

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 564 (McGuire) – As Amended June 8, 2017

**SENATE VOTE:** 38-0

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

**SUMMARY:** Establishes the Water Bill Savings Act, which would authorize 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 be repaid by charges collected on a water bill. Specifically, **this bill:**

- 1) Establishes the Water Bill Savings Act, which, notwithstanding any other law, would authorize 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, which must comply with the eligible projects and priorities identified in the Cal Conserve Water Use Efficiency Revolving Loan Program. 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) Specify the types of efficiency improvements that may be financed by the program;
  - d) Approve a standardized servicing agreement; and,
  - e) 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) Specify the types of efficiency improvements that may be financed by the program;
  - iv) 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;
  - v) 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;
  - vi) Authorize, if applicable, execution and delivery of one or more pledge agreements to evidence a pledge; and,
  - vii) 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 with 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. Requires the administrative expenses to be listed separately in the written agreement;

- 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;
  - 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; and,
  - f) A demonstration by the JPA that the customer's payment of the efficiency charge will be bill neutral.
- 8) Requires the written agreement, when the property is not owner occupied, to provide that the obligation to pay the efficiency charge appear in the terms by which the customer leases or licenses the property for occupancy.
- 9) Prohibits the written agreement from being valid, unless the JPA has verified the following information:
- a) The customer entering into the agreement is the utility customer at the address and that all property owners of record have consented in writing to the agreement;
  - b) The participating customer's account has been in good standing for the prior 12 months, or if the customer's occupancy is less than 12 months, has been in good standing for the duration of the customer's occupancy of the site;
  - c) The person installing the efficiency improvement has been approved to install efficiency improvements by the JPA and the local agency or its publicly owned utility and is in compliance with program requirements established by the JPA;
  - d) The efficiency improvement included in the agreement complies with program requirements established by the JPA, consistent with the requirements established by this bill; and,
  - e) The efficiency improvement will generate total utility cost savings that exceed the total cost of the efficiency charge paid by the customer over the duration of the agreement, and will be bill neutral for the participating customer.

- 10) 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.
- 11) 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.
- 12) Prohibits a person liable for an efficiency charge from withholding payment, in whole or in part, of the efficiency charge for any reason.
- 13) Prohibits any portion of an efficiency charge that is past due at the time a property is sold or transferred from being transferred to the transferee. Prohibits the failure of a prior customer that did not pay efficiency charges from preventing the subsequent customer from obtaining water service from the local agency.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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.
- 19) 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.

- 20) Requires the JPA, local agency, or utility to include a contact number where the customer can obtain the amount of the monthly efficiency charge and a description of the improvement on each water bill issued to the customer.
- 21) 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.
- 22) 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.
- 23) Requires moneys collected as an efficiency charge to be held in trust, as specified.
- 24) 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.
- 25) 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.
- 26) 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.
- 27) 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.
- 28) 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.
- 29) 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).
- 30) Authorizes a JPA to pledge one or more efficiency charges as security for the bonds.

- 31) 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.
- 32) 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.
- 33) 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.
- 34) 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.
- 35) 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.
- 36) 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.
- 37) Requires a JPA administering an efficiency improvement financing program to compile and publicly post an annual report that includes all of the following:
  - a) The number of written agreements entered into;
  - b) The estimated and average water efficiency savings achieved;
  - c) The amount of upfront financing provided by the JPA;
  - d) The amount of revenue collected by the JPA;
  - e) A copy of the JPA's report submitted to CDIAC, pursuant to existing law;
  - f) A copy or summary of the JPA's process for accepting complaints about the program from customers and local agencies or their publicly owned utilities; and,
  - g) A copy or summary of the JPA's practices and procedures for overseeing contractors' performance and the marketing of the program.
- 38) Defines numerous terms, including "bill neutral" to mean "based on a customer's recent billing history, the total monetary savings achieved by the customer's efficiency improvement is projected to be greater than or equal to the efficiency charge on the customer's monthly water bill."

- 39) 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.
- 40) 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.
- 41) 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. Provides that it is the intent of the Legislature that this bill authorize the development of a program to be established by a JPA that provides water customers with an alternative and voluntary means to acquire, install, or repair water efficiency improvements.

**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.

Under this bill, for a written agreement to be valid, a JPA must verify that the efficiency improvement will generate total utility cost savings that exceed the total cost of the efficiency charge paid by the customer during the duration of the agreement and will be bill neutral.

An efficiency improvement must comply with the lists of eligible projects and project priorities identified in the program guidelines for the CalConserve Water Use Efficiency Revolving Loan Program. These projects include, but are not limited to, efficient dishwashers, toilets, showerheads, faucets, hot-water recirculating pumps, and recycled water projects. This bill also requires a JPA that is administering a financing program to compile and publicly post an annual report that contains specified information.

This bill is author-sponsored.

- 3) **Author's Statement.** According to the author, "The recent drought severely impacted local governments' ability to balance water supplies with customer needs, whether those needs are for residents, businesses or agriculture operations. Despite recent rain and snowfall, major factors will continue to contribute to our State's ongoing drought conditions, including the fact that groundwater supplies are anticipated to take years to replenish and hit pre-drought levels. SB 564 will provide local governments with the necessary tools to fund water savings projects for customers who voluntarily participate, thus helping the state achieve its continued goals of reducing water use. Pay As You Save pilots in Hayward and the Town of Windsor have already demonstrated the potential for this water efficiency model, saving 20-33% of participating customers' water use and financing over \$700,000 in water efficiency improvements. They are also good investments: the pilot programs have recovered 99.7% of the water efficiency charges. Building upon these successes, SB 564 would expand the scope of these efforts by allowing JPAs and local water agencies to: (1) pool revenues from water efficiency charges across multiple local agencies, thereby lowering interest rates; and (2) centralize administrative activities with the JPA in order to run the program as efficiently as possible."
- 4) **Financing Programs for Water Efficiencies.** Under existing law, local governments have several additional 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) **Pay As You Save (PAYS) Pilot Programs.** According to their website, the Bay Area Regional Energy Network (BayREN) is a collaboration of nine counties in the San Francisco Bay Area. Led by the Association of Bay Area Governments (ABAG), BayREN implements energy savings programs on a regional level. In addition to single family and multifamily rebate programs BayREN offers several financing models. For example, commercial property owners can utilize PACE, and single family and multifamily owners with select water utilities can utilize the PAYS on-bill financing program. The Town of Windsor has the oldest and largest PAYS program to date. The first projects were initiated in October 2012 and there are 248 single family, five multifamily, and one time share participants for a total value of \$532,647 for completed projects. The City of Hayward began in May of 2014 and has four multifamily participants for a total value of \$130,452. The East Bay Municipal Utility District (EBMUD) on-bill financing program had their first participant in 2016, and currently has two multifamily properties participating in the pilot program.
- 6) **Prior Legislation.** This bill is substantially similar to SB 1233 (McGuire) of 2016, which was held on the Assembly Appropriations Committee suspense file. SB 1233 was amended in this Committee to establish oversight of this financing program by the Department of Water Resources, add bill neutrality requirements, and to contain additional disclosures for customers.
- 7) **Policy Considerations and Committee Amendments:** The Committee may wish to consider the following and to ask the author to accept the following amendments:
  - a) **Lessons Learned.** 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. 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. Additionally, local agencies, like Windsor, Hayward, and East Bay Municipal Utility District, provide their own on-bill financing programs. The Town of Windsor is the only on-bill financing program that includes single family homes, and has more than a handful of participants. The Committee may wish to ask the author to accept committee amendments to narrow the scope of this program to one region of the state that is already collaborating on PAYS pilot programs, the nine counties that participate in BayRen and ABAG (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma). This incremental approach would allow for regional participation within an entity that is already administering on-bill financing programs and for the Legislature to obtain more data prior to extending the program statewide.
  - b) **Determining Fault.** 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 there should be an appeals process or administrative process to allow customers to request reconsideration of this determination. The Committee may wish to ask the author to remove the final and conclusive language from the written agreement and to instead require the JPA to include information regarding an administrative or appeals process available to customers to dispute fault for the damage of an efficiency improvement.

8) **Arguments in Support.** BayREN states, "We believe that everyone – renters and low income residents – should be able to benefit from efficiency and that customers are more likely to invest in efficiency if there are tools for them to receive measures at no up-front cost. Your proposal to allow pooled bond finance for customer resource efficiency extends customary local government levers available for water project to efficiency, as essential water resource. The ability to repay these bonds with customer efficiency charges enables those receiving the benefit of reduced bills to pay for efficiency, and create benefits to the water system at scale. The Water Bill Savings Act will allow for a regionally efficient, financially sustainable model to achieve water efficiency that is available to all municipal utilities, large and small."

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Association of Bay Area Governments  
Bay Area Regional Energy Network (BayREN)  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
Counties of Santa Clara and Sonoma  
Sierra Club California  
Sonoma County Water Agency  
StopWaste

**Opposition**

None on file

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