

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2179 (Gipson) – As Introduced February 12, 2018

**SUBJECT:** Municipal corporations: public utility service: water and sewer service.

**SUMMARY:** Authorizes a municipal corporation to utilize alternative procedures to lease, sell, or transfer a municipal utility used for furnishing sewer service. Specifically, **this bill:**

- 1) Allows a municipal corporation owning and operating a public utility for furnishing sewer service, that provides sewer service outside the boundaries of such municipal corporation, to lease, sell or transfer the portion of the utility located outside the boundaries of such municipal corporation to another public entity or utility upon a majority vote of the board, provided there is adequate justification for the sale or transfer.
- 2) Authorizes a municipal corporation owning a public utility for furnishing sewer service to sell the public utility within its boundaries with a majority vote of its legislative body and a majority vote of the electorate.
- 3) Requires the municipal corporation, public agency, water corporation, or sewer system corporation that is proposing to acquire sewer service from a municipal corporation to disclose to the customers of the system to be acquired, not less than 30 days prior to the date of the election, a written statement which includes all of the following:
  - a) A summary of the price and terms of the proposed acquisition;
  - b) A comparison of the applicable sewer charges before and after the proposed acquisition; and,
  - c) The estimated savings to be achieved or additional costs to be expected to result, or both, from the proposed acquisition.
- 4) Authorizes a municipal corporation to lease a public utility furnishing sewer service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions.

**EXISTING LAW:**

- 1) Defines “Municipal corporation” to mean a city or a city and county.
- 2) Allows a city to purchase, lease, receive, hold and enjoy real and personal property, and control and dispose of it for the common benefit.
- 3) Establishes, generally, a maximum term of 15 years for the lease of a public utility.
- 4) Allows a city or a city and county to sell any public utility that it owns, generally, by a two-thirds vote of its legislative body, and subsequently by a two-thirds vote of all voters voting at an election.

- 5) Allows municipal corporations owning and operating a public utility for furnishing drinking water, which provides water service outside the boundaries of such municipal corporation, to lease, sell or transfer the portion of the utility located outside the boundaries of such municipal corporation to another public entity or utility upon a majority vote of the board, provided there is adequate justification for the sale or transfer.
- 6) Allows a municipal corporation owning a public utility for furnishing drinking water service to sell the public utility within its boundaries with a majority vote of its legislative body and a majority vote of the electorate.
- 7) Establishes a policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Wastewater treatment and regulation.** Wastewater treatment in California centers on the collection, conveyance, treatment, reuse and disposal of wastewater. This process is conducted largely by public agencies, though there are also privatized systems in places where a treatment plant is not feasible. In California, wastewater treatment takes place through 100,000 miles of sanitary sewers and at more than 900 wastewater treatment plants that manage the roughly four billion gallons of wastewater generated in the state each day.

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (regional boards) regulate water quality in the state. The Porter-Cologne Water Quality Control Act requires SWRCB and the regional boards to regulate discharges (including those from septic systems and sewer systems) to ensure long-term water quality protection.

- 2) **Consolidation in California.** In 2015, the SWRCB was given the authority to order consolidation of a public water system within a disadvantaged community, under specified conditions. In 2016, the SWRCB was given the authority to evaluate the ability of a proposed new public water system's ability to meet drinking water standards for the foreseeable future and to deny a permit if it is determined that the new public water system will not be sustainable into the future. In 1997, the Public Utilities Commission (PUC) was required to use fair market value when setting rates creating a greater incentive for PUC regulated water providers to consolidate. At a November 2017 joint workshop between the PUC and the SWRCB, the SWRCB reported that they sent out approximately 250 letters to small public water systems from September through November recommending consolidation.

In recent years, the Legislature has focused on creating tools to bring clean, reliable drinking water to all of California's communities. This year, the Legislature has expanded that focus to ensuring all communities have reliable sewer service. Besides AB 2179, SB 1215 (Hertzberg) of this year, allows the SWRCB to order provision of service to disadvantaged communities served by onsite wastewater treatment systems, similar to its authority to order the provision of drinking water service detailed above.

- 3) **Bill Summary.** AB 2179 reduces the voter threshold for cities to sell, lease, or transfer sewer service infrastructure to another provider from a super majority vote to a majority vote. This bill aligns the selling, lease, or transfer of a city sewer system with the existing process that dictates how a city can sell, lease, or transfer its drinking water service to another provider. This bill is sponsored by the author.
- 4) **Author's Statement.** According to the author, "Sewer systems are utilities that consist of pipes, chambers, manholes, and other infrastructure that convey sewage or storm water to treatment facilities or into the environment. California has hundreds of these systems that vary considerably in size and quality. In many cities, water and sewer services are not provided by the same agency.

"Severe constraints are applied to sewer systems, which may result in premature deterioration. These include root intrusion, joint displacement, cracks, and hole formations that can lead to a significant volume of leakage with an overall risk for the environment and public health. Conveying sewage in a safe and affordable manner can be particularly challenging for small municipal sewer systems that lack the resources to fund the ongoing cost of maintenance, treatment, and personnel needed to operate what are sometimes very complex systems. Additionally, increasing regulatory compliance and cost infrastructure needs are driving small systems to consider alternatives like regionalization, partnering, and consolidation.

"Specific to consolidation, small sewer systems can overcome these challenges by consolidating with neighboring sewer or overlapping water systems to achieve economies of scale and eliminate duplicated expenses. Consolidated sewer and water systems can share costs such as billing and operational personnel and can purchase time-saving equipment that neither system could afford to purchase alone because they can spread costs over a larger customer base.

"Although some cities may want to voluntarily consolidate their water and sewer system, there are barriers to consolidation. One of those barriers is existing law which requires a city's legislative body to pass a resolution authorizing the sale of a sewer system by a two-thirds majority vote as well as the voters in the city approving the sale by a two-thirds majority vote. Since the cost of an election is prohibitive for many small cities and the voter threshold to successfully sell a sewer system is unreasonably high many local governments are not able to consolidate their sewer systems.

"Additionally, the sale of a water system only requires a majority of its legislative body and a majority of the voters in the city to approve the sale. This bill would therefore allow cities to sell and consolidate their sewer systems if the majority of its legislative body approves of the sale and if the sale is approved by a majority of the city's voters. This bill would normalize the election requirements for water and sewer systems."

- 5) **Prior and Related Legislation.** SB 2111 (Beverly), Chapter 169, Statutes of 1996, allowed municipal corporations owning and operating a public utility for furnishing water to sell or transfer all or any part of the utility located inside its municipal boundaries to another public entity or utility, with a majority vote of the legislative board of the municipal corporation and a majority vote of the qualified voters of the municipality.

SB 1268 (Kelley), Chapter 675, Statutes of 1997, required the PUC, when establishing the rate base value for the distribution system of a public water system acquired by a water corporation, to use the standard of fair market value for rate setting purposes.

SB 88 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2015, allowed for the SWRCB to order consolidation of a public water system or a small water system within a disadvantaged community, under specified conditions. Additionally, SB 88 limited the liability of any agency in the chain of distribution that delivers water to a consolidated water system.

AB 685 (Eng), Chapter 524, Statutes of 2012, established the human right to water policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

This year, AB 2339 (Gipson) allows, in limited circumstances, a city to sell its drinking water property without a majority election. This bill was heard in this Committee on April 11 and passed with a 7-0 vote. This bill is currently pending in the Assembly Appropriations Committee.

6) **Arguments in Support.** Supporters argue that AB 2179 encourages the voluntary consolidation of municipal sewer systems to improve infrastructure in California. Conveying sewage in a safe and affordable manner is particularly challenging for small municipal sewer systems that lack the resources to fund the ongoing cost of maintenance, treatment, and personnel needed to operate what can be very complex systems. Additionally, increasing regulatory compliance and cost infrastructure needs are driving small systems to consider alternatives such as regionalization, partnering, and consolidation. Unlike sewer systems, the sale of a drinking water system only requires a majority vote of its legislative body and a majority vote of the residents in the city to approve a sale. This bill would therefore allow a municipality to sell and consolidate its sewer system if the majority of its legislative body approves of the sale and if the sale is approved by a majority of the city's voters. This bill would ultimately normalize the election requirements for city owned water and sewer systems.

7) **Arguments in Opposition.** None on file.

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

##### **Support**

California Water Association

##### **Opposition**

None on file

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