

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
SB 953 (Lara) – As Introduced February 4, 2016

SENATE VOTE: 26-11

SUBJECT: Central Basin Municipal Water District.

SUMMARY: Makes changes to the composition of the Central Basin Municipal Water District's (District) Board of Directors (Board) and establishes restrictions on the District's use of sole source contracting. Specifically, **this bill:**

- 1) Requires the Board to consist of seven members to each serve four-year terms. Requires the members of the Board to be selected as follows:
 - a) Five (5) directors elected in accordance with the Municipal Water District Law, which requires each of the five directors to be a resident from the division from which they are elected. Requires the directors elected on or before January 1, 2018, to continue to serve their term, pursuant to existing law.
 - b) Two (2) directors appointed by the Los Angeles County Board of Supervisors (Board of Supervisors) in a public meeting. Requires the Board of Supervisors to consider any nominations of candidates for appointment made by a water retailer that purchases water from the District, if any, and allows the Board of Supervisors to also consider other qualified candidates for appointment.
- 2) Requires each appointed director to possess the following qualifications:
 - a) Residence within the District's boundaries; and,
 - b) Knowledge of the water industry and familiarity with the role and responsibilities of a municipal water district.
- 3) Requires the Board of Supervisors to appoint a director to fill a vacancy of any appointed director who is unable to serve for the duration of his or her term, pursuant to 1b), above.
- 4) Prohibits the District from using sole source contracts, unless one of the following conditions is met:
 - a) The contract is limited to an emergency circumstance; or,
 - b) The circumstances are that only one vendor can meet the District's needs.
- 5) Requires the District, before executing a sole source contract, to provide written justification demonstrating the reasons for not competitively bidding the services. Requires the justification to include all of the following information:
 - a) The background of the purchase;

- b) A description of the vendor's uniqueness;
 - c) An explanation of the consequences of not purchasing from the vendor;
 - d) Market research to substantiate a lack of competition; and,
 - e) An analysis of pricing and alternatives.
- 6) Requires the District to rebid a contract if the District significantly changes the scope of work of the contract. Provides that significant changes include, but are not limited to, changes to the nature of the services or work products.
 - 7) Requires the District's general manager to submit a quarterly report to the District's Board detailing all of the District's contracts, contract amendments, and contract and amendment dollar amounts.
 - 8) Prohibits the District from providing any members of the Board with District funds to conduct community outreach activities.
 - 9) Finds and declares that a special law is necessary because of the unique circumstances with the District, as described in the California State Auditor's December 3, 2015 report.
 - 10) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made, pursuant to current law governing state mandated local costs.

EXISTING LAW:

- 1) Establishes the Municipal Water District Law, which governs the formation, internal organization, and elections for municipal water districts.
- 2) Requires a municipal water district board of directors to consist of five members elected by the voters in each of the five divisions of the district. Requires that each director elected is a resident of that division.
- 3) Requires directors to be elected at general district elections, which means the election of directors held in each even-numbered year at the time of the general election.
- 4) Authorizes a municipal water district to contract with other public agencies, private corporations, or persons to finance acquisitions, constructions, and operations for the purpose of carrying out any of the powers of a district.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains unknown local costs, some of which may be reimbursable by the state General Fund. Potentially reimbursable costs may exceed \$50,000. Actual costs would depend upon a determination by the Commission on State Mandates regarding what expenses incurred by [the District] in implementing the bill are deemed to be subject to state reimbursement. See staff comments [in the Senate Appropriations Committee analysis] for a discussion of potentially reimbursable costs.

COMMENTS:

- 1) **Bill Summary.** This bill establishes a governance structure for the District. This bill establishes a seven-member Board composed of five directors elected, pursuant to the Municipal Water District Law, and two directors appointed by the Local Angeles County Board of Supervisors in a public meeting. The two appointed directors must reside within the boundaries of the District and have knowledge of the water industry and familiarity with the role and responsibilities of a municipal water district.

Under this bill, the District may only use sole source contracts if the contract is limited to an emergency circumstance or in a circumstance where there is only one vendor that can meet the District's needs. This bill also establishes requirements that the District must fulfill to provide specified written justification and reporting on contracts and costs. This bill also prohibits funds from being provided to the Board for community outreach activities.

- 2) **Author's Statement.** According to the author, "This bill amends state laws governing the CBMWD to implement some of the recommendations made in the audit report published by the Bureau of State Audits last year. Specifically, this bill implements the auditor's recommendation for legislation to change the membership of [District's] governing board. By requiring the [Board of Supervisors] to appoint two additional members to [District's] board, this bill seeks to add some independent participants to the [District's] policymaking process and make the board more representative and accountable. The changes this bill makes to state law will promote public transparency, sound fiscal management, and improved governance at the [District]."
- 3) **Central Basin Municipal Water District.** The District was formed in 1952 by the voters, pursuant to the Municipal Water District Act of 1911, to help mitigate the overpumping of groundwater in southeast Los Angeles County. The District is a member agency of the Metropolitan Water District of Southern California (Metropolitan), where it purchases imported water from Metropolitan to whole to 40 retail water agencies and one wholesaler that includes cities, water districts, mutual water companies, investor-owned utilities, and private companies. A smaller source of the District's incoming revenue is from the sale of recycled water for municipal, commercial, and industrial use. The District serves nearly two million people in 24 cities in southeast Los Angeles County and in some unincorporated areas of the County.

The District is governed by a five-member Board with each director representing a division within the District. Voters within each division elect a director to a four-year term. There are no term limits for the Board, as some directors are currently serving their fourth and fifth terms on the Board. Directors in three of the five divisions are up for election in November of 2016.

The District has been under increased scrutiny as news reports have highlighted the District's misuse of public funds, inappropriate contracting and employment practices, and several lawsuits. In June of 2014, the Los Angeles County Board of Supervisors directed the County Chief Executive Office, County Counsel, and Department of Public Works to consult with the District to ensure all necessary steps were being taken to address and correct their ongoing problems, investigate options to ensure continued water availability and service to the District's customers, and report back to the Board of Supervisors with findings and

recommendations. While the report contained a section discussing the transfer of ownership of the District to another entity and the dissolution process outlined in current law, the ultimate recommendation to the Board of Supervisors was to request a comprehensive audit of the District by the California State Auditor.

- 4) **Audit Findings.** In December 2015, the Bureau of State Audits (BSA) issued a report that identified several key findings:
- a) The Board has failed to provide the leadership necessary for the District to fulfill its responsibilities;
 - b) There are a lack of policies to safeguard the District's long-term financial viability;
 - c) The District's debt coverage ratio is insufficient and the District's credit rating has been downgraded several times;
 - d) The Board's actions caused the District to lose its insurance coverage;
 - e) The Board violated state law in 2010, when it approved the establishment of a legal trust fund without adequate public disclosure;
 - f) The District frequently inappropriately avoided its competitive bidding processes, while awarding contracts to vendors;
 - g) The District spent thousands of dollars on purposes unrelated to its underlying authority; and,
 - h) The District failed to follow its policies for hiring employees and failed to ensure stability in its key executive management position.

To address these findings, the audit made numerous recommendations, most of which do not require legislation. Additionally, the audit included an addendum report from the District, which includes actions to put in place many of the recommendations contained in the audit.

The audit only includes one recommendation that requires legislation: "To ensure the efficient and effective delivery of imported and recycled water in southeastern Los Angeles County, the Legislature should pass special legislation to preserve the district as an independent entity but modify the District's governance structure. In doing so, the Legislature should consider a governance structure that ensures the District remains accountable to those it serves, for example, by changing the District's board from one elected by the public at large to one appointed by the District's customers."

- 5) **Related Legislation.** AB 1794 (Garcia), pending in the Senate, also establishes a governance structure for the District. AB 1794 adds three appointed directors to the Board and creates a technical oversight committee.

- 6) **Policy Considerations.** According to the BSA report, "Given the concerns we raise in this report, a dissolution or restructuring may become necessary in the future. Should the board not succeed in maintaining a stable leadership team, should the district experience additional lawsuits, or should it lose its insurance coverage again, it will risk not being able to operate effectively as an independent entity. However, because of the recent progress, a complete dissolution may be premature at this time." The Committee may wish to consider if the internal changes made by the District, combined with proposed changes to the governance structure, will be enough to address the multitude of issues identified by the audit.
- 7) **Arguments in Support.** Supporters argue that this bill creates greater transparency in the District's contracting process and that this bill increases public accountability by authorizing the Board of Supervisors to appoint two additional members to the Board.
- 8) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Central Basin Municipal Water District (if amended)
Cities of Lakewood, Lynwood, Maywood, Montebello, Paramount, Signal Hill, South Gate,
and Vernon
Karina Macias, City Council Member, City of Huntington Park

Opposition

None on file

Analysis Prepared by: Misa Lennox / L. GOV. / (916) 319-3958