

AMENDED IN ASSEMBLY JUNE 20, 2016

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

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

February 18, 2016

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

1 improvements. It is further the intent of the Legislature that the
2 cost of this voluntarily acquired, installed, or repaired water
3 efficiency improvement be repaid through an efficiency charge
4 added to the water bill associated with the publicly owned utility's
5 water meter at the customer property upon which the water
6 efficiency improvement is located.

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8 Section 4 of Chapter 723 of the Statutes of 2000, is repealed.

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

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

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

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

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

25 (3) To finance transportation facilities and vehicles.

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

29 (A) Local agencies with overlapping boundaries.

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

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

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

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

1 (7) Issued pursuant to Section 6588.8.
2 SEC. 5. Section 6588.8 is added to the Government Code, to
3 read:
4 6588.8. (a) This section shall be known and may be cited as
5 the Water Bill Savings Act.
6 (b) For purposes of this section, the following terms have the
7 following meanings:
8 (1) “Customer” means a person or entity that purchases water
9 from a local agency or its publicly owned utility and is billed for
10 the water by the local agency or its publicly owned utility.
11 (2) “Customer property” means residential, commercial,
12 industrial, agricultural, or other real property owned, leased, or
13 licensed for occupancy by the customer.
14 (3) “Efficiency charge” means a charge on a customer’s water
15 bill that is paid by the customer directly to the local agency or its
16 publicly owned utility in order to pay for an efficiency
17 improvement pursuant to this section.
18 (4) “Efficiency improvement” means a water efficiency
19 improvement, as defined by the authority. An efficiency
20 improvement shall not include living vegetation.
21 (5) “Financing costs” mean all of the following:
22 (A) An interest and redemption premium payable on a bond.
23 (B) The cost of retiring the principal of a bond, whether at
24 maturity, including acceleration of maturity upon an event of
25 default, or upon redemption, including sinking fund redemption.
26 (C) A cost related to issuing or servicing bonds, including, but
27 not limited to, a servicing fee, trustee fee, legal fee, administrative
28 fee, bond counsel fee, bond placement or underwriting fee,
29 remarketing fee, broker dealer fee, independent manager fee,
30 municipal adviser fee, accounting report fee, engineering report
31 fee, rating agency fee, and payment made under an interest rate
32 swap agreement.
33 (D) A payment or expense associated with a bond insurance
34 policy, financial guaranty, or a contract, agreement, or other credit
35 enhancement for bonds or a contract, agreement, or other financial
36 agreement entered into in connection with a bond.
37 (E) The funding of one or more reserve accounts related to a
38 bond.

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

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

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

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

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

- 25 (i) State the intent of the authority to operate the program.
- 26 (ii) Define the geographical scope of the operation of the
27 program as an area that is limited to only the territories within
28 which retail water service is provided by those local agencies that
29 have expressly requested the authority to provide funding for the
30 local agency’s customers through the program, in accordance with
31 the requirements of paragraph (3).
- 32 (iii) Approve a standardized servicing agreement.
- 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) 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.

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 of record, if different than the customer; the
12 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 the

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

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

9 (B) *Within 10 days of a decision by the authority not to repair
10 and return to service a failed efficiency improvement when failure
11 did not involve damage, removal, or other fault of the customer,
12 the entity responsible for the collection and servicing of the charge
13 shall record a notice of removal of the efficiency charge in the
14 records of the county recorder of the county in which the
15 customer’s property is located. The notice of the removal of the
16 efficiency charge shall include a reference to the recorded notice
17 of the efficiency charge.*

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

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

37 (2) The authority, local agency, or utility responsible for the
38 collection of the efficiency charges shall ensure that the contact
39 information in the notice of efficiency charge recorded in the
40 records of the county recorder pursuant to this section is accurate

1 so that interested parties may request and promptly receive a
2 written and accurate payoff amount or verification of the
3 outstanding charges associated with the recorded notice of
4 efficiency charge.

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

8 (4) Any party requesting written payoff or amount verification
9 of outstanding charges from the authority, local agency, or utility
10 identified as the contact on the recorded notice of efficiency charge
11 may rely upon the written payoff amount or verification as being
12 accurate for 45 days from the receipt of this written information.
13 If the authority, local agency, or utility provides a written
14 amendment to the written payoff amount or verification, any party
15 may rely on the written amendment for 45 days from receipt of
16 the written amendment.

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

24 (6) In the servicing agreement, the local agency or its publicly
25 owned utility shall contract with the authority that the local agency
26 or its publicly owned utility will continue to operate its publicly
27 owned utility system to provide service to its customers, will, as
28 servicer, collect the efficiency charge for the benefit and account
29 of the authority and, if applicable, the beneficiaries of the pledge
30 of the efficiency charge, and will account for and remit these
31 amounts to, or for the account of, the authority.

32 (7) The servicing agreement shall provide that the obligation to
33 pay the efficiency charge shall remain associated with the meter
34 at the customer property on which the efficiency improvement is
35 located until the authority is fully repaid. When the property is not
36 owner occupied, the servicing agreement shall provide that the
37 obligation to pay the efficiency charge appear in the terms through
38 which the customer leases or licenses the property for occupancy.

39 (8) In the servicing agreement, the local agency or its publicly
40 owned utility may agree that the timely and complete payment of

1 all efficiency charges by a customer that has agreed to pay an
2 efficiency charge shall be a condition of receiving service from
3 the publicly owned utility, and the local agency or its publicly
4 owned utility shall use their established collection policies and all
5 rights and remedies provided by law to enforce payment and
6 collection of the efficiency charge.

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

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

20 (2) An authority issuing a bond shall include in its preliminary
21 notice and final report for the bonds submitted to the California
22 Debt and Investment Advisory Commission pursuant to Section
23 8855 a statement that the bond is being issued pursuant to this
24 section.

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

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

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

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

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

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

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