

Date of Hearing: September 12, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
AB 1752 (Petrie-Norris and Brough) – As Amended August 12, 2019

**SUBJECT:** South Coast Water District.

**SUMMARY:** Allows, until January 1, 2025, the South Coast Water District to contract with a private entity for the Doheny Ocean Desalination Project, under certain conditions. Specifically, **this bill:**

- 1) Allows the South Coast Water District (District) to contract for the Doheny Ocean Desalination Project (Project) in compliance with the following:
  - a) Existing law governing the use public-private partnerships (P3s) by local agencies, except that the Project shall not constitute a state project within the meaning of this law;
  - b) Skilled and trained workforce requirements of existing law; and,
  - c) Laws governing county water districts.
- 2) Stipulates that this bill shall only remain in effect until January 1, 2025.

**EXISTING LAW:**

- 1) Authorizes local governments to enter into P3s for fee-producing infrastructure projects that might not be feasible without private-sector involvement. Local governments may solicit proposals and enter into agreements with private entities for the study, planning, design, financing, construction, maintenance, rebuilding, improvement, repair, or operation by private entities of specific types of fee-producing infrastructure.
- 2) Provides that a P3 agreement for the construction of fee-producing infrastructure by a private entity must provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years.
- 3) Requires that P3 agreements do all of the following:
  - a) Demonstrate compliance with the California Environmental Quality Act;
  - b) Use bonds as security to ensure project completion and secure payment of laborers;
  - c) Demonstrate that the private entity has adequate resources to design, build, and operate the facility;
  - d) Outline the fee structure for use of the facility;
  - e) Provide for at least one public hearing before imposing the fee;
  - f) Outline a process for the local agency to use excess fees to pay the private entity's debts, establish a reserve, or reduce user fees;

- g) Require the private entity to maintain the facility in good operating condition at all times;
  - h) Provide for annual audited financial statements from the private facility;
  - i) Establish a process for the local agency to buy out the private entity;
  - j) Require the private entity to maintain insurance; and,
  - k) Entitle both parties to legal remedies for any complaints.
- 4) Does not generally allow governmental entities to use P3 agreements for state projects, including tollroads on state highways, state water projects, state park and recreation projects, or state-financed projects.
- 5) Allows certain projects that would otherwise qualify as state projects to enter into agreements until January 1, 2020. Specifically, this includes projects that receive funding through the State Water Pollution Control Revolving Fund or the Drinking Water State Revolving Fund.
- 6) Allows local governments to require contractors to use a skilled and trained workforce to complete a project, and requires the use of a skilled and trained workforce in some instances. To meet the requirements of a skilled and trained workforce, the workforce on the project must meet two basic conditions:
- a) All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeable program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations; and,
  - b) For work performed on or after January 1, 2020, at least 60% of the skilled journeypersons employed to perform work on the project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill allows the District to contract with a private entity for the Doheny Ocean Desalination Project, until January 1, 2025. The bill is sponsored by the District.

According to the author, "AB 1752 will ensure that the full array of State funding options are available to the South Coast Water District, as it moves ahead with its Doheny Ocean Desalination Facility to be located in Dana Point. Limited existing State funding authority sunsets at the end of this year and the replacement statute that goes into effect on January 1, 2020, precludes the ability of the State to partner with the project.

"Orange County, like much of the State, must diversify its water portfolio in order to position itself for the next drought and to lessen its dependence on imported water. As a matter of economics and sound water policy, the Doheny design-build-operate facility makes great sense. From an environmental perspective, the facility will utilize slant well technology,

which is the preferred approach for these kinds of Desal projects given its significantly reduced impact on our treasured marine life. This project has engendered a broad swath of community support, including labor, the environmental community, and the general public.”

- 2) **Background on P3s.** P3s are agreements between a government agency and a private-sector company and are typically used for infrastructure projects. P3s place a wide range of project responsibilities and risks onto private entities, some of which were traditionally borne by public agencies alone. A typical P3 agreement calls on the private entity to design and build a facility, and also to finance, operate and maintain it. In exchange, the private entity may be entitled to tolls or user fees that the facility generates, or may receive direct payments from the government. While proponents contend that P3s can be an effective project delivery tool, some projects that have been constructed and operated under P3 authority have been contentious.

Existing state law allows local agencies to use P3 arrangements for specific types of fee-producing infrastructure, but generally excludes state projects. However, certain state projects may enter into P3s until January 1, 2020 [AB 1478 (Committee on Budget), Chapter 664, Statutes of 2014]. This includes projects that receive funding through the State Water Pollution Control Revolving Fund or the Drinking Water State Revolving Fund. The latter receives funds from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 – also known as Proposition 1.

Because the Project received Proposition 1 funding, it is considered a state project and can only enter into a P3 agreement until January 1, 2020. This bill would extend the District’s ability to use a P3 arrangement for the Doheny Ocean Desalination Project until January 1, 2025. In doing so, the District must comply with existing statutes governing the ability of local agencies to use P3s, as well as existing skilled and trained workforce requirements and existing law governing county water districts.

- 3) **Doheny Ocean Desalination Project.** The Project is located in Dana Point and will use slant-well technology, a method by which slant wells, buried diagonally underground beneath the ocean floor, suck out water through the sand rather than directly from the ocean. This technique significantly reduces impacts to marine life and preserves the integrity of the coastline.

It is the hope that once the facility is completed, it will significantly enhance local water production and decrease the area’s vulnerability during droughts, supply shortages, and natural disasters. The proposed plant could handle more than 90 % of the District’s potable needs, and could reach customers as soon as 2022. The Project is expected to cost about \$107 million to build, which is significantly cheaper than other nearby proposed desalination projects in El Segundo and Huntington Beach.

The District has received a \$10-million grant from Proposition 1 funds and an \$8.3 million U.S. Bureau of Reclamation grant, along with assistance from the State Water Resources Control Board State Revolving Fund to complete the project.

- 4) **South Coast Water District.** The District was established in 1932 and provides water and wastewater services to approximately 40,000 residents, 1,000 businesses, and 2 million visitors per year in south coastal Orange County, including the communities of Dana Point

and South Laguna. Currently, the District imports 85-100% of its drinking water from the Colorado River, the State Water Project, and other outside supplies. The District is working towards building a sustainable, resilient local water portfolio for south coastal Orange County.

- 5) **Arguments in Support.** According to the South Coast Water District, the sponsor of this bill, “The statute that provides for limited access to State funds expires at the end of 2019. And the statute that assumes its place on January 1, 2020, provides no opportunity for State partnership in design-build-operate facilities. South Coast Water District is building a sustainable, resilient local water portfolio for south coastal Orange County. The Doheny Ocean Desalination Project enjoys strong, diverse local support. The district is eager to pursue a pending \$10-million grant from Prop. 1, along with assistance from the State Revolving Fund.”
- 6) **Arguments in Opposition.** None on file.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

South Coast Water District [SPONSOR]  
 American Council of Engineering Companies of California  
 Association of California Water Agencies  
 CalDesal  
 California Special Districts Association  
 East Orange County Water District  
 El Toro Water District  
 Independent Special Districts of Orange County  
 Laguna Beach County Water District  
 Mesa Water District  
 Metropolitan Water District of Southern California  
 Municipal Water District of Orange County  
 Santa Margarita Water District  
 South Coast Water District  
 State Building & Construction Trades Council of California  
 Yorba Linda Water District

##### **Opposition**

None on file

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