

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 1233 (McGuire) – As Amended June 20, 2016

**SENATE VOTE:** 35-2

**SUBJECT:** Joint powers authorities: Water Bill Savings Act.

**SUMMARY:** Establishes the Water Bill Savings Act, which authorizes joint powers authorities (JPAs) to finance water conservation improvements on private property for a customer of a local agency or its publicly owned utility, to repay by charges collected on a water bill. Specifically, **this bill:**

- 1) Establishes the Water Bill Savings Act, which, notwithstanding any other law, authorizes a JPA that meets specified requirements to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on a customer's property (residential, commercial, industrial, agricultural, or other real property owned, leased or licensed for occupancy by the customer) served by the local agency or its publicly owned utility.
- 2) Requires a JPA to adopt a resolution to establish or extend a program to provide funding for a customer for a water efficiency improvement. Requires the resolution to do all of the following:
  - a) State the JPA's intent to operate the program;
  - b) Define the geographical scope of the operation of the program as an area that is limited to only the territories within which retail water service is provided by those local agencies that have requested the JPA to provide funding for the local agency's customers through the program;
  - c) Approve a standardized servicing agreement; and,
  - d) Authorize one or more designated officials of the JPA to execute and deliver the servicing agreement on behalf of the JPA.
- 3) Allows a JPA to make a final and conclusive determination that its proceedings to establish or extend a program were valid and in conformity with specified requirements enacted by the bill.
- 4) Authorizes the legislative body of a local agency to provide funding for its customers through a program established by a JPA by doing all of the following:
  - a) Adopt a resolution of intention, as specified;
  - b) Conduct a noticed public hearing, as specified; and,

- c) Adopt a resolution to authorize the program that does all of the following:
  - i) Authorize the JPA to establish or extend a program within the boundaries of the local agency;
  - ii) Declare that the operation of the program by the JPA in the local agency's geographic boundaries would provide significant public benefits in accordance with specified statutory criteria;
  - iii) Approve the standardized servicing agreement and authorize one or more designated officials of the local agency to execute and deliver the servicing agreement with the JPA;
  - iv) Approve, if applicable, the pledge of water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the JPA in the event that efficiency charges are insufficient;
  - v) Authorize, if applicable, execution and delivery of one or more pledge agreements to evidence a pledge; and,
  - vi) Allow a local legislative body, in the resolution, to make a final and conclusive determination that its proceedings to establish or extend a program were valid and in conformity with specified requirements enacted by this bill.
- 5) Requires a customer to repay the JPA for the costs of water efficiency improvements through an efficiency charge on the customer's water bill that is established and collected by the local agency or its publicly owned utility upon verification that the efficiency improvement was installed.
- 6) Specifies that the duty to pay the efficiency charge must arise from and be evidenced by a written agreement executed at the time of the efficiency improvement's installation among the customer; the property owner of record, if different than the customer; the JPA; and, the local agency or its publicly owned utility.
- 7) Requires the written agreement to include all of the following:
  - a) An agreement by the customer to pay an efficiency charge for the period and in the amount specified in the agreement, unless the efficiency charge is prepaid in the manner set forth in the agreement. Prohibits the period designated for repayment from exceeding the estimated useful life of the funded efficiency improvements;
  - b) A description of the financial calculation, formula, or other method that the authority used to determine the efficiency charge. Allows the efficiency charge to include a component for reasonable administrative expenses incurred by the local agency or its publicly owned utility and the authority in connection with the program and the funding;
  - c) A description of the efficiency improvement funded with the efficiency charge. Requires a determination in the agreement that an improvement is an efficiency improvement to be final and conclusive;

- d) A representation by the customer that the customer intends to acquire, install, or repair and use the efficiency improvement on the customer's property for the useful life of the efficiency improvement. Prohibits any failure of the efficiency improvement by damage, removal, or other fault of the customer during the useful life of the efficiency improvement from affecting the customer's obligation to pay the efficiency charge, as set forth in the agreement; and,
  - e) A requirement that any failure of the efficiency improvement not involving damage, removal, or other fault of the customer must result in the efficiency charge being suspended until the efficiency improvement is repaired and returned to service. Requires the JPA's decision on the reasons for failure of the efficiency improvement and its repair and return to service to be final and conclusive.
- 8) Provides that the timely and complete payment of an efficiency charge by a customer that has agreed to pay an efficiency charge may be a condition of receiving water service from the local agency or its publicly owned utility.
  - 9) Authorizes a local agency and its publicly owned utility to use their established collection policies and all rights and remedies provided by law to enforce payment and collection of the efficiency charge.
  - 10) Prohibits a person liable for an efficiency charge from withholding payment, in whole or in part, of the efficiency charge for any reason.
  - 11) Requires a customer's obligation to pay the efficiency charge to remain until the efficiency charge related to the efficiency improvement has been repaid in full or the efficiency charge has been transferred to a subsequent customer who receives water service at a property with installed efficiency measures for the remainder of the obligation. Prohibits the efficiency charge from transferring to a subsequent customer and requires the charge to remain an obligation of the previous customer if the efficiency improvements were removed or damaged, and not restored to service, by the previous customer.
  - 12) Requires a local agency or its publicly owned utility to record, no later than 10 days after funding an efficiency improvement, a notice of the efficiency charge in the records of the county recorder, pursuant to specified requirements regarding the form and content of the notice.
  - 13) Requires the entity responsible for collecting and servicing the efficiency charge to record, within 10 days of full repayment of the outstanding charges, a notice of the full repayment and removal of the efficiency charge in the records of the county recorder, as specified.
  - 14) Requires, within 10 days of the JPA's decision not to repair or return to service a failed efficiency improvement, when the failure did not involve damage, removal, or other fault of the customer, the entity responsible for the collection and servicing of the charge to record a notice of removal of the efficiency charge in the record of the county recorder, as specified. Requires the notice of the removal of the efficiency charge to include a reference to the recorded notice of the efficiency charge.

- 15) Requires the JPA and a local agency or its publicly owned utility to enter into a servicing agreement for the collection of one or more efficiency charges and requires the local agency or its publicly owned utility to act as a servicing agent for purposes of collecting the efficiency charge.
- 16) Requires the JPA, local agency, or utility responsible for the collection of the efficiency charges to ensure that the contact information in the notice of efficiency charge recorded in the records of the county recorder, pursuant to this bill, is accurate so that interested parties may request and promptly receive a written and accurate payoff amount or verification of the outstanding charges associated with the recorded notice of efficiency charge.
- 17) Requires, in the event that the servicing agent or entity responsible for the collection of the efficiency charge changes, a new notice of efficiency charge to be recorded within 10 days.
- 18) Allows any party requesting written payoff or amount verification of outstanding charges from the JPA, local agency, or utility identified as the contact on the recorded notice to rely upon the written payoff amount or verification as being accurate for 45 days from the receipt of this written information. Authorizes any party, if the JPA, local agency, or utility provides a written amendment to the written payoff amount or verification, to rely on the written amendment for 45 days from receipt of the written amendment.
- 19) Requires moneys collected as an efficiency charge to be held in trust, as specified.
- 20) Requires the local agency or its publicly owned utility, in the service agreement, to contract with the JPA that the local agency or its publicly owned utility will continue to operate its utility system to provide service to customers, as specified.
- 21) Requires the servicing agreement to provide that the obligation to pay the efficiency charge shall remain associated with the meter at the customer's property on which the efficiency improvement is located, until the JPA is fully repaid.
- 22) Authorizes the local agency or its publicly owned utility, in the servicing agreement, to agree that the timely and complete payment of all efficiency charges by a customer that has agreed to pay an efficiency charge shall be a condition of receiving service from the publicly owned utility, and that the local agency or its publicly owned utility shall use their established collection policies, all rights and remedies provided by law, to enforce payment and the collection of the efficiency and charge.
- 23) Requires the local agency or its publicly owned utility, in its servicing agreement, to agree that in the event of default by the local agency or its publicly owned utility, in payment of revenues for the efficiency charge, that the JPA will order the sequestration and payment to the beneficiaries of revenue, as specified.
- 24) Authorizes a JPA to issue bonds for the purpose of providing funds for the acquisition, installation, and repair of an efficiency improvement on customer property, pursuant to the bill's provisions.

- 25) Specifies information that a JPA issuing a bond must include in its preliminary notice and final report for the bonds submitted to the California Debt and Investment Advisory Commission (CDIAC).
- 26) Authorizes a JPA to pledge one or more efficiency charges as security for the bonds.
- 27) Authorizes a local agency to pledge water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the JPA if the efficiency charges are insufficient for that purpose. Allows a local agency to execute one or more pledge agreements, pursuant to state law, for the benefit of the JPA or for the exclusive benefit of the persons entitled to the financing costs to be paid from the efficiency charges.
- 28) Requires a local agency that pledges water enterprise revenues to establish a debt service reserve fund for the bond, as required by the purchaser of the bond.
- 29) Requires a JPA and a local agency or its publicly owned utility to enter into a servicing agreement for the collection of one or more efficiency charges and requires the local agency or its publicly owned utility to act as a servicing agent for purposes of collecting the efficiency charge.
- 30) Imposes requirements on the handling of funds collected by a servicing agent and specifies provisions that must be included in a servicing agreement to help ensure the collection of efficiency charges and repayment of JPA debts.
- 31) Requires a JPA that issues bonds, pursuant to this bill, to establish a debt service reserve fund for the bond to the extent required by the purchaser of the bond.
- 32) Specifies the manner in which its provisions will continue to be enforced if a local agency for which bonds have been issued and remain outstanding ceases to operate a water utility, either directly or through its publicly owned utility.
- 33) Defines numerous terms that are used throughout the bill.
- 34) Exempts a local agency, its publicly owned utility, and the JPA, if they have complied with procedures specified in the bill, from complying with existing statutes that would otherwise prohibit a JPA from authorizing bonds to construct, acquire, or finance a public capital improvement.
- 35) Makes findings and declarations, including that efficiency charges levied under the bill's provisions are not taxes, assessments, fees, or charges for the purposes of Articles XIII C and XIII D of the California Constitution and therefore the provisions of Articles XIII C and XIII D and Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to those efficiency charges.
- 36) States that it is the intent of the Legislature to make water efficiency improvements more affordable and promote the acquisition, installation, and repair of those improvements by allowing local agencies to establish a mechanism by which they may help their water customers acquire install, and repair water efficiency improvements on privately owned customer properties.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Marks-Roos.** The Marks-Roos Local Bond Pooling Act of 1985 authorizes two or more public agencies to exercise their common powers by signing joint powers agreements. This agreement can create a JPA which allows local agencies to use JPAs to finance infrastructure. The Marks-Roos Act authorizes JPAs to issue bonds and loan the capital to local agencies to finance public capital improvements, working capital, liability, insurance needs, or other projects. Bonds issued under Marks-Roos are secured by a variety of repayment sources.
- 2) **Bill Summary.** This bill establishes the Water Bill Savings Act which authorizes JPAs to provide funding to customers of a local agency or its publicly owned utility for water efficiency improvements on the customer's private property. This bill creates the process for establishing a financing program; specifies the information that must be included in the written agreement between a customer, a local agency or its locally owned utility, and a JPA; provides reporting requirements for outstanding efficiency charges; requires a local agency or its publicly owned utility to enter into a servicing agreement with a JPA; and, provides for the bond issuance. Under this bill, following the establishment of a financing program, a JPA would provide the customer of a local agency or its publicly owned utility up front financing for a water efficiency improvement that the customer would then repay by an efficiency charge on the water bill. JPAs would be authorized to pool revenues generated by water efficiency charges paid by participating customers to issue bonds, pursuant to the Marks-Roos Act. This bill is author-sponsored.
- 3) **Author's Statement.** According to the author, "This bill will create a broad scale regional response to California's water supply issues by adding Section 6588 of the California Government Code to extend existing Marks Roos Local Bond Pooling Act authority used by JPAs to fund utility projects to voluntary customer water efficiency projects installed on private property and paid for by participants.

"The legislation will enable JPAs to fund project installation with pooled revenue bonds, with debt service provided through meter charges aggregated from participating properties rather than all ratepayers. Just like a charge for water service, individual meter charges are tied to the specific efficiency services delivered at the meter location. Meter charges designed to be less than the estimated utility bill savings delivered by the associated project create immediate net cost savings at a participating property.

"Pay As You Save (PAYS) pilots established by the Bay Area Regional Energy Network (BayREN) have already demonstrated the potential for this water efficiency model, saving 20-33% of participating customers' water use. Building upon these successes, SB 1233 seeks to allow Local Governments the option to: 1) Pool JPA Member Utilities into a single entity able to raise capital; 2) Deliver centralized administration and operation services to Member Utilities and their customers, and; 3) Allow Member Utilities to aggregate customer on-bill surcharges to repay the program for services received."

- 4) **Financing Programs for Water Efficiencies.** Under existing law, local governments have several options to respond to concerns about the barriers to the upfront costs of water efficiency improvements on private property.

Modeled after a financing program in the City of Berkeley, in 2008, the Legislature granted the statutory authority to cities and counties to provide up-front financing to property owners to install renewable energy sources or energy efficiency improvements that are permanently fixed to their properties, which is repaid through the property tax bill. The Legislature has expanded PACE (Property Assessed Clean Energy) for residential and commercial property owners as an option to pay for renewable energy upgrades, energy and water efficiency retrofits, water efficiency improvements, and other specified improvements for their homes or buildings. Local agencies create PACE assessment districts or establish a Community Facilities District (CFD), allowing the local agency to issue bonds to finance the up-front costs of improvements. In turn, property owners enter into a voluntary contractual assessment agreement with the local agency or agree to annex their property into a CFD to re-pay the bonds via an assessment or special tax, secured by a priority lien, on their property tax bill. The intent of the program is that the assessment or parcel tax remains with the property, even if it is sold or transferred, and the improvements must be permanently fixed to the property.

In California, there are several models available to local governments in administering a PACE program. Only the counties of Sonoma and Placer administer their own PACE programs. The majority of local governments contract with a private third-party or join a JPA, which contracts with a private third-party to carry out their PACE programs.

Additionally, AB 2636 (Gatto), Chapter 825, Statutes of 2014, created the CalConserve Water Use Efficiency Revolving Fund, administered by the Department of Water Resources, to be a sustainable funding source for water use efficiency projects. The Legislature allocated \$10 million to provide loans to local agencies to provide water efficiency updates to eligible residents at no upfront costs, and to local agencies to implement water use efficiency loan programs through on-bill financing.

- 5) **Policy Considerations:** The Committee may wish to consider the following:
- a) **Existing Programs.** When faced with the barriers of up-front costs for water efficiency improvements, local agencies and homeowners have options to offer PACE or apply to participate in the CalConserve Water Use Efficiency Revolving Fund. Additionally, local agencies, like Windsor or East Bay Municipal Utility District, may provide their own on-bill financing programs or rebate programs. The Committee may wish to ask the author to explain why these existing programs are not sufficient.
  - b) **Water Efficiency Improvements.** This bill defines an efficiency improvement to mean a water efficiency improvement, as defined by the JPA. The only prohibition is that an efficiency improvement cannot include living vegetation. The Committee may wish to consider if parameters should be established around what types of water efficiency improvements that may be financed by this program, especially in absence of any cost limitations or requirements around a customer's ability to repay. The Committee may

wish to consider if DWR should play a role in determining the types of improvements eligible for the program, similar to those available in the CalConserve Water Use Efficiency Revolving Fund.

- c) **Consumer Protections.** This bill does not include any requirements that ensure a customer's ability to repay nor any assurances that the savings realized on a customer's utility bill, as a result of the improvement, will be equal to or greater than the amount necessary to repay the loan. The Committee may wish to consider if this should be a requirement for participation in the financing program.
  - d) **Written Agreement.** This bill requires a written agreement with the customer to include a description of the financial calculation used to determine the efficiency charge, which may include a component of reasonable administrative expenses incurred by the local agency or the JPA. The Committee may wish to consider if the administrative expense should be explicitly disclosed to the consumer.
  - e) **Oversight and Reporting.** This bill requires a JPA to report to CDIAC on debt issuance. Absent any additional reporting requirements, the Committee may wish to consider a requirement for participating JPAs to produce an annual report, and to consider if additional oversight and reporting requirements should be included in this financing program.
  - f) **Complaint Process.** Under this bill, if a customer does not pay an efficiency charge, the local agency or its publicly owned utility are authorized to use their established collection policies, including turning off water service. This bill also authorizes the suspension of payment, in the case of any failure of the improvement that is not the fault of the customer, until an efficiency improvement is repaired and returned to service. This bill requires the JPA's decision on the reasons for failure of the improvement to be final and conclusive. The Committee may wish to consider if it should be the determination of the local agency or, instead, its publicly owned utility and if some type of process should be established by the local agency or its publicly owned utility to consider complaints.
- 6) **Committee Amendments.** Due to the policy considerations raised above, the Committee may wish to ask the author to accept the following Committee amendments to ensure consumer protections:
- a) **DWR.** The Committee may wish to consider lessons learned from PACE, another voluntary financing program, which authorizes local agencies to opt into a financing program administered by a JPA. To provide additional oversight, the Committee may wish to ask the author to accept an amendment to place oversight of this financing program with DWR. Additionally, Committee amendments would direct DWR to utilize the work performed for the CalConserve program to establish a list of eligible water efficiency improvements, and to provide ongoing oversight and monitoring of JPAs administering a financing program, pursuant to this bill. The Committee may wish to ask the author to accept amendments that would require JPAs to report the creation of a financing program and direct DWR to compile annual reporting requirements for the JPAs, which would include, but not be limited to, the participating local agencies,

number of written agreements entered into, water savings achieved, the amount of up front financing provided, the amount of revenues collected, water efficiency savings achieved, and a copy of the CDIAC report, the complaint process for customers and local agencies or publically owned utilities, and the oversight mechanism for contractors and marketing.

- b) **Resolution.** For transparency purposes, the Committee may wish to require both the legislative body and the JPA in their resolutions to establish the program to identify the types of water efficiency improvements offered.
  - c) **Bill Neutrality.** The Committee may wish to consider an amendment to require the local agency or its publicly owned utility to exemplify to the customer, based on recent billing history, that the savings achieved will be equal to or greater than the cost of the loan repayment. This requirement does not need to ensure future neutrality, as conditions like usage by the customer may change, but should be a requirement at the point the local agency or its publicly owned utility enter into the written agreement.
  - d) **Disclosures.** The Committee may wish to consider adding explicit language to require that any administrative expenses must be listed separately on the written agreement to provide transparency. Additionally, the Committee may wish to require that the written agreement include the authorization granted to the local agency or its publicly owned utility to use collection policies and all rights and remedies, under existing law, which includes discontinuing water service.
  - e) **Determining Fault for an Improvement.** The Committee may ask the author to accept an amendment to provide the local agency or its publicly owned utility, instead of the JPA, the right to determine failure of a water efficiency improvement.
- 7) **Arguments in Support.** Supporters argue that this bill is a voluntary program and will create another tool for local governments to respond to drought that is regionally efficient, financially sustainable, and available to all municipal utilities, large and small. Additionally, this bill will help people save money on water, while reducing wasted water, and provide a voluntary tool to meet state conservation mandate.
- 8) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association of Bay Area Governments  
Bay Area Regional Energy Network  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
Mayors and Councilmembers' Association of Sonoma County  
Nexus eWater, Inc.  
School Project for Utility Rate Reduction  
Sierra Club California  
Sonoma County Board of Supervisors  
Sonoma County Regional Climate Protection Authority  
Sonoma County Water Agency  
StopWaste  
Town of Windsor

**Opposition**

None on file

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