

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1476 (Bradford) – As Amended June 20, 2022

**SENATE VOTE:** 37-0

**SUBJECT:** Water replenishment districts: contracts.

**SUMMARY:** Revises non-construction contracting requirements for the Water Replenishment District of Southern California (WRD). Specifically, **this bill:**

- 1) Repeals, until January 1, 2028, a requirement that WRD advertise for bids before making any contract totaling \$25,000 or more within any 12 month period and, instead, provides the following:
  - a) Requires 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.
  - b) Requires WRD to adopt policies and procedures, including formal and informal bidding requirements, governing contracts for professional services, materials, supplies, and equipment.
  - c) Provides 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.
- 2) Restores the repealed requirements to advertise for bids specified in 1), above, on January 1, 2028.
- 3) Limits 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.
- 4) Repeals a provision that requires contracts for the purchase of materials only to be awarded to the lowest responsible bidder, except that the WRD board may reject any or all bids for the furnishing of materials only and thereafter either re-advertise for bids or solicit offers from not less than three responsible persons to furnish materials.
- 5) Changes an existing provision that requires contracts and other documents that authorize an expenditure of \$10,000 or more to be approved by the WRD board and signed by the president and the secretary, but allows the WRD board to authorize by resolution the district manager or other district representative to sign instead, not to exceed \$25,000. The bill increases the \$10,000 threshold to \$40,000; eliminates the \$25,000 cap; and, requires a delegated signature by the district manager *and* one other district representative.
- 6) Makes additional technical and conforming changes to WRD's contracting authority.

**EXISTING LAW:**

- 1) Authorizes the formation of water replenishment districts to recharge water into groundwater basins for later withdrawal by water purveyors.
- 2) Requires all WRD contracts of \$25,000 or more to be advertised for bids, except contracts for the following:
  - a) The recruitment, hiring, and dismissal of district employees and officers.
  - b) Specified contracts with other public entities.
  - c) Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered.
  - d) Contracts solely for the purpose of retaining expert witnesses for litigation.
  - e) Contracts for proprietary information or systems.
  - f) Contracts for professional services, including, but not limited to, architectural, engineering, environmental, land surveying, or construction project management services, as specified.
  - g) Contracts for legal services, as specified.
- 3) Requires contracts and other documents that authorize an expenditure of \$10,000 or more to be approved by the WRD board and signed by the president and the secretary, but allows the WRD board to authorize by resolution the district manager or other district representative to sign instead, not to exceed \$25,000.
- 4) Establishes contracting procedures setting forth a specific process when WRD advertises contracts for bid, including requirements for notice, sealed bids, and security from bidders and contract recipients.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "State law governing WRD purchasing authority has not been updated in 20 years. In that time, WRD has changed from purchasing imported water to replenish the two groundwater basins. Today, WRD owns three water treatment facilities: two advanced water treatment facilities and a groundwater desalter. Over 15 years, WRD has created a locally sustainable water supply for groundwater replenishment, and in 2020 WRD did not purchase any imported water for replenishment purposes.

"SB 1476 modernizes the purchasing authority for WRD, bringing it in line with other local agencies, including cities and counties. State law for WRD competitive bidding procedures for construction contracts will remain unchanged. SB 1476 also streamlines the formal execution of contracts following approval by the WRD Board of Directors by authorizing the board to delegate the execution of specified contracts to the district manager."

- 2) **Background.** 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 WRD, which is the state's sole water replenishment district. It earns revenue by charging water replenishment assessments to the agencies, utilities, and companies that pump groundwater. The District also gets property tax revenues from its share of the 1% property tax rate. WRD uses these funds to secure water – by purchasing imported water (until recently) and constructing projects that produce local water supplies – that percolates into the groundwater basin.

Over time, the manner by which WRD replaced pumped groundwater changed. When it was originally formed, WRD purchased nearly 100% of the water it used for replenishment from imported sources. In the 1960s, WRD began a steady shift towards developing local sources of water, such as captured stormwater and recycled water. As a result, WRD relied less on purchasing water and more on building its own capital projects. By 2015, only 20% of the water used for replenishment came from imported water purchases, and the District now relies entirely on local sources.

- 3) **Audits and Legislative Mandates.** A 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 2004 [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.

- 4) **Bill Summary.** This bill repeals, until January 1, 2028, the requirement that WRD must advertise for bids any contracts for \$25,000. Instead, this bill requires an expenditure for construction or alteration of a public structure of \$25,000 to be let by contract by formal bidding procedure, and WRD to adopt policies and procedures, including formal and informal bidding requirements, governing contracts for professional services, materials, supplies, and equipment. This bill restores the existing requirements for advertising for bids on January 1, 2028.

This bill also increases the threshold for contracts that must be approved by the WRD board from \$10,000 to \$40,000, but allows the board to delegate, by resolution, specific contracts over \$40,000 to be signed by the district manager and one additional district representative. This bill removes a cap of \$25,000 on this delegated authority.

Lastly, this bill limits the work that can be done by district personnel to \$25,000, except if the work consists of maintenance work or emergency work, and makes additional technical and conforming changes to WRD's contracting authority.

This bill is sponsored by WRD.

- 5) **Policy Consideration.** State laws regulating local contracting attempts to balance the goals of accountability and efficiency. For decisions to be accountable, public officials must spend the public's money in full view. Such requirements as inviting bids and awarding contracts to the lowest possible bidder are an effective method of ensuring transparency for the expenditures of public funds. In 2004, WRD wanted the Legislature to allow it to delegate its smaller contracts to its general manager. SB 1165 (Senate Governance and Finance Committee), Chapter 118, Statutes of 2004, revised the requirement that all contracts be signed by the president and secretary, and instead allowed contracts under \$10,000 to be signed by the district manager or another district representative, so long as the same manager does not sign multiple contracts with the same entity that exceed \$10,000 collectively in a single year. SB 1165 also allowed WRD's board to delegate by resolution the ability to sign contracts for specific expenditures under \$25,000 to the district manager or another representative. This bill removes the \$25,000 cap and allows the board to delegate, by resolution, specific contracts over \$40,000 to be signed by the district manager and one additional district representative. This could remove any obligation for a board president and secretary to sign any contracts moving forward, potentially reducing accountability. The Committee may wish to consider if this bill should include a cap for when the board president and secretary must sign a contract.

- 6) **Committee Amendment.** In order to respond to the policy consideration above, the Committee may wish to consider the following committee amendment:

**60622.** (a) Contracts and other documents executed by the district that require or authorize the district to expend forty thousand dollars (\$40,000) or more shall be authorized by the board of directors and signed by the president and the secretary except that the board may, by resolution, authorize a specific contract or other document, *not to exceed one hundred thousand dollars (\$100,000)*, to be signed by the district manager and one other district representative.

- 7) **Arguments in Support.** The Water Replenishment District of Southern California, sponsor of this bill, writes, “WRD is the largest groundwater agency by population in California, managing and protecting local groundwater resources for four million residents. WRD's service area covers a 420-square-mile region of southern Los Angeles County. The 43 cities in the service area, including a portion of the City of Los Angeles, and other unincorporated parts of LA 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 ensures that a reliable supply of high-quality groundwater is available through replenishment with recycled water and stormwater capture. WRD is responsible for monitoring and testing groundwater throughout the region using effective management principles. In 2013 and 2014, WRD was appointed by the Los Angeles Superior Court as the Watermaster Administrative Body for the Central and West Coast Basins. In this role, WRD is responsible for administering the terms of the legal judgments controlling pumping, water right sales and leases, storage, and carry-over conversions. WRD owns three water treatment facilities: two advanced water treatment facilities and a groundwater desalter. Furthermore, WRD leads the robust Regional Groundwater Quality Monitoring Program, a Safe Drinking Water Program, and a Water Education Program.

“WRD early in its history purchased nearly 100 percent of the water needed to replenish the basins from imported water sources. Recognizing the value of recycled water early on, WRD found innovative methods to increase its ratio of recycled water use for replenishment purposes starting in the 1960s. The final push to replace all imported water supplies with recycled water and stormwater capture came in 2004 with the introduction of the Water Independence Now (WIN) program. Over the following 15 years, the suite of WIN projects successfully created a locally sustainable water supply for groundwater replenishment, and in 2020 WRD did not purchase any imported water for replenishment purposes. The evolution from the reliance on imported water purchases to ownership and operation of advanced water treatment facilities now calls for updating the Water Replenishment District Act as proposed by SB 1476. The sections of existing law that SB 1476 would change were put into place over 20 years ago.”

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Water Replenishment District of Southern California [SPONSOR]

Association of California Water Agencies

California Groundwater Coalition

California Special Districts Association

**Opposition**

None on file

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