the following circumstances [Water Code (WC) § 60604]:
 - a) The work consists of maintenance work, as defined.
 - b) The work consist of emergency work.
- 2) Specifies that notice of a contract for any improvement or work shall be made by the district after publication pursuant to existing law. The notice shall set forth all of the following information (WC § 60604):
 - a) Plans and specifications of the work to be done can be seen at the office of the district.
 - b) The board will receive sealed bids.
 - c) The contract will be let to the lowest responsible bidder.
 - d) The bids will be opened in public at a given time and place.
- 3) Provides that if less than the whole work provided for in the plans and specifications is to be done, the portion to be done shall be particularly described in the notice (WC § 60604).
- 4) Requires all bids for construction work to be presented under sealed cover and to be accompanied by one of the following forms of bidder's security (WC § 60604):
 - a) Cash.
 - b) A cashier's check made payable to the district.
 - c) A certified check made payable to the district.
 - d) A bidder's bond executed by an admitted surety insurer, made payable to the district.
- 5) Provides that, upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period, but in no event shall that security be held by the district beyond 60 days from the time the ward is made (WC § 60604).

- 6) Authorizes a district to do any of the following (WC § 60604):
 - a) Let work to the lowest responsible bidder.
 - b) Reject any or all bids and readvertise for proposals
 - c) Proceed to construct the work under its own superintendence.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Water Replenishment District of Southern California.** State law allows the formation of water replenishment districts to recharge water into groundwater basins for later withdrawal by water purveyors. In 1959, the voters of Los Angeles County established the Water Replenishment District of Southern California (WRD), which is the state's sole water replenishment district.

WRD earns revenue by charging water replenishment assessments to the agencies, utilities, and companies that pump groundwater. WRD also gets property tax revenues from its share of the 1% property tax rate. WRD uses these funds to secure water that percolates into the groundwater basin. WRD is the most populous groundwater management agency in the state of California, managing groundwater resources for approximately four million residents over a 420 square-mile territory. The 43 cities in the service area, including a portion of the City of Los Angeles, and other unincorporated parts of Los Angeles County use about 220,000 acre-feet (72 billion gallons) of groundwater annually, which accounts for nearly half of the region's water supply needs. WRD is governed by a five-member board, with each member representing a division of the district.

- 2) **Audits and Legislative Mandates.** More than 20 years ago, WRD became the subject of controversy over its water rates, fund balances, capital projects, and administrative practices. A December 1999 State Auditor's report found that WRD did not exercise strict fiscal controls. Among other issues, the State Auditor found that WRD had established an operating reserve of \$20 million – twice what the Auditor estimated was necessary to ensure prudent reserves.

In response to the audit, the Legislature amended the Water Replenishment District Act to install a host of restrictions over WRD's finances. Specifically, SB 1979 (Escutia), Chapter 894, Statutes of 2000, did the following:

- a) Limited WRD's annual reserve fund to a maximum of \$10 million, adjusted annually to reflect changes in the cost of purchased water. Reserves appropriated for capital improvements under construction are not subject to this limit.
- b) Required 80% of WRD's reserves to go to water purchases.
- c) Mandated that WRD annually commission an independent, audited financial statement that lists fund balances, includes specified reports on capital projects, and records WRD's response to any management recommendations from the State Auditor.

- d) Required the above financial statements to be submitted to the Governor, the Legislature, and the State Auditor annually by November 1.

The Legislature also established rules for contracting and constructing capital projects, and required follow-up audits of WRD by the State Auditor in 2002 [AB 1834, (Havice), Chapter 888, Statutes of 2000] and 2002 [AB 1163, (Calderon), Chapter 941, Statutes of 2002]. Those audits found that, although WRD had implemented many of the recommendations in previous audits, its reserve policies continued to raise questions.

In 2013, WRD sought relief from some of the fiscal controls imposed by the Legislature, arguing that these controls threatened its financial viability and prevented it from investing in local sources of water. In response, the Legislature temporarily repealed the requirement that 80% of reserves must be spent on water purchases until the 2019-20 fiscal year [SB 620, (Wright), Chapter 638, Statutes of 2013]. In order to continue some oversight of WRD's reserves, SB 620 also required the establishment of a budget advisory committee, composed of WRD's ratepayers. This committee was charged with reviewing and making recommendations on any replenishment assessment levied by WRD, and WRD's operating budget and reserves. SB 620 further contained intent language that records of the recommendations from the budget advisory committee should be used to evaluate the permanent repeal of the 80% requirement. The Legislature repealed additional limitations on WRD's reserves and loosened audit requirements for the district via SB 963 (Allen), Chapter 351, Statutes of 2018.

- 3) **SB 1476.** SB 1476 (Bradford), Chapter 891, Statutes of 2022, revised non-construction contracting requirements for districts as follows:
 - a) Repealed, until January 1, 2028, a requirement that districts advertise for bids before making any contract totaling \$25,000 or more within any 12 month period and, instead, provided the following:
 - i) Required an expenditure for the erection, construction, alteration, repair or improvement of a public structure or building of \$25,000 or more to be let by contract by formal bidding procedure, consistent with the applicable provisions of the Public Contract Code.
 - ii) Required districts to adopt policies and procedures, including formal and informal bidding requirements, governing contracts for professional services, materials, supplies, and equipment.
 - iii) Provided that private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be selected pursuant to existing law governing allowable contracting practices for these types of services, as specified.
 - b) Restores the repealed requirements to advertise for bids specified in 1), above, on January 1, 2028.
 - c) Limited the work that can be done by district personnel to \$25,000, except if the work consists of maintenance work or emergency work, as specified.

d) Increased the threshold for contracts that must be approved by a district board from \$10,000 to \$40,000, but allowed the board to delegate by resolution specific contracts over \$40,000, but not to exceed \$100,000, to be signed by the district manager and one additional district representative.

- 4) **Bill Summary and Author's Statement.** This bill allows district boards to negotiate a contract for work if no bids are received, as specified. WRD is the sponsor of this bill.

According to the author, "The Water Replenishment District Act specifies substantive and procedural requirements for letting contracts for public works projects. The Act allows the WRD governing board to do any of the following: (1) Let the work to the lowest responsible bidder; (2) Reject any or all bids and readvertise for proposal; and (3) Proceed to construct the work under its own superintendence (construct the work with its own employees). The Act is silent on the process to be taken when no bids have been received to an advertisement for proposals.

"The authority for WRD to construct a project with its own employees—authority granted in the 1959 law—is not of benefit to WRD because it does not employ its own construction workers. Other local agencies have the option of negotiating a public works contract after receiving no bids. AB 1736 would provide this option to WRD."

- 5) **Arguments in Support.** According to the sponsors, "The Water Replenishment District Act requires a district to provide notice of a contract for any improvement or work. Existing law authorizes a board to let the work to the lowest responsible bidder, reject the bids and readvertise for proposals, or proceed to construct the work under its own superintendence. AB 1736 would also authorize a board to negotiate a contract for the work if no bids are received.

"The only choices for WRD under existing law is to issue a new bid solicitation or delay construction of the project. Both choices result in additional costs to the district. Delaying construction has a negative effect on the ability of the district to carry out its duties and responsibilities, and in the present inflationary financial environment, increases construction costs. All added costs place upward pressure on WRD's water replenishment assessment, which is reflected in commercial and residential water rates imposed by local agency water systems and water corporations."

- 6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Water Replenishment District of Southern California [SPONSOR]
California Groundwater Coalition

Opposition

None on file

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