

AMENDED IN SENATE MAY 23, 2016

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**  
**(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 (5) of subdivision (f) of Section 6588.8 of  
17 the Government Code of water enterprise revenue as security for  
18 bonds an authority has secured with a pledge of, and intends to  
19 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 publicly owned utility's*  
4 *water meter at* the customer property upon which the water  
5 efficiency improvement is located.

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7 Section 4 of Chapter 723 of the Statutes of 2000, is repealed.

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

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

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

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

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

24 (3) To finance transportation facilities and vehicles.

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

28 (A) Local agencies with overlapping boundaries.

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

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

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

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

40 (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~~ *owned, leased,*  
12 *or licensed for occupancy* by the 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~~ *State the intent of the authority to operate the program.*

24 (ii) *Define the geographical scope of the operation of the*  
25 *program as an area that is limited to only the territories within*  
26 *which retail water service is provided by those local agencies that*  
27 *have expressly requested the authority to provide funding for the*  
28 *local agency’s customers through the program, in accordance*  
29 *with the requirements of paragraph (3).*

30 ~~(ii)~~

31 (iii) Approve a standardized servicing agreement.

32 ~~(iii)~~

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

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

38 (C) The authority may determine that all proceedings were valid  
39 and in conformity with the requirements of this paragraph and that  
40 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 ~~(5)~~, (5) of subdivision (f), the legislative body shall  
17 declare 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.

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

4 (d) (1) A customer shall repay the authority through an  
5 efficiency charge on the customer's water bill that is established  
6 and collected by the local agency or its publicly owned utility upon  
7 verification that the efficiency improvement has been installed.  
8 The duty to pay the efficiency charge shall arise from and be  
9 evidenced by a written agreement *executed at the time of*  
10 *installation of the efficiency improvement* among the customer;  
11 the ~~property owner~~, *owner of record*, if different than the customer;  
12 the authority; and the local agency or its publicly owned utility.

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

14 (A) An agreement by the customer to pay an efficiency charge  
15 for the period and in the amount specified in the agreement unless  
16 the efficiency charge is prepaid in the manner set forth in the  
17 agreement. The period designated for repayment shall not exceed  
18 the estimated useful life of the funded efficiency improvements.

19 (B) A description of the financial calculation, formula, or other  
20 method that the authority used to determine the efficiency charge.  
21 The efficiency charge may include a component for reasonable  
22 administrative expenses incurred by the local agency or its publicly  
23 owned utility and the authority in connection with the program  
24 and the funding.

25 (C) A description of the efficiency improvement funded with  
26 the efficiency charge. A determination in the agreement that an  
27 improvement is an efficiency improvement shall be final and  
28 conclusive.

29 (D) A representation by the customer that the customer intends  
30 to acquire, install, or repair and use the efficiency improvement  
31 on the customer's property for the useful life of the efficiency  
32 improvement. Any failure of the efficiency improvement by  
33 damage, removal, or other fault of the customer during the useful  
34 life of the efficiency improvement shall not affect the customer's  
35 obligation to pay the efficiency charge as set forth in the agreement.

36 (E) *Any failure of the efficiency improvement not involving*  
37 *damage, removal, or other fault of the customer shall result in the*  
38 *efficiency charge being suspended until the efficiency improvement*  
39 *is repaired and returned to service. The authority's decision on*

1 *the reasons for failure of the efficiency improvement and its repair*  
2 *and return to service shall be final and conclusive.*

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

13 (4) A customer's obligation to pay the efficiency charge shall  
14 remain *associated with the meter at the customer property on*  
15 *which the efficiency improvement is located* until the efficiency  
16 charge related to the efficiency improvement has been repaid in  
17 full or the efficiency charge has been transferred to a subsequent  
18 customer who ~~assumes responsibility~~ *receives water service at a*  
19 *property with installed efficiency measures* for the remainder of  
20 the obligation. *Notwithstanding any other provision of this section,*  
21 *the efficiency charge shall not transfer to a subsequent customer*  
22 *and shall remain an obligation of the previous customer if the*  
23 *efficiency improvements were removed or damaged, and not*  
24 *restored to service, by the previous customer.* A local agency or  
25 its publicly owned utility shall record, no later than 10 days after  
26 funding an efficiency improvement, a notice of the efficiency  
27 charge in the records of the county recorder of the county in which  
28 the customer's property is located. *The notice shall include the*  
29 *real property address and assessors' parcel number of the real*  
30 *property affected by the efficiency charge.* The notice shall be  
31 prominently titled "NOTICE OF EFFICIENCY CHARGE" *in*  
32 *uppercase, 14-point bold type in the heading,* and shall provide  
33 contact information for the person or entity authorized to provide  
34 a prompt and accurate written statement of the outstanding charges  
35 and payoff amounts related to the efficiency charge for which the  
36 notice of efficiency charge was recorded. *The recordation of the*  
37 *notice of efficiency charge shall be considered sufficient notice to*  
38 *a subsequent customer at a property with installed efficiency*  
39 *measures of the customer's obligation to pay the efficiency charge*  
40 *for installed measures.*

1 (5) Within 10 days of full repayment of the outstanding charges  
2 related to the recorded notice of the efficiency charge, the entity  
3 responsible for the collection and servicing of the charge shall  
4 record a notice of the full repayment of the efficiency charge in  
5 the records of the county recorder of the county in which the  
6 customer’s property is located. The notice of the full repayment  
7 of the efficiency charge shall include a reference to the recorded  
8 notice of the efficiency charge.

9 (6) Because the efficiency charge is a voluntary charge that will  
10 be made pursuant to a written agreement between the customer,  
11 *the property owner of record if this is different than the customer*;  
12 the authority, and the local agency or its publicly owned utility,  
13 the Legislature finds and declares that voluntary efficiency charges  
14 under this section are not taxes, assessments, fees, or charges for  
15 the purposes of Articles XIII C and XIII D of the California  
16 Constitution and therefore the provisions of Articles XIII C and  
17 XIII D and Article 4.6 (commencing with Section 53750) of  
18 Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to  
19 voluntary efficiency charges levied pursuant to this section.  
20 Furthermore, a program established pursuant to this section  
21 provides a “water” service, as defined in subdivision (m) of Section  
22 53750.

23 (e) (1) The authority and a local agency or its publicly owned  
24 utility shall enter into a servicing agreement for the collection of  
25 one or more efficiency charges and the local agency or its publicly  
26 owned utility shall act as a servicing agent for purposes of  
27 collecting the efficiency charge.

28 (2) *The authority, local agency, or utility responsible for the*  
29 *collection of the efficiency charges shall ensure that the contact*  
30 *information in the notice of efficiency charge recorded in the*  
31 *records of the county recorder pursuant to this section is accurate*  
32 *so that interested parties may request and promptly receive a*  
33 *written and accurate payoff amount or verification of the*  
34 *outstanding charges associated with the recorded notice of*  
35 *efficiency charge.*

36 (3) *In the event that the servicing agent or entity responsible*  
37 *for the collection of the efficiency charge changes, a new notice*  
38 *of efficiency charge shall be recorded within 10 days.*

39 (4) *Any party requesting written payoff or amount verification*  
40 *of outstanding charges from the authority, local agency, or utility*

1 *identified as the contact on the recorded notice of efficiency charge*  
2 *may rely upon the written payoff amount or verification as being*  
3 *accurate for 45 days from the receipt of this written information.*  
4 *If the authority, local agency, or utility provides a written*  
5 *amendment to the written payoff amount or verification, any party*  
6 *may rely on the written amendment for 45 days from receipt of the*  
7 *written amendment.*

8 ~~(2)~~

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

16 ~~(3)~~

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

25 ~~(4)~~

26 (7) The servicing agreement shall provide that the obligation to  
27 pay the efficiency charge shall ~~run with title to~~ *remain associated*  
28 *with the meter at* the customer property on which the efficiency  
29 improvement is located until the authority is fully repaid. When  
30 the property is not owner occupied, the servicing agreement shall  
31 provide that the obligation to pay the efficiency charge appear in  
32 the terms through which the customer leases or licenses the  
33 property for occupancy.

34 ~~(5)~~

35 (8) In the servicing agreement, the local agency or its publicly  
36 owned utility may agree that the timely and complete payment of  
37 all efficiency charges by a customer that has agreed to pay an  
38 efficiency charge shall be a condition of receiving service from  
39 the publicly owned utility, and the local agency or its publicly  
40 owned utility shall use their established collection policies and all

1 rights and remedies provided by law to enforce payment and  
2 collection of the efficiency charge.

3 ~~(6)~~

4 (9) In the servicing agreement, the local agency or its publicly  
5 owned utility shall agree that in the event of default by the local  
6 agency or its publicly owned utility in payment of revenues arising  
7 with respect to the efficiency charge, the authority, upon the  
8 application by the beneficiaries of the authority's pledge described  
9 in this section, and without limiting any other remedies available  
10 to the beneficiaries by reason of the default, shall order the  
11 sequestration and payment to the beneficiaries of revenues arising  
12 with respect to the efficiency charge.

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

17 (2) An authority issuing a bond shall include in its preliminary  
18 notice and final report for the bonds submitted to the California  
19 Debt and Investment Advisory Commission pursuant to Section  
20 8855 a statement that the bond is being issued pursuant to this  
21 section.

22 (3) An authority that issues a bond pursuant to this section shall  
23 establish a debt service reserve fund for the bond to the extent  
24 required by the purchaser of the bond.

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

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

38 (5) A local agency may pledge water enterprise revenue as  
39 security for the payment of the principal of, and interest and  
40 redemption premium on, bonds issued by the authority if efficiency

1 charges are insufficient for that purpose, and may execute one or  
2 more pledge agreements pursuant to Section 5451 for the benefit  
3 of the authority or for the exclusive benefit of the persons entitled  
4 to the financing costs to be paid from the efficiency charges.

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

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

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

22 (i) ~~The provisions of this section are severable. If any provision~~  
23 ~~of this section or its application is held invalid, that invalidity shall~~  
24 ~~not affect other provisions or applications that can be given effect~~  
25 ~~without the invalid provision or application.~~