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AB-2339 Water utility service: sale of water utility property by a city. (2017-2018)

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Assembly Bill No. 2339

CHAPTER 866

An act to add and repeal Section 37420.5 of the Government Code, and to amend Section 10061 of the Public Utilities Code, relating to water.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2339, Gipson. Water utility service: sale of water utility property by a city.

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, and authorizes a municipal corporation to sell or dispose of any public utility it owns. 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 or inside the boundaries of the municipal corporation, including the determination that the public 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, the sale or transfer is approved by a majority of all voters voting on this issue in an election, and that the acquiring entity disclose specified information before the election.

This bill would authorize the City of El Monte, the City of Montebello, and the City of Willows, until January 1, 2022, to sell its public utility for furnishing water service for the purpose of consolidating its public water system with another public water system pursuant to the specified procedures, only if the potentially subsumed water system is wholly within the boundaries of the city, if the city determines that it is uneconomical and not in the public interest to own and operate the public utility, and if certain requirements are met. The bill would prohibit the city from selling the public utility for one year if 50% of interested persons, as defined, protest the sale.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Cities of El Monte, Montebello, and Willows.

This bill would incorporate additional changes to Section 10061 of the Public Utilities Code proposed by AB 2179 to be operative only if this bill and AB 2179 are enacted and this bill is enacted last.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) Many communities in the State of California receive their drinking water from a multitude of public water systems, including municipalities, public utility corporations, state special districts, small public water systems, and mutual water companies. Communities with fragmented public water systems typically have vastly different costs of service, aging and failing infrastructure, and conflicting drought mitigation and conservation policies. Small fragmented water service providers are often unable to achieve efficiencies and economies of scale that are available to consolidated water systems with a broader customer base.

(c) Small water systems often lack adequate resources or expertise to operate in compliance with increasingly stringent and complex safe drinking water quality standards, which are required to protect public health and safety, and are unable to bear the cost of replacing and upgrading aging and failing water service infrastructure. As a result, many small water suppliers are too small to be viable, raising questions as to whether they will be able to provide safe and reliable water service to the public now or in the future. Many small water suppliers are in such precarious financial condition that basic infrastructure maintenance is infeasible, and in many cases, maintenance and replacement of failing infrastructure is deferred. These water suppliers also have such small customer bases that additional investment is not affordable.

(d) Drinking water supply facilities require ongoing routine maintenance and repair to ensure that the public receives safe and reliable water service at affordable rates. When routine repairs to water supply infrastructure components are deferred, facilities fail, necessitating costly emergency repairs when water mains break or pumping and water treatment equipment fails. Thus, while deferring routine maintenance might lower costs in the short term, doing so results in substantial increases in costs to small water suppliers and their customers in the long term.

(e) Therefore, it is the policy of the State of California to consolidate small public water systems when (1) the water supplier cannot feasibly provide or ensure access to affordable water services to a community, (2) multiple suppliers exist in a single community, and (3) water systems have deferred maintenance on their aging or failing water supply infrastructure.

SEC. 2. Section 37420.5 is added to the Government Code, to read:

37420.5. (a) Notwithstanding Article 2 (commencing with Section 10051) of Chapter 1 of Division 5 of the Public Utilities Code, the City of El Monte, the City of Montebello, and the City of Willows may sell its public utility for furnishing water service pursuant to this article for the purpose of consolidating its public water system with another public water system only if the potentially subsumed public water system is wholly within the boundaries of the city and 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, subject to all of the following requirements:

(1) The legislative body of the city shall not sell the water utility property for less than its fair market value, as defined in Section 1263.320 of the Code of Civil Procedure.

(2) The legislative body of the city shall not sell the water utility property without a four-fifths vote of the city's legislative body.

(3) There are at least two water suppliers that provide drinking water to residents in the city prior to the sale.

(4) The city has deferred necessary maintenance for aging or failing water infrastructure of public water systems operated by the public utility. The necessity of the maintenance shall be demonstrated by a study conducted by an independent third party that evaluates performance of the system applying American Water Works Association standards or other equivalent standards.

(5) The receiving water system's service area borders the service area of the subsumed water system.

(6) The subsumed water system's customers shall not pay water rates different from customers already receiving service from the receiving water system. Consolidation of the water systems shall be economically feasible for the ratepayers of the subsumed water system. Ratepayers of the subsumed water system shall be 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 shall be phased in over time.

(7) Consolidation of the water systems is technically and economically feasible.

(8) (A) The legislative body of the city shall not sell its public utility for furnishing water service unless it considers oral and written protests at its second regularly scheduled meeting following the adoption of a resolution pursuant to Sections 37422 and publication pursuant to subparagraph (B). In addition to the requirements of Section 37422, the resolution shall allow 45 days for hearing protests to the sale and shall state the city's intended use of the sale proceeds. Notice of the sale may be given by including notice in the agency's regular billing statement. One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a protest. The city shall maintain all written protests for a minimum of two years following the date of the hearing to consider written protests.

(B) Notwithstanding Section 37423, the resolution shall be published at least once in a daily newspaper published and circulated in the city or, if there is none, the legislative body shall designate a newspaper published in the county. It shall also be posted for not less than 10 days in at least three conspicuous places in the city.

(C) (i) Notwithstanding Section 37425, if the legislative body of the city finds that protests have been filed by at least 10 percent of interested persons, the legislative body of the city shall call an election pursuant to Section 37427. If an election is called pursuant to this paragraph, the legislative body of the city shall not sell the public utility for furnishing water service unless the sale is approved by a majority of the city's registered voters voting on the issue.

(ii) If 50 percent or more of interested persons protest the sale of the public utility, the city shall not take further steps for the sale of the public utility. The city, after one year has passed, may sell the public utility if the requirements of this section are met, including adoption of a new resolution pursuant to subparagraph (A).

(iii) For purposes of this paragraph, "interested person" means a person who is a resident of the city proposing to sell its public utility pursuant to this section.

(9) The legislative body of the city has adopted a resolution, at a regularly scheduled meeting, that paragraphs (1) to (8), inclusive, have been met.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2022, deletes or extends that date.

SEC. 3. 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 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 service, a part of which or all of which public utility is operated and used for furnishing water 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, or public utility water 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 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 service to the persons formerly served through the system being sold on terms and conditions which are just and reasonable and which do not unreasonably discriminate against the customers of the acquired entity.

(c) Any municipal corporation owning and operating a public utility for furnishing water 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, or public utility water 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 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, or public utility water corporation proposing to acquire a municipal corporation public utility for furnishing water service shall disclose to the customers of the public water 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 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 service by a resolution adopted by a majority of its legislative body and without lease term or other restrictions stated in any other provision of 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. 3.5. 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. 4. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the Cities of El Monte, Montebello, and Willows.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 10061 of the Public Utilities Code proposed by both this bill and Assembly Bill 2179. 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 2179, in which case Section 3 of this bill shall not become operative.