

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1233**

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**Introduced by Senator McGuire**  
**(Coauthor: Senator Wolk)**  
(Coauthors: Assembly Members Levine and Wood)

February 18, 2016

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An act to ~~amend Section 6586.7 of, and to add Section 6588.8 to,~~  
*and to repeal and amend Section 6586.7 of,* the Government Code,  
relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, McGuire. Joint powers authorities: Water Bill Savings Act.

Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes joint powers authorities, among other powers, to issue bonds and loan the proceeds to local agencies to finance specified types of projects and programs.

This bill would enact the Water Bill Savings Act, which would authorize a joint powers authority 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 the customer's property served by the local agency or its publicly owned utility. The bill would require the customer to repay the authority through an efficiency charge on the customer's water bill to be imposed and collected by the local agency or its publicly owned utility on behalf of the authority pursuant to a servicing agreement. The bill would authorize the authority to issue bonds to fund the program. *The bill would also make technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) Water conservation efforts are indispensable to combating  
4 the current and continuing drought conditions faced by the state  
5 and advancing the state's greenhouse gas emission reduction goals.

6     (b) The up-front cost of acquiring, installing, and repairing water  
7 efficiency improvements is often prohibitive and may prevent  
8 customers from using them on residential, commercial, industrial,  
9 agricultural, or other real property.

10    (c) Increasing customer water efficiency is a core component  
11 of the provision of water utility service.

12    SEC. 2. (a) It is the intent of the Legislature to make water  
13 efficiency improvements more affordable and promote the  
14 acquisition, installation, and repair of those improvements by  
15 allowing local agencies to establish a mechanism by which they  
16 may help their water customers to acquire, install, and repair water  
17 efficiency improvements on privately owned customer properties.

18    (b) It is the intent of the Legislature that this act authorize the  
19 development of a program to be established by a joint powers  
20 authority that would provide a water customer with an alternative  
21 and voluntary means to acquire, install, or repair water efficiency  
22 improvements. It is further the intent of the Legislature that the  
23 cost of this voluntarily acquired, installed, or repaired water  
24 efficiency improvement be repaid through an efficiency charge  
25 added to the water bill associated with the customer property upon  
26 which the water efficiency improvement is located.

27    ~~SEC. 3. Section 6586.7 of the Government Code, as added by~~  
28 ~~Section 4 of Chapter 723 of the Statutes of 2000, is amended to~~  
29 ~~read:~~

30    ~~6586.7. (a) A copy of the resolution adopted by an authority~~  
31 ~~authorizing bonds or any issuance of bonds, or accepting the benefit~~  
32 ~~of any bonds or proceeds of bonds, except bonds issued or~~  
33 ~~authorized pursuant to Article 1 (commencing with Section 6500),~~  
34 ~~or bonds issued for the purposes specified in subdivision (c) of~~  
35 ~~Section 6586.5, shall be sent by certified mail to the Attorney~~  
36 ~~General and the California Debt and Investment Advisory~~  
37 ~~Commission not later than five days after adoption by the authority.~~

38    ~~(b) This section does not apply to bonds.~~

1 ~~(1) Specified in subdivision (e) of Section 6586.5.~~

2 ~~(2) Issued pursuant to the Community Redevelopment Law,~~  
3 ~~Part 1 (commencing with Section 33000) of Division 24 of the~~  
4 ~~Health and Safety Code.~~

5 ~~(3) To finance transportation facilities and vehicles.~~

6 ~~(4) To finance a facility that is located within the boundaries of~~  
7 ~~an authority, provided that the authority that issues those bonds~~  
8 ~~consists of any of the following:~~

9 ~~(A) Local agencies with overlapping boundaries.~~

10 ~~(B) A county and a local agency or local agencies located~~  
11 ~~entirely within that county.~~

12 ~~(C) A city and a local agency or local agencies located entirely~~  
13 ~~within that city.~~

14 ~~(5) To finance a facility for which an authority has received an~~  
15 ~~allocation from the California Debt Limit Allocation Committee.~~

16 ~~(6) Of an authority that consists of no less than 250 local~~  
17 ~~agencies and the agreement that established that authority requires~~  
18 ~~the governing body of the local agency that is a member of the~~  
19 ~~authority in whose jurisdiction the facility will be located to~~  
20 ~~approve the facility and the issuance of the bonds.~~

21 ~~(7) Issued pursuant to Section 6588.8.~~

22 ~~SEC. 3. Section 6586.7 of the Government Code, as added by~~  
23 ~~Section 4 of Chapter 723 of the Statutes of 2000, is repealed.~~

24 ~~6586.7. (a) A copy of the resolution adopted by an authority~~  
25 ~~authorizing bonds or any issuance of bonds, or accepting the benefit~~  
26 ~~of any bonds or proceeds of bonds, except bonds issued or~~  
27 ~~authorized pursuant to Article 1 (commencing with Section 6500),~~  
28 ~~or bonds issued for the purposes specified in subdivision (e) of~~  
29 ~~Section 6586.5, shall be sent by certified mail to the Attorney~~  
30 ~~General and the California Debt and Investment Advisory~~  
31 ~~Commission not later than five days after adoption by the authority.~~

32 ~~(b) This section does not apply to bonds:~~

33 ~~(1) Specified in subdivision (e) of Section 6586.5.~~

34 ~~(2) Issued pursuant to the Community Redevelopment Law,~~  
35 ~~Part 1 (commencing with Section 33000) of Division 24 of the~~  
36 ~~Health and Safety Code.~~

37 ~~(3) To finance transportation facilities and vehicles.~~

38 ~~(4) To finance a facility that is located within the boundaries of~~  
39 ~~an authority, provided that the authority that issues those bonds~~  
40 ~~consists of any of the following:~~

1 ~~(A) Local agencies with overlapping boundaries.~~

2 ~~(B) A county and a local agency or local agencies located~~  
3 ~~entirely within that county.~~

4 ~~(C) A city and a local agency or local agencies located entirely~~  
5 ~~within that city.~~

6 ~~(5) To finance a facility for which an authority has received an~~  
7 ~~allocation from the California Debt Limit Allocation Committee.~~

8 ~~(6) Of an authority that consists of no less than 250 local~~  
9 ~~agencies and the agreement that established that authority requires~~  
10 ~~the governing body of the local agency that is a member of the~~  
11 ~~authority in whose jurisdiction the facility will be located to~~  
12 ~~approve the facility and the issuance of the bonds.~~

13 *SEC. 4. Section 6586.7 of the Government Code, as added by*  
14 *Section 1 of Chapter 724 of the Statutes of 2000, is amended to*  
15 *read:*

16 6586.7. (a) A copy of the resolution adopted by an authority  
17 authorizing bonds or any issuance of bonds, or accepting the benefit  
18 of any bonds or proceeds of bonds, except bonds issued or  
19 authorized pursuant to Article 1 (commencing with Section 6500),  
20 or bonds issued for the purposes specified in subdivision (c) of  
21 Section 6586.5, shall be sent by certified mail to the Attorney  
22 General and the California Debt and Investment Advisory  
23 Commission not later than five days after adoption by the authority.

24 (b) This section does not apply to bonds:

25 (1) Specified in subdivision (c) of Section 6586.5.

26 (2) Issued pursuant to the Community Redevelopment ~~Law;~~  
27 ~~Part Law~~ (*Part* 1 (commencing with Section 33000) of Division  
28 24 of the Health and Safety ~~Code.~~ *Code*).

29 (3) To finance transportation facilities and vehicles.

30 (4) To finance a facility that is located within the boundaries of  
31 an authority, provided that the authority that issues those bonds  
32 consists of any of the following:

33 (A) Local agencies with overlapping boundaries.

34 (B) A county and a local agency or local agencies located  
35 entirely within that county.

36 (C) A city and a local agency or local agencies located entirely  
37 within that city.

38 (5) To finance a facility for which an authority has received an  
39 allocation from the California Debt Limit Allocation Committee.

(6) Of an authority that consists of no less than 100 local agencies and the agreement that established that authority requires the governing body of the local agency that is a member of the authority in whose jurisdiction the facility will be located to approve the facility and the issuance of the bonds.

(7) *Issued pursuant to Section 6588.8.*

~~SEC. 4.~~

SEC. 5. Section 6588.8 is added to the Government Code, to read:

6588.8. (a) This section shall be known and may be cited as the Water Bill Savings Act.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Customer” means a person or entity that purchases water from a local agency or its publicly owned utility and is billed for the water by the local agency or its publicly owned utility.

(2) “Customer property” means residential, commercial, industrial, agricultural, or other real property owned by the customer.

(3) “Efficiency charge” means a charge on a customer’s water bill that is paid by the customer directly to the local agency or its publicly owned utility in order to pay for an efficiency improvement pursuant to this section.

(4) “Efficiency improvement” means a water efficiency improvement, as defined by the authority.

(5) “Financing costs” mean all of the following:

(A) An interest and redemption premium payable on a bond.

(B) The cost of retiring the principal of a bond, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption.

(C) A cost related to issuing or servicing bonds, including, but not limited to, a servicing fee, trustee fee, legal fee, administrative fee, bond counsel fee, bond placement or underwriting fee, remarketing fee, broker dealer fee, independent manager fee, municipal adviser fee, accounting report fee, engineering report fee, rating agency fee, and payment made under an interest rate swap agreement.

(D) A payment or expense associated with a bond insurance policy, financial guaranty, or a contract, agreement, or other credit

1 enhancement for bonds or a contract, agreement, or other financial  
2 agreement entered into in connection with a bond.

3 (E) The funding of one or more reserve accounts related to a  
4 bond.

5 (6) “Local agency” means a “local government” as defined in  
6 subdivision (b) of Section 1 of Article XIII C of the California  
7 Constitution.

8 (7) “Publicly owned utility” means a utility furnishing water  
9 service to customers that is owned and operated by a local agency  
10 or a department or other subdivision of a local agency and includes  
11 any successor to the powers and functions of the department or  
12 other subdivision.

13 (8) “Servicing agreement” means an agreement between a local  
14 agency or its publicly owned utility and the authority for the  
15 collection of the efficiency charge, pursuant to which the local  
16 agency or its publicly owned utility acts as a servicing agent for  
17 purposes of collecting the efficiency charge for the authority.

18 (c) (1) Notwithstanding any other law, if the requirements of  
19 paragraphs (2) and (3) are met, an authority may provide funding  
20 for a customer of a local agency or its publicly owned utility to  
21 acquire, install, or repair an efficiency improvement on a customer  
22 property served by the local agency or its publicly owned utility.

23 (2) (A) The authority, by resolution, establishes or extends a  
24 program to provide funding for a customer of a local agency or its  
25 publicly owned utility to acquire, install, or repair an efficiency  
26 improvement on a customer property served by the local agency  
27 or its publicly owned utility. The resolution shall do all of the  
28 following:

29 (i) Identify the geographic area in the state in which the authority  
30 intends to operate the program.

31 (ii) Approve a standardized servicing agreement.

32 (iii) Authorize one or more designated officials of the authority  
33 to execute and deliver the servicing agreement on behalf of the  
34 authority.

35 (B) The authority acknowledges receipt of the resolution  
36 described in *subparagraph (C) of* paragraph (3).

37 (C) The authority may determine that all proceedings were valid  
38 and in conformity with the requirements of this paragraph and that  
39 finding shall be final and conclusive.

1 (3) The legislative body of the local agency requests the  
2 authority to provide funding for its customers through a program  
3 established by the authority pursuant to this section by doing all  
4 of the following:

5 (A) The legislative body adopts a resolution declaring its  
6 intention to request the authority to establish or extend a program  
7 to a customer represented by the legislative body, calling for a  
8 public hearing that shall be held at least 30 days later and directing  
9 the clerk or secretary of the legislative body to publish a notice of  
10 the hearing at least five days before the hearing in a newspaper of  
11 general circulation in the boundaries of the local agency. If the  
12 local agency wishes to pledge its water enterprise revenue as  
13 security for the payment of the principal of, and interest and  
14 redemption premium on, bonds issued by the authority in the event  
15 that efficiency charges are insufficient for those purposes pursuant  
16 to paragraph (4) of subdivision (f), the legislative body shall declare  
17 that intention in the resolution.

18 (B) The legislative body conducts the noticed public hearing  
19 and, after considering the testimony of any interested person,  
20 concludes that the program and the proposed pledge of water  
21 enterprise revenue, if applicable, would provide significant public  
22 benefits in accordance with the criteria specified in Section 6586.

23 (C) The legislative body adopts a resolution that does all of the  
24 following:

25 (i) Authorizes the authority to establish or extend a program  
26 pursuant to this section within the boundaries of the local agency.

27 (ii) Declares that the operation of the program by the authority  
28 in the local agency's geographic boundaries would provide  
29 significant public benefits in accordance with the criteria specified  
30 in Section 6586.

31 (iii) Approves the standardized servicing agreement and  
32 authorizes one or more designated officials of the local agency to  
33 execute and deliver the servicing agreement with the authority.

34 (iv) If applicable, approves the pledge of water enterprise  
35 revenue as security for the payment of the principal of, and interest  
36 and redemption premium on, bonds issued by the authority in the  
37 event that efficiency charges are insufficient for those purposes.

38 (v) If applicable, authorizes execution and delivery of one or  
39 more pledge agreements to evidence a pledge.

(vi) In the resolution, the legislative body may determine that all proceedings were valid and in conformity with the requirements of this section and that finding shall be final and conclusive.

(d) (1) Subject to the requirements of Article XIII C or Article XIII D of the California Constitution, a customer shall repay the authority through an efficiency charge on the customer's water bill that is imposed and collected by the local agency or its publicly owned utility. The imposition of the efficiency charge shall be made and evidenced by a written agreement between the customer, the authority, and the local agency or its publicly owned utility. The use of the proceeds of the efficiency charge to repay the costs of the efficiency improvement constitutes a "water" service, as defined in subdivision (m) of Section 53750.

(2) The written agreement shall 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. The period designated for repayment shall not exceed 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. The efficiency charge may 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. A determination in the agreement that an improvement is an efficiency improvement shall 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. Any failure by the customer to acquire, install, or repair and use the efficiency improvement on the customer's property for the useful life of the efficiency improvement shall not affect the customer's obligation to pay the efficiency charge as set forth in the agreement.

(3) Notwithstanding any other provision of this section, an efficiency charge shall not exceed the maximum rate permitted under Article XIII D of the California Constitution.



1 (4) The timely and complete payment of an efficiency charge  
2 by a customer that has agreed to pay an efficiency charge may be  
3 a condition of receiving water service from the local agency or its  
4 publicly owned utility, and a local agency and its publicly owned  
5 utility are authorized to use their established collection policies  
6 and all rights and remedies provided by law to enforce payment  
7 and collection of the efficiency charge. A person liable for an  
8 efficiency charge shall not be entitled or authorized to withhold  
9 payment, in whole or in part, of the efficiency charge for any  
10 reason.

11 (5) A customer's obligation to pay the efficiency charge shall  
12 run with title to the customer property on which the efficiency  
13 improvement is located until repaid in full. A local agency or its  
14 publicly owned utility ~~may~~ *shall* record notice of an efficiency  
15 charge in the records of the county recorder of the county in which  
16 the customer's property is located and that notice shall impart  
17 notice of the efficiency charge to all persons. Any failure by the  
18 local agency or its publicly owned utility to record that notice shall  
19 not excuse an owner of the customer property, on which the funded  
20 improvement is located, from the obligation to pay the efficiency  
21 charge.

22 (6) Because the efficiency charge is a voluntary charge that will  
23 be made pursuant to a written agreement between the customer,  
24 the authority, and the local agency or its publicly owned utility,  
25 the Legislature finds and declares that voluntary efficiency charges  
26 under this section are not taxes, assessments, fees, or charges for  
27 the purposes of Articles XIII C and XIII D of the California  
28 Constitution and therefore the provisions of Articles XIII C and  
29 XIII D and Article 4.6 (commencing with Section 53750) of  
30 Chapter 4 of Part 1 of Division 2 of Title 5 ~~of the Government~~  
31 ~~Code~~ are not applicable to voluntary efficiency charges levied  
32 pursuant to this section. Furthermore, a program established  
33 pursuant to this section provides a "water" service, as defined in  
34 subdivision (m) of Section 53750.

35 (e) (1) The authority and a local agency or its publicly owned  
36 utility shall enter into a servicing agreement for the collection of  
37 one or more efficiency charges and the local agency or its publicly  
38 owned utility shall act as a servicing agent for purposes of  
39 collecting the efficiency charge.

1 (2) Moneys collected as an efficiency charge by the local agency  
2 or its publicly owned utility, acting as a servicing agent on behalf  
3 of the authority, shall be held in trust for the exclusive benefit of  
4 the persons entitled to the financing costs to be paid, directly or  
5 indirectly, from the efficiency charge and shall not lose their  
6 character as revenues of the authority because the local agency or  
7 its publicly owned utility possesses them.

8 (3) In the servicing agreement, the local agency or its publicly  
9 owned utility shall contract with the authority that the local agency  
10 or its publicly owned utility will continue to operate its publicly  
11 owned utility system to provide service to its customers, will, as  
12 servicer, collect the efficiency charge for the benefit and account  
13 of the authority and, if applicable, the beneficiaries of the pledge  
14 of the efficiency charge, and will account for and remit these  
15 amounts to, or for the account of, the authority.

16 (4) The servicing agreement shall provide that the obligation to  
17 pay the efficiency charge shall run with title to the customer  
18 property on which the efficiency improvement is located until the  
19 authority is fully repaid. When the property is not owner occupied,  
20 the servicing agreement shall provide that the obligation to pay  
21 the efficiency charge appear in the terms through which the  
22 customer leases or licenses the property for occupancy.

23 (5) In the servicing agreement, the local agency or its publicly  
24 owned utility may agree that the timely and complete payment of  
25 all efficiency charges by a customer that has agreed to pay an  
26 efficiency charge shall be a condition of receiving service from  
27 the publicly owned utility, and the local agency or its publicly  
28 owned utility shall use their established collection policies and all  
29 rights and remedies provided by law to enforce payment and  
30 collection of the efficiency charge.

31 (6) In the servicing agreement, the local agency or its publicly  
32 owned utility shall agree that in the event of default by the local  
33 agency or its publicly owned utility in payment of revenues arising  
34 with respect to the efficiency charge, the authority, upon the  
35 application by the beneficiaries of the authority's pledge described  
36 in this section, and without limiting any other remedies available  
37 to the beneficiaries by reason of the default, shall order the  
38 sequestration and payment to the beneficiaries of revenues arising  
39 with respect to the efficiency charge.

1 (f) (1) The authority may issue one or more bonds for the  
2 purpose of providing funds for the acquisition, installation, and  
3 repair of an efficiency improvement on customer property pursuant  
4 to this section.

5 (2) An authority issuing a bond shall include in its preliminary  
6 notice and final report for the bonds submitted to the California  
7 Debt and Investment Advisory Commission pursuant to Section  
8 8855 a statement that the bond is being issued pursuant to this  
9 section.

10 (3) (A) The authority may, pursuant to Section 5451, pledge  
11 one or more efficiency charges as security for the bonds issued  
12 pursuant to this section. Revenue from an efficiency charge shall  
13 be deemed special revenue of the authority and shall not constitute  
14 revenue of the local agency or its publicly owned utility for any  
15 purpose, including without limitation any dedication, commitment,  
16 or pledge of revenue, receipts, or other income that the local agency  
17 or its publicly owned utility has made or will make for the security  
18 of any of its obligations.

19 (B) The validity and relative priority of a pledge created or  
20 authorized under this section is not defeated or adversely affected  
21 by the commingling of efficiency charge revenue with other  
22 moneys collected by a local agency or its publicly owned utility.

23 (4) Subject to the requirements of Article XIII C or Article XIII  
24 D of the California Constitution, a local agency may pledge water  
25 enterprise revenue as security for the payment of the principal of,  
26 and interest and redemption premium on, bonds issued by the  
27 authority in the event that efficiency charges are insufficient for  
28 those purposes, and may execute one or more pledge agreements,  
29 which shall be made pursuant to Section 5451, for the benefit of  
30 the authority or for the exclusive benefit of the persons entitled to  
31 the financing costs to be paid from the efficiency charges.

32 (g) If a local agency for which bonds have been issued and  
33 remain outstanding ceases to operate a water utility, either directly  
34 or through its publicly owned utility, references in this section to  
35 the local agency or to its publicly owned utility shall be deemed  
36 to refer to the entity providing water utility services in lieu of the  
37 local agency and that entity shall assume and perform all  
38 obligations of the local agency or its publicly owned utility required  
39 by this section and the servicing agreement with the authority while  
40 the bonds ~~remains~~ *remain* outstanding.

1 (h) If the local agency, its publicly owned utility, and the  
2 authority have complied with the procedures set forth in this  
3 section, they shall not be required to comply with Section 6586.5.

4 (i) The provisions of this section are severable. If any provision  
5 of this section or its application is held invalid, that invalidity shall  
6 not affect other provisions or applications that can be given effect  
7 without the invalid provision or application.