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AB-2179 Municipal corporations: public utility service: water and sewer service. (2017-2018)

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Assembly Bill No. 2179

CHAPTER 863

An act to amend Section 10061 of the Public Utilities Code, relating to utility service.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2179, Gipson. Municipal corporations: public utility service: water and sewer service.

Existing law authorizes the furnishing of utility services by publicly owned public utilities, including municipal corporations, which are subject to control by their governing bodies. Existing law authorizes any municipal corporation to acquire, construct, own, operate, or lease any public utility, as defined, to furnish its inhabitants with light, water, power, heat, transportation, or means of communications and to furnish those services outside its boundaries, except within another municipal corporation that furnishes the same service or that does not consent. Existing law authorizes a municipal corporation to sell or dispose of any public utility it owns. Existing law requires that a resolution authorizing the sale of a public utility be passed by $\frac{2}{3}$ of the members of the legislative body of the municipal corporation and be passed by a $\frac{2}{3}$ vote of all voters voting at an election to authorize the sale in the ordinance calling the election. Existing law establishes an alternative procedure whereby a municipal corporation can lease, sell, or transfer that portion of a water utility used for furnishing water service outside the boundaries of the municipal corporation.

This bill would additionally authorize a municipal corporation to utilize the alternative procedures to lease, sell, or transfer that portion of a municipal utility used for furnishing sewer service outside the boundaries of the municipal corporation.

This bill would incorporate additional changes to Section 10061 of the Public Utilities Code proposed by AB 2339 to be operative only if this bill and AB 2339 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10061 of the Public Utilities Code is amended to read:

10061. (a) Notwithstanding Article 1 (commencing with Section 10001) and this article, a municipal corporation, by following the provisions of this section, may lease, sell or transfer all or part of a public utility owned and operated by it for furnishing water or sewer service. As used in this section, "municipal corporation," means a city or a city and county.

(b) Any municipal corporation owning and operating a public utility for furnishing water or sewer service, a part of which or all of which public utility is operated and used for furnishing water or sewer service outside the boundaries of the municipal corporation, may lease, sell or transfer, for just compensation all or any part of the portion of the public utility located outside the boundaries of

the municipal corporation to any other municipal corporation, public agency, water corporation, or sewer system corporation upon the terms and conditions agreed upon by the selling municipal corporation if, by resolution adopted by a majority of its legislative body, it has determined that the public utility, or portion thereof, is not necessary for supplying water or sewer service to its own inhabitants and if the acquiring entity by resolution adopted by a majority of the members of its legislative body or board of directors has concurred in the lease, sale, or transfer and the terms and conditions thereof and if the acquiring entity will be bound to render water or sewer service to the persons formerly served through the system being sold on terms and conditions that are just and reasonable and do not unreasonably discriminate against the customers of the acquired entity.

(c) Any municipal corporation owning and operating a public utility for furnishing water or sewer service may sell or transfer, for just compensation, all or any part of the public utility located inside its municipal boundaries to any other municipal corporation, public agency, water corporation, or sewer system corporation upon the terms and conditions agreed upon by the selling municipal corporation, if the sale or transfer is approved as follows:

(1) The municipal corporation, by resolution adopted by a majority of its legislative body, has determined that the public utility, or portion thereof, is not necessary for supplying water or sewer services 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; and orders the issue submitted to the qualified voters of the municipality at a special or general election held for that purpose.

(2) The acquiring entity by resolution adopted by a majority of its legislative body or board of directors has concurred in the sale or transfer and in the terms and conditions thereof.

(3) The sale or transfer is approved by a majority of all voters voting on the issue in the election held for that purpose.

(4) The municipal corporation, public agency, water corporation, or sewer system corporation proposing to acquire a municipal corporation public utility for furnishing water or sewer service shall disclose to the customers of the public water or sewer system to be acquired, not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement which includes all of the following:

(A) A summary of the price and terms of the proposed acquisition.

(B) A comparison of the applicable water or sewer charges before and after the proposed acquisition.

(C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition.

(d) Subject to subdivision (e), a municipal corporation may lease a public utility furnishing water or sewer service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions stated in any other law.

(e) A municipal corporation acting pursuant to subdivision (c) shall specify the manner of soliciting and filing, and the method of evaluating, proposals for the acquisition of the public utility. Upon receipt and staff evaluation of a proposal or proposals the municipal corporation, if it determines that the proposal or proposals are responsive, shall schedule a public hearing, and notice thereof shall be published in accordance with Section 6066 of the Government Code. At the hearing, the municipal corporation shall examine proposals received and staff recommendations, and without lease term or other restrictions, may lease, sell, or transfer, for just compensation, the public utility to the entity that the municipal corporation finds best qualified to continue to provide equal or better service to the customers of the system. If the resolution proposes a sale, the resolution shall place the question on the ballot at the next regularly scheduled election or at a special election called for that purpose. The municipal corporation may, in its sole discretion, reject all proposals.

(f) Any agreement entered into before September 17, 1965, between municipal corporations for the lease, sale, or transfer of all or any part of a public utility owned and operated by one of the municipal corporations and furnishing water service to the inhabitants of the municipal corporation to which the lease, sale or transfer is made is hereby validated.

SEC. 1.5. Section 10061 of the Public Utilities Code is amended to read:

10061. (a) Notwithstanding Article 1 (commencing with Section 10001) and this article, and except as provided in Section 37420.5 of the Government Code, a municipal corporation, by following the provisions of this section, may lease, sell, or transfer all or part of a public utility owned and operated by it for furnishing water or sewer service. As used in this section, "municipal corporation" means a city or a city and county.

(b) Any municipal corporation owning and operating a public utility for furnishing water or sewer service, a part of which or all of which public utility is operated and used for furnishing water or sewer service outside the boundaries of the municipal corporation, may lease, sell, or transfer, for just compensation, all or any part of the portion of the public utility located outside the boundaries of the municipal corporation to any other municipal corporation, public agency, water corporation, or sewer system corporation upon the terms and conditions agreed upon by the selling municipal corporation if, by resolution adopted by a majority of its

legislative body, it has determined that the public utility, or portion thereof, is not necessary for supplying water or sewer service to its own inhabitants and if the acquiring entity by resolution adopted by a majority of the members of its legislative body or board of directors has concurred in the lease, sale, or transfer and the terms and conditions thereof and if the acquiring entity will be bound to render water or sewer service to the persons formerly served through the system being sold on terms and conditions that are just and reasonable and do not unreasonably discriminate against the customers of the acquired entity.

(c) Any municipal corporation owning and operating a public utility for furnishing water or sewer service may sell or transfer, for just compensation, all or any part of the public utility located inside its municipal boundaries to any other municipal corporation, public agency, water corporation, or sewer system corporation upon the terms and conditions agreed upon by the selling municipal corporation, if the sale or transfer is approved as follows:

(1) The municipal corporation, by resolution adopted by a majority of its legislative body, has determined that the public utility, or portion thereof, is not necessary for supplying water or sewer services 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, and orders the issue submitted to the qualified voters of the municipality at a special or general election held for that purpose.

(2) The acquiring entity by resolution adopted by a majority of its legislative body or board of directors has concurred in the sale or transfer and in the terms and conditions thereof.

(3) The sale or transfer is approved by a majority of all voters voting on the issue in the election held for that purpose.

(4) The municipal corporation, public agency, water corporation, or sewer system corporation proposing to acquire a municipal corporation public utility for furnishing water or sewer service shall disclose to the customers of the public water or sewer system to be acquired, not less than 30 days prior to the date of election for formal approval of the acquisition, a written statement which includes all of the following:

(A) A summary of the price and terms of the proposed acquisition.

(B) A comparison of the applicable water or sewer charges before and after the proposed acquisition.

(C) The estimated savings to be achieved or additional costs expected to result, or both, from the proposed acquisition.

(d) Subject to subdivision (e), a municipal corporation may lease a public utility furnishing water or sewer service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions stated in any other law.

(e) A municipal corporation acting pursuant to subdivision (c) shall specify the manner of soliciting and filing, and the method of evaluating, proposals for the acquisition of the public utility. Upon receipt and staff evaluation of a proposal or proposals the municipal corporation, if it determines that the proposal or proposals are responsive, shall schedule a public hearing, and notice thereof shall be published in accordance with Section 6066 of the Government Code. At the hearing, the municipal corporation shall examine proposals received and staff recommendations, and without lease term or other restrictions, may lease, sell, or transfer, for just compensation, the public utility to the entity that the municipal corporation finds best qualified to continue to provide equal or better service to the customers of the system. If the resolution proposes a sale, the resolution shall place the question on the ballot at the next regularly scheduled election or at a special election called for that purpose. The municipal corporation may, in its sole discretion, reject all proposals.

(f) Any agreement entered into before September 17, 1965, between municipal corporations for the lease, sale, or transfer of all or any part of a public utility owned and operated by one of the municipal corporations and furnishing water service to the inhabitants of the municipal corporation to which the lease, sale, or transfer is made is hereby validated.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 10061 of the Public Utilities Code proposed by both this bill and Assembly Bill 2339. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 10061 of the Public Utilities Code, and (3) this bill is enacted after Assembly Bill 2339, in which case Section 1 of this bill shall not become operative.