

Date of Hearing: June 17, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Brian Maienschein, Chair

SB 188 (Hancock) – As Amended April 14, 2015

SENATE VOTE: 31-4

SUBJECT: Municipal utility district: utility charges: delinquencies.

SUMMARY: Makes permanent provisions of law that authorize a municipal utility district (MUD) to file a lien on real property for unpaid water and sewer utility charges rendered to a lessee, tenant, or subtenant, which may be collected on the tax roll in the same manner as property taxes. Specifically, **this bill:**

- 1) Deletes the January 1, 2016, sunset date that authorizes a MUD's lien authority to include delinquent fees or charges for the furnishing of water or sewer services to a residential property.
- 2) Repeals a code section that requires any MUD that places a lien on a property for water or sewer service on or before December 31, 2014, to submit to the Assembly and Senate Committees on Judiciary and Local Government on or before January 1, 2015, a report containing specified information detailing the number of liens, the total dollar amount of those liens, the overall effectiveness of the liens, and any problems associated with the liens.
- 3) States that the Legislature's intent to remove the sunset date in Section 12811.1 of the Public Utilities Code on the authority of a MUD to collect delinquent fees, tolls, rates, rentals, and other charges on the tax roll, and not to change existing law regarding the protection provided to a property owner pursuant to Section 12822.6 of the Public Utilities Code, which prohibits a MUD from collecting delinquent charges or penalties from a property owner accrued by a residential tenant in a nonmaster-metered building.
- 4) Specifies that no reimbursement is required by this bill, pursuant to Section 6 of Article XIII B of the California Constitution, because a local agency for school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of services mandated by this bill, within the meaning of current law.

EXISTING LAW:

- 1) Authorizes a MUD, until January 1, 2016, by resolution or ordinance, to collect on the tax roll, delinquent fees, tolls, rates, rentals, or other charges and any interest and penalties thereon, including any delinquencies for services rendered to a lessee, tenant, or subtenant, in the same manner as property taxes, except on properties where the account was established by the tenant.
- 2) Requires a MUD seeking to apply delinquent utility charges to the tax roll to:
 - a) Prepare and file an annual report of delinquent charges for each affected parcel;

- b) Give published and mailed notice of the filing of the report and the time and place for a public hearing;
 - c) Hear and consider objections or protests of the report at the public hearing and potentially revise the report; and,
 - d) Provide, by August 10 of each year, a final report to the county recorder to be added to the current tax assessment roll.
- 3) Authorizes the MUD to recover any delinquent fees, tolls, rates, rentals, or other charges, together with interest and penalties thereon, including any delinquent fees, tolls, rates, rentals, or other charges for services rendered to a lessee, tenant, or subtenant.
- 4) Requires the MUD to file a release of the lien within 30 days of receipt of payment of the delinquent charges.
- 5) Prohibits a MUD from recovering on the tax roll any delinquent fees, tolls, rates, rentals, or other charges for services for commercial use to a commercial tenant under an account established by the commercial tenant, from any subsequent tenant or the property owner, due to nonpayment of charges by a previous commercial tenant.
- 6) States that the term “subsequent commercial tenant” shall not include an entity or adult person that was located at the same address during the period the charges or penalties accrued.
- 7) Specifies that the provisions of current law regarding commercial accounts do not apply to master-metered accounts.
- 8) Requires the MUD to reimburse the county for the reasonable expenses incurred by the county under this authority.
- 9) Requires any MUD that places a lien on a property for water or sewer service on or before December 31, 2014, to submit to the Assembly and Senate Committees on Judiciary and to the Assembly and Senate Committees on Local Government, on or before January 1, 2015, a report containing the following information:
- a) The total number of liens created under this section for water or sewer service and the total dollar amount of those liens; and,
 - b) The overall effectiveness of the liens and any problems associated with the use of those liens.
- 10) Authorizes a MUD providing water or sewer to residential property to utilize the above lien methodology for delinquencies related to water or sewer services, but prohibits this use on electrical services.

FISCAL EFFECT: According to the Senate Appropriations Committee, no state fiscal impact. Any costs incurred by county officials related to the recording of liens and collection of

delinquent service charges through the tax roll must be paid by the district, and are not reimbursable from the state.

COMMENTS:

- 1) **Background.** There are five MUDs statewide: East Bay, Lassen, Sacramento, South Placer, and Southern San Joaquin. MUDs can provide various utility services, including electricity, water, sewer, garbage disposal, transportation, and communications. Currently, only East Bay MUD (EBMUD) and South Placer MUD provide sewer service, and only EBMUD provides water service.

Prior to 2010, when water bills were not paid, MUDs, such as EBMUD, were forced to either shut off water service or subsidize the cost of continued water service by charging more for water services to other ratepayers. Unlike a number of other types of special districts in California, MUDs did not have the authority to record a lien on residential property when water bills were unpaid. EBMUD argued that terminating service to the property unfairly punishes tenants who have paid for and are continuing to pay for utility services as part of their rent, and have no control over whether property owners are paying the utility bills.

To remedy this issue SB 1035 (Hancock), Chapter 485, Statutes of 2010, authorized a MUD to record a lien on residential real property for unpaid water and sewer utility charges rendered to a lessee, tenant, or subtenant. SB 1035 also required MUDS to prepare a report, provide notice, and conduct a public hearing to ensure property owners have notice of and an opportunity to contest proposed liens.

- 2) **Bill Summary.** This bill deletes the January 1, 2016, sunset date and extends indefinitely the authority for MUDs to impose a lien on residential property for the nonpayment of charges for services rendered to a lessee, tenant, or subtenant for water or sewer service.

This bill does not make changes to any of the notice or hearing requirements that provide a public process for property owners, nor does the bill affect the lien exemption in current law for delinquent fees or charges for electrical service or those accrued by residential tenants in nonmaster-metered buildings.

This bill is sponsored by EBMUD.

- 3) **Author's Statement.** According to the author, "The [current] authority is scheduled to sunset January 1, 2016. However, none of the other local government authorities with similar authority, including cities, counties and county service areas, county water districts, and public utility districts have a statutory sunset date.

"The authority to collect delinquent residential charges via liens and the property tax rolls has provided EBMUD with a viable alternative to terminating service and burdening other ratepayers with subsidizing the cost of these delinquent accounts. As indicated in the report to the Legislature, since EBMUD has been exercising the SB 1035 authority, collections have increased from about 15% to over 90%. If this authority sunsets, EBMUD's options for addressing delinquent accounts would be narrowed to terminating service and unfairly burdening other ratepayers to make up the difference for delinquent accounts.

"[This bill] would also remove the outdated reporting requirement in current law. The required report was completed and submitted to the legislature prior to the December 31, 2014 statutory deadline."

- 4) **EBMUD's Report to the Legislature.** In order to comply with the reporting requirements contained in SB 1035, EBMUD submitted a report to the Legislature, on November 25, 2014, regarding its use of liens on properties for delinquent water and wastewater service charges.

The reports states, "Collection of delinquent [multi-family residential] charges through the lien program has been an effective alternative to terminating water service. Since the inception of the lien program, no [multi-family residential] accounts have had service terminated due to delinquent charges. In addition, collection rates have significantly increased.

"Prior to the initiation of the Lien Program, [multi-family residential] account delinquencies resulted in termination of service and collection rates were significantly lower. From 2006-2010, an average of 400 [multi-family residential] accounts had service terminated each year due to unpaid delinquent charges. Over \$1,200,000 in unpaid [multi-family residential] charges from 2006-2010 were referred to a third party collection agency for collections. Approximately \$1,000,000 of these delinquent charges remains unrecovered."

- 5) **Arguments in Support.** Supporters argue that this bill will allow EBMUD to continue to recover delinquent charges from the responsible property owners through the use of liens, rather than terminating water service to tenants. Additionally, this bill simply removes the sunset date on EBMUD's existing authority, allowing them to continue this important program.
- 6) **Arguments in Opposition.** None on file.
- 7) **Double-Referral.** This bill is double-referred to the Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors [CO-SPONSOR]
East Bay Municipal Utility District [CO-SPONSOR]
Association of California Water Agencies
California Special Districts Association

Opposition

None on file

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