
THIRD READING

Bill No: AB 850
Author: Gallagher (R), et al.
Amended: 8/18/21 in Senate
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 7/1/21
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 75-0, 5/27/21 (Consent) - See last page for vote

SUBJECT: City property: sale of water utility property

SOURCE: City of El Monte
City of Montebello
City of Willows

DIGEST: This bill 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.

Senate Floor Amendments of 8/18/21 (1) remove the requirement that a water system be wholly within its boundaries for the Cities of El Monte, Montebello, and Willows to sell their water utilities for the purposes of consolidating with another agency without voter approval, and (2) add ratepayers outside the city's boundaries to the definition of "interested person" for purposes of this bill's protest process.

ANALYSIS:

Existing law:

- 1) Permits cities to purchase, lease, receive, hold and enjoy real and personal property, and control and dispose of it for the common benefit.

- 2) Provides that 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.
- 3) Allows anybody to 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.
- 4) Allows cities to own and operate public utilities.
- 5) Requires 2/3 governing board and voter approval for a city to sell its public utility when the public interest and necessity demand.
- 6) Enacts an exception from the 2/3 governing board and voter approval requirement that allows cities to lease, sell, or transfer their water utilities to another public entity or utility with majority governing board and voter approval instead (SB 2111, Beverly, Chapter 169, Statutes of 1996), while maintaining the 2/3 supermajority requirement for sales of other types of public utilities such as power, sewage, drainage, and transportation. For the exemption to apply:
 - a) The city must determine 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.
 - b) The agency acquiring the utility concurs.
 - c) 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.
- 7) Authorized, temporarily, the following cities to sell their public utilities without voter approval under specified terms and conditions:
 - a) Montebello (SB 248, Montoya, Chapter 60, Statutes of 1987),
 - b) Fontana (AB 2867, Brulte, Chapter 588, Statutes of 1996), and
 - c) West Covina (AB 1128, Miller, Chapter 521, Statutes of 1997).
- 8) Provides that voter approval does 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, Chapter 209, Statutes of 2007).

- 9) Allows, until January 1, 2022, the Cities of El Monte, Montebello, and Willows to sell its public water utilities within its boundaries without voter approval when consolidating with another system, if the City determines that it is uneconomical and not in the public interest to own and operate the public utility for furnishing water service (AB 2339, Gipson, Chapter 866, Statutes of 2018), under the following conditions:
- a) The sale is not for less than fair market value, as defined,
 - b) The legislative body of the city approves the sale by four-fifths vote,
 - c) At least two water suppliers that provide drinking water to residents in the city exist prior to the sale,
 - d) 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,
 - e) The receiving water system's service area borders the service area of the subsumed water system,
 - f) The subsumed water system's customers do not pay water rates different from customers already receiving service from the receiving water system,
 - g) Consolidation of the water systems is economically feasible for the ratepayers of the subsumed water system,
 - h) 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,
 - i) Consolidation of the water systems is technically and economically feasible,
 - j) The governing boards of the Cities of El Monte, Montebello, and Willows meet to consider oral and written protests at its second regularly scheduled meeting following adopting the resolution authorizing the sale,
 - k) The following requirements for protests are met:
 - i) The resolution authorizing the sale allows 45 days for hearing protests to the sale and states the city's intended use of the sale proceeds.
 - ii) The city maintains all written protests for a minimum of two years following the date of the hearing to consider written protests.

- iii) The resolution must be published at least once in a daily newspaper published and circulated in the city or, if there is none, the legislative body designates a newspaper published in the county.
- iv) The resolution must be posted for not less than 10 days in at least three conspicuous places in the city.
- l) Provides an election must be held, and the legislative body of the city is precluded from selling the public utility unless the sale is approved by a majority of the city's registered voters voting on the issue. If the legislative body of the specified cities finds that protests have been filed by at least 10% of interested persons, as defined.
- m) The city cannot take 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 reinstate the sale after one year has passed.

This bill:

- 1) Extends the sunset date on the authority for the Cities of El Monte, Montebello, and Willows to sell its public water systems from January 1, 2022, to January 1, 2024.
- 2) Removes the requirement that the water system be wholly within the boundaries of the city to be sold under this bill's procedure.
- 3) Adds ratepayers outside the city's boundaries to the definition of "interested persons" for purposes of this bill's protest process.
- 4) Makes a legislative finding explaining that a special statute is necessary, because of the unique circumstances in the Cities of El Monte, Montebello, and Willows.

Background

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 CPUC 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 is compliant 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."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/19/21)

City of El Monte (co-source)
City of Montebello (co-source)
City of Willows (co-source)
California American Water
California Water Association
California Water Service Company
Golden State Water Company
San Gabriel Valley Water Company

OPPOSITION: (Verified 8/19/21)

None received

ARGUMENTS IN SUPPORT: 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.”

ASSEMBLY FLOOR: 75-0, 5/27/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood

NO VOTE RECORDED: Maienschein, Mullin, Rendon

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8/20/21 11:57:29

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