
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2021 - 2022 Regular

Bill No: AB 850
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Version: 3/22/21
Consultant: Grinnell

Hearing Date: 7/1/21
Tax Levy: No
Fiscal: Yes

CITY PROPERTY: SALE OF WATER UTILITY PROPERTY

Extends the sunset on the authorization for the Cities of El Monte, Montebello, and Willows to sell their water utilities without voter approval under specified circumstances from January 1, 2022, to January 1, 2024.

Background

Cities can purchase, lease, receive, hold and enjoy real and personal property, and control and dispose of it for the common benefit. A city can sell property it owns when its governing board finds the public interest and convenience requires the sale of any public building and site dedicated to a public use, and approves a resolution authorizing the sale with specified contents. Anybody can protest the sale in writing or orally, which the city can override with 4/5 vote of its governing board. If no protests are received, the city can proceed with the sale with majority approval of its governing board. If a protest is received, and the city does not override it, the sale must be approved by a majority of voters.

Sales of water utilities. Cities can own and operate public utilities. The city can sell its public utility when the public interest and necessity demand with 2/3 vote of the governing board and voters when it provides any authorized service. However, the Legislature provided that cities can lease, sell, or transfer their water utilities with majority governing board and voter approval instead (SB 2111, Beverly, 1996). The supermajority vote continues to apply to sales of other types of public utilities such as power, sewage, drainage, and transportation.

Under SB 2111, a city can sell all or any portion of a utility within its jurisdiction to another public entity or utility upon a majority vote of the board, if:

- The city determines that the utility is not necessary for supplying water to its own inhabitants, or that its inhabitants will be provided with equal or better service by the acquiring entity on terms that are just and reasonable and do not discriminate against the customers of the acquired entity;
- The city submits the issue to the qualified voters of the municipality at a special or general election, and a majority of voters approve it;
- The acquiring agency concurs; and
- The acquiring agency discloses to the customers they are seeking to acquire within 30 days of the election a summary of the price and terms of the proposed acquisition, a comparison of the applicable water charges, and the estimated costs or savings resulting from the acquisition.

Proposition 218. Proposition 218 (1996) generally prohibits taxes, assessments, fees, and charges “assessed by any agency upon any parcel of property or upon any person as an incident of property ownership.” The initiative sets forth a specific notice, hearing, and protest process, which agencies must comply with to impose a new fee or increase an existing one. After the agency provides written notification to all property owners subject to the fee, the agency must hold a meeting within 45 days on the new or increased fee. The agency cannot impose or increase the fee if a majority of the affected property owners file written protests opposing the rates before the end of the public hearing.

In 2018, the Legislature allowed the Cities of El Monte, Montebello, and Willows to sell their water utilities for the purposes of consolidating with another agency without voter approval under several specific requirements (AB 2339, Gipson). Specifically, AB 2339 allowed sales without voter approval when:

- The potentially subsumed public water system be wholly within the boundaries of the city;
- The city determines that it is uneconomical and not in the public interest to own and operate the public utility for furnishing water service;
- The sale is not for less than fair market value, as defined;
- The legislative body of the city approves the sale by four-fifths vote;
- At least two water suppliers that provide drinking water to residents in the city exist prior to the sale;
- The city has deferred necessary maintenance for its aging or failing water infrastructure, demonstrated by a study conducted by an independent third party that evaluates performance of the system applying American Water Works Association standards or its equivalent;
- The receiving water system’s service area borders the service area of the subsumed water system;
- The subsumed water system’s customers do not pay water rates different from customers already receiving service from the receiving water system;
- Consolidation of the water systems is economically feasible for the ratepayers of the subsumed water system;
- Ratepayers of the subsumed water system are notified of the applicable rate that will be in effect during the first year after consolidation has been completed. Any rate increases following the sale of a public utility for furnishing water service must be phased in over time, and;
- Consolidation of the water systems is technically and economically feasible.

Additionally, AB 2339 only allowed the three cities to sell the utility after complying with protest process similar to Proposition 218. Specifically, the cities must:

- Include in the resolution authorizing the sale a 45 day period for hearing protests to the sale, and state the city’s intended use of the sale proceeds;
- Consider oral and written protests at its second regularly scheduled meeting following adopting the resolution authorizing the sale;
- Maintain all written protests for a minimum of two years following the date of the hearing to consider written protests;

- Publish the resolution at least once in a daily newspaper published and circulated in the city or, if there is none, then a newspaper published in the county designated by the city's legislative body, and
- Post the resolution for ten or more days in at least three conspicuous places in the city.

If the legislative body of the specified cities finds that protests have been filed by at least 10% of interested persons, it must call an election; in this case, AB 2339 precludes the city from selling the public utility unless the sale is approved by a majority of the city's registered voters voting on the issue. The bill also prohibits the city from taking further steps for the sale of the public utility if 50% or more of interested persons protest the sale of the public utility. However, the city can reinitiate the sale after one year.

AB 2339's authorization is due to sunset on January 1, 2022. However, each of the three cities authorized by AB 2339 have not yet completed sales of their water systems, and want a two year extension.

Proposed Law

Assembly Bill 850 extends the sunset on AB 2339's authorization for the Cities of El Monte, Montebello, and Willows to sell their water utilities under specified circumstances from January 1, 2022, to January 1, 2024.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "Consolidated water systems can share costs such as billing, operational personnel, new water sources acquisition, and often can purchase time saving equipment that neither system could afford to purchase alone because they can spread costs over a larger customer base. For these reasons, some cities may want to consolidate their water systems. However, there are barriers to consolidation. One of those barriers is a requirement for a city-wide election to consolidate a municipal water system. This can be cost prohibitive for many smaller jurisdictions. In 2018, the Governor signed AB 2339 (Gipson), which allowed the cities of El Monte, Montebello, and Willows to use a public protest process to sell their water system. The statute sunsets January 1, 2022. The City of Willows is seeking to consolidate their water system to ensure the community receives reliable and high-quality drinking water. They have an interested party, but they need additional time to complete the transaction. (This bill) would give the City until January 1, 2024 to complete the transaction utilizing the process provided for in the AB 2339 pilot program."

2. Public participation. Cities form municipal utilities to control the provision of vital public services, such as water. Instead of distant private corporations owned by shareholders, municipal ownership of utilities provides public control and accountability: voters know who to contact when service is substandard, infrastructure improvements are needed, or rates are too high. State law has required 2/3 governing board and voter approval to allow a sale from the 1920s until the Legislature reduced the thresholds to majorities only for water systems in 1996. AB 2339 allowed cities to sell its public water system to private parties under a protest process commonly

used for other local agency decisions, which AB 850 would extend for two years. However, is a protest process good enough when city residents will lose all control over their municipal water utility? Opponents of consolidation will likely face higher hurdles, as elections require a minimum of 50% plus one of those that vote, but if only 15% of 5,000 people vote, it only takes 376 people to defeat the sale. However, a protest process requires 10% of the entire residency to provide an oral or written protest sufficient to trigger an election. In such a case, opponents would have to file 500 protests to block the sale. If the protest threshold is not met, the sale to a private water company can be completed. After that, citizens lose public control over their water. If the sale is to a private water utility ostensibly regulated by the California Public Utilities Commission, residents may have to travel hundreds of miles to San Francisco for Commission proceedings, and navigate the Commission's complex intervenor process to have their voices heard. With a municipal utility, citizens know who to call, and where to go to weigh-in on community issues. The Committee may wish to consider whether extending AB 2339's protest process allows for sufficient public participation before a city sells its water system.

3. Consolidation. The California Safe Drinking Water Act regulates the provision of drinking water in California by setting standards for the maximum contaminant level that can be present in drinking water. The State Water Resources Control Board's (state board) Division of Drinking Water regulates "public water systems" that provide water for human consumption and have 15 or more service connections, or regularly serve at least 25 individuals daily at least 60 days out of the year. According to the state board's 2019 Annual Compliance Report, 369 out of the 7,403 active public water systems are out of compliance with clean water standards. Of these systems in non-compliance, over 91 percent are the smaller public water systems. The Legislature has empowered the state board in recent years to consolidate public water systems outside the current local agency formation commission process. AB 850 is consistent with these consolidation efforts by extending AB 2339's authority for three cities to sell their current water systems to other water suppliers.

4. Time has come today. AB 2339 became effective on January 1, 2019, and is due to sunset on January 1, 2022, which allowed a three year period for each city to sell its water utility. However, each city has been unable to complete the sale for different reasons.

- Impacted by hexavalent chromium, the City of Willows determined it was necessary to construct a pipeline to connect with the neighboring water provider before selling its system. While the City began work on this project in 2018, the COVID-19 pandemic and other financial challenges forced the City to put a hold on all capital projects, including this one. The City wants to reinstate the project later this year or early next year.
- The Office of Public Advocates at the California Public Utilities Commission intervened in the sale of the City of Montebello's system, arguing that the City did not comply with the requirements of AB 2339. Specifically, the Advocates argue that AB 2339 does not apply to the sale because some of the system is located outside the City's boundaries, and the City did not comply with other provisions in law that allow a sale for parts of the utility located outside its jurisdiction. The City asserts that it complied with all applicable laws, and that the CPUC does not have authority to deny a sale under AB 2339. The CPUC indicates that it will issue a proposed decision in February 2022.
- Victoria Martinez Muela, Mayor Pro Tempore of the City of El Monte states: "Currently, the city owned water system only serves about 9% of the city. That amounts to a rate base of 3500 to spread out millions in much needed maintenance. We have millions in

deferred maintenance cost and our water rates although increased in recent years by 25% they have not kept pace with the systems needs. For the last 10 years all the residents of El Monte have subsidized the water system for the benefit of a few residents. Recent development in the area of the city’s owned system has led the city to exceed its allotment of water rights production in the Main San Gabriel Valley. In the last 2 fiscal years the overproduction deficit has been over 248-acre feet. The city of El Monte has had to purchase the extra water at a huge cost. We see that trend continuing, considering drought conditions the State of California is currently experiencing.”

5. One of many. Before it enacted AB 2339, the Legislature had previously approved a series of specific exemptions to the majority voter requirement subject to varying requirements, including the Cities of Montebello (SB 248, Montoya, 1987), Fontana (AB 2867, Brulte, 1995), and West Covina (AB 1128, Miller, 1997). In 2005, Governor Schwarzenegger vetoed a bill that would have allowed the City of Palm Springs to sell its wastewater utility to the Desert Water Agency (SB 557, Battin, 2005). However, in 2007, the Legislature provided that voter approval did not apply to the lease, sale, or transfer of public utilities by a municipal corporation to another local agency when completing the Local Agency Formation Commission process under the Cortese-Knox-Hertzberg Act (SB 558, Cogdill, 2007).

6. Special legislation. The California Constitution prohibits special legislation when a general law can apply (Article IV, §16). AB 850 contains findings and declarations explaining that a special statute is necessary, because of the unique circumstances in the Cities of El Monte, Montebello, and Willows.

Assembly Actions

Assembly Water, Parks, and Wildlife Committee:	15-0
Assembly Local Government Committee:	8-0
Assembly Appropriations Committee:	15-0
Assembly Floor:	75-0

Support and Opposition (6/28/21)

Support: City of Montebello

Opposition: None submitted

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