

AMENDED IN SENATE MAY 4, 2016  
AMENDED IN SENATE APRIL 14, 2016  
AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1233**

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

February 18, 2016

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An act 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 established 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 (d) The conservation to be accomplished by efficiency  
13 improvements is a core component of water utility service and  
14 makes existing water supplies available for all water customers  
15 by displacing demand for those supplies. Accordingly, a pledge  
16 pursuant to paragraph-(4) (5) of subdivision (f) of Section 6588.8  
17 of the Government Code of water enterprise revenue as security  
18 for bonds an authority has secured with a pledge of, and intends  
19 to pay from, efficiency charges is an appropriate use of water  
20 enterprise revenues as explained in *Capistrano Taxpayers*  
21 *Association, Inc. v. City of San Juan Capistrano* (2015) 235  
22 *Cal.App.4th 1493, 1501-1504.*

23 SEC. 2. (a) It is the intent of the Legislature to make water  
24 efficiency improvements more affordable and promote the  
25 acquisition, installation, and repair of those improvements by  
26 allowing local agencies to establish a mechanism by which they  
27 may help their water customers to acquire, install, and repair water  
28 efficiency improvements on privately owned customer properties.

29 (b) It is the intent of the Legislature that this act authorize the  
30 development of a program to be established by a joint powers  
31 authority that would provide a water customer with an alternative  
32 and voluntary means to acquire, install, or repair water efficiency  
33 improvements. It is further the intent of the Legislature that the

1 cost of this voluntarily acquired, installed, or repaired water  
2 efficiency improvement be repaid through an efficiency charge  
3 added to the water bill associated with the customer property upon  
4 which the water efficiency improvement is located.

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6 Section 4 of Chapter 723 of the Statutes of 2000, is repealed.

7 SEC. 4. Section 6586.7 of the Government Code, as added by  
8 Section 1 of Chapter 724 of the Statutes of 2000, is amended to  
9 read:

10 6586.7. (a) A copy of the resolution adopted by an authority  
11 authorizing bonds or any issuance of bonds, or accepting the benefit  
12 of any bonds or proceeds of bonds, except bonds issued or  
13 authorized pursuant to Article 1 (commencing with Section 6500),  
14 or bonds issued for the purposes specified in subdivision (c) of  
15 Section 6586.5, shall be sent by certified mail to the Attorney  
16 General and the California Debt and Investment Advisory  
17 Commission not later than five days after adoption by the authority.

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

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

20 (2) Issued pursuant to the Community Redevelopment Law  
21 (Part 1 (commencing with Section 33000) of Division 24 of the  
22 Health and Safety Code).

23 (3) To finance transportation facilities and vehicles.

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

27 (A) Local agencies with overlapping boundaries.

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

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

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

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

39 (7) Issued pursuant to Section 6588.8.

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

3 6588.8. (a) This section shall be known and may be cited as  
4 the Water Bill Savings Act.

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

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

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

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

17 (4) “Efficiency improvement” means a water efficiency  
18 improvement, as defined by the authority. *An efficiency*  
19 *improvement shall not include living vegetation.*

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

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

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

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

32 (D) A payment or expense associated with a bond insurance  
33 policy, financial guaranty, or a contract, agreement, or other credit  
34 enhancement for bonds or a contract, agreement, or other financial  
35 agreement entered into in connection with a bond.

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

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

1 (7) “Publicly owned utility” means a utility furnishing water  
2 service to customers that is owned and operated by a local agency  
3 or a department or other subdivision of a local agency and includes  
4 any successor to the powers and functions of the department or  
5 other subdivision.

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

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

16 (2) (A) The authority, by resolution, establishes or extends a  
17 program to provide funding for a customer of a local agency or its  
18 publicly owned utility to acquire, install, or repair an efficiency  
19 improvement on a customer property served by the local agency  
20 or its publicly owned utility. The resolution shall do all of the  
21 following:

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

24 (ii) Approve a standardized servicing agreement.

25 (iii) Authorize one or more designated officials of the authority  
26 to execute and deliver the servicing agreement on behalf of the  
27 authority.

28 (B) The authority acknowledges receipt of the resolution  
29 described in subparagraph (C) of paragraph (3).

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

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

37 (A) The legislative body adopts a resolution declaring its  
38 intention to request the authority to establish or extend a program  
39 to a customer represented by the legislative body, calling for a  
40 public hearing that shall be held at least 30 days later and directing

1 the clerk or secretary of the legislative body to publish a notice of  
2 the hearing at least five days before the hearing in a newspaper of  
3 general circulation in the boundaries of the local agency. If the  
4 local agency wishes to pledge its water enterprise revenue as  
5 security for the payment of the principal of, and interest and  
6 redemption premium on, bonds issued by the authority in the event  
7 that efficiency charges are insufficient for those purposes pursuant  
8 to paragraph ~~(4)~~ (5), of subdivision (f), the legislative body shall  
9 declare that intention in the resolution.

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

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

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

19 (ii) Declares that the operation of the program by the authority  
20 in the local agency's geographic boundaries would provide  
21 significant public benefits in accordance with the criteria specified  
22 in Section 6586.

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

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

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

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

35 (d) (1) A customer shall repay the authority through an  
36 efficiency charge on the customer's water bill *that is* established  
37 and collected by the local agency or its publicly owned ~~utility.~~  
38 *utility upon verification that the efficiency improvement has been*  
39 *installed.* The duty to pay the efficiency charge shall arise from  
40 and be evidenced by a written agreement among the ~~customer,~~

1 *customer; the property owner, if different than the customer; the*  
2 ~~authority; authority;~~ and the local agency or its publicly owned  
3 utility.

4 (2) The written agreement shall include all of the following:

5 (A) An agreement by the customer to pay an efficiency charge  
6 for the period and in the amount specified in the agreement unless  
7 the efficiency charge is prepaid in the manner set forth in the  
8 agreement. The period designated for repayment shall not exceed  
9 the estimated useful life of the funded efficiency improvements.

10 (B) A description of the financial calculation, formula, or other  
11 method that the authority used to determine the efficiency charge.  
12 The efficiency charge may include a component for reasonable  
13 administrative expenses incurred by the local agency or its publicly  
14 owned utility and the authority in connection with the program  
15 and the funding.

16 (C) A description of the efficiency improvement funded with  
17 the efficiency charge. A determination in the agreement that an  
18 improvement is an efficiency improvement shall be final and  
19 conclusive.

20 (D) A representation by the customer that the customer intends  
21 to acquire, install, or repair and use the efficiency improvement  
22 on the customer's property for the useful life of the efficiency  
23 improvement. Any failure ~~by of the efficiency improvement by~~  
24 ~~damage, removal, or other fault of the customer to acquire, install,~~  
25 ~~or repair and use the efficiency improvement on the customer's~~  
26 ~~property for~~ *during* the useful life of the efficiency improvement  
27 shall not affect the customer's obligation to pay the efficiency  
28 charge as set forth in the agreement.

29 (3) The timely and complete payment of an efficiency charge  
30 by a customer that has agreed to pay an efficiency charge may be  
31 a condition of receiving water service from the local agency or its  
32 publicly owned utility, and a local agency and its publicly owned  
33 utility are authorized to use their established collection policies  
34 and all rights and remedies provided by law to enforce payment  
35 and collection of the efficiency charge. A person liable for an  
36 efficiency charge shall not be entitled or authorized to withhold  
37 payment, in whole or in part, of the efficiency charge for any  
38 reason.

39 (4) A customer's obligation to pay the efficiency charge shall  
40 ~~run with title to the customer property on which the efficiency~~

1 ~~improvement is located until~~ *remain until the efficiency charge*  
2 *related to the efficiency improvement has been repaid in full. full*  
3 *or the efficiency charge has been transferred to a subsequent*  
4 *customer who assumes responsibility for the remainder of the*  
5 *obligation. A local agency or its publicly owned utility shall record*  
6 *record, no later than 10 days after funding an efficiency*  
7 *improvement, a notice of an the efficiency charge in the records*  
8 *of the county recorder of the county in which the customer's*  
9 *property is located and that notice shall impart notice of the*  
10 *efficiency charge to all persons. Any failure by the local agency*  
11 *or its publicly owned utility to record that notice shall not excuse*  
12 *an owner of the customer property, on which the funded*  
13 *improvement is located, from the obligation to pay the efficiency*  
14 *charge. located. The notice shall be prominently titled "NOTICE*  
15 *OF EFFICIENCY CHARGE" and shall provide contact*  
16 *information for the person or entity authorized to provide a prompt*  
17 *and accurate written statement of the outstanding charges and*  
18 *payoff amounts related to the efficiency charge for which the notice*  
19 *of efficiency charge was recorded.*

20 *(5) Within 10 days of full repayment of the outstanding charges*  
21 *related to the recorded notice of the efficiency charge, the entity*  
22 *responsible for the collection and servicing of the charge shall*  
23 *record a notice of the full repayment of the efficiency charge in*  
24 *the records of the county recorder of the county in which the*  
25 *customer's property is located. The notice of the full repayment*  
26 *of the efficiency charge shall include a reference to the recorded*  
27 *notice of the efficiency charge.*

28 ~~(5)~~

29 *(6) Because the efficiency charge is a voluntary charge that will*  
30 *be made pursuant to a written agreement between the customer,*  
31 *the authority, and the local agency or its publicly owned utility,*  
32 *the Legislature finds and declares that voluntary efficiency charges*  
33 *under this section are not taxes, assessments, fees, or charges for*  
34 *the purposes of Articles XIII C and XIII D of the California*  
35 *Constitution and therefore the provisions of Articles XIII C and*  
36 *XIII D and Article 4.6 (commencing with Section 53750) of*  
37 *Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to*  
38 *voluntary efficiency charges levied pursuant to this section.*  
39 *Furthermore, a program established pursuant to this section*

1 provides a “water” service, as defined in subdivision (m) of Section  
2 53750.

3 (e) (1) The authority and a local agency or its publicly owned  
4 utility shall enter into a servicing agreement for the collection of  
5 one or more efficiency charges and the local agency or its publicly  
6 owned utility shall act as a servicing agent for purposes of  
7 collecting the efficiency charge.

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

15 (3) In the servicing agreement, the local agency or its publicly  
16 owned utility shall contract with the authority that the local agency  
17 or its publicly owned utility will continue to operate its publicly  
18 owned utility system to provide service to its customers, will, as  
19 servicer, collect the efficiency charge for the benefit and account  
20 of the authority and, if applicable, the beneficiaries of the pledge  
21 of the efficiency charge, and will account for and remit these  
22 amounts to, or for the account of, the authority.

23 (4) The servicing agreement shall provide that the obligation to  
24 pay the efficiency charge shall run with title to the customer  
25 property on which the efficiency improvement is located until the  
26 authority is fully repaid. When the property is not owner occupied,  
27 the servicing agreement shall provide that the obligation to pay  
28 the efficiency charge appear in the terms through which the  
29 customer leases or licenses the property for occupancy.

30 (5) In the servicing agreement, the local agency or its publicly  
31 owned utility may agree that the timely and complete payment of  
32 all efficiency charges by a customer that has agreed to pay an  
33 efficiency charge shall be a condition of receiving service from  
34 the publicly owned utility, and the local agency or its publicly  
35 owned utility shall use their established collection policies and all  
36 rights and remedies provided by law to enforce payment and  
37 collection of the efficiency charge.

38 (6) In the servicing agreement, the local agency or its publicly  
39 owned utility shall agree that in the event of default by the local  
40 agency or its publicly owned utility in payment of revenues arising

1 with respect to the efficiency charge, the authority, upon the  
2 application by the beneficiaries of the authority's pledge described  
3 in this section, and without limiting any other remedies available  
4 to the beneficiaries by reason of the default, shall order the  
5 sequestration and payment to the beneficiaries of revenues arising  
6 with respect to the efficiency charge.

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

11 (2) An authority issuing a bond shall include in its preliminary  
12 notice and final report for the bonds submitted to the California  
13 Debt and Investment Advisory Commission pursuant to Section  
14 8855 a statement that the bond is being issued pursuant to this  
15 section.

16 (3) *An authority that issues a bond pursuant to this section shall*  
17 *establish a debt service reserve fund for the bond to the extent*  
18 *required by the purchaser of the bond.*

19 ~~(3)~~

20 (4) (A) The authority may, pursuant to Section 5451, pledge  
21 one or more efficiency charges as security for the bonds issued  
22 pursuant to this section. Revenue from an efficiency charge shall  
23 be deemed special revenue of the authority and shall not constitute  
24 revenue of the local agency or its publicly owned utility for any  
25 purpose, including without limitation any dedication, commitment,  
26 or pledge of revenue, receipts, or other income that the local agency  
27 or its publicly owned utility has made or will make for the security  
28 of any of its obligations.

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

33 ~~(4)~~

34 (5) A local agency may pledge water enterprise revenue as  
35 security for the payment of the principal of, and interest and  
36 redemption premium on, bonds issued by the authority if efficiency  
37 charges are insufficient for that purpose, and may execute one or  
38 more pledge agreements pursuant to Section 5451 for the benefit  
39 of the authority or for the exclusive benefit of the persons entitled  
40 to the financing costs to be paid from the efficiency charges.

1     (6) *A local agency that pledges water enterprise revenues as*  
2 *security for the payment of the principal of, and interest and*  
3 *redemption premium on, a bond issued by the authority shall*  
4 *establish a debt service reserve fund for the bond to the extent*  
5 *required by the purchaser of the bond.*

6     (g) If a local agency for which bonds have been issued and  
7 remain outstanding ceases to operate a water utility, either directly  
8 or through its publicly owned utility, references in this section to  
9 the local agency or to its publicly owned utility shall be deemed  
10 to refer to the entity providing water utility services in lieu of the  
11 local agency and that entity shall assume and perform all  
12 obligations of the local agency or its publicly owned utility required  
13 by this section and the servicing agreement with the authority while  
14 the bonds remain outstanding.

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

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