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SB-564 Joint powers authorities: Water Bill Savings Act. (2017-2018)

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Senate Bill No. 564

CHAPTER 430

An act to add Section 6588.8 to, and to repeal and amend Section 6586.7 of, the Government Code, relating to water.

[Approved by Governor October 02, 2017. Filed with Secretary of State October 02, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 564, 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 in the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma 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 require an efficiency improvement to comply with certain provisions of the CalConserve Water Use Efficiency Revolving Loan Program guidelines to be eligible for financing under the bill. The bill would also make technical changes.

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay Area and the County of Los Angeles.

Vote: majority Appropriation: no Fiscal Committee: no 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) Water conservation efforts are indispensable to combating the current and continuing drought conditions faced by the state and advancing the state's greenhouse gas emission reduction goals.

(b) The upfront cost of acquiring, installing, and repairing water efficiency improvements is often prohibitive and may prevent customers from using them on residential, commercial, industrial, agricultural, or other real property.

(c) The conservation to be accomplished by efficiency improvements, including, but not limited to, through an efficiency program established pursuant to Section 6588.8 of the Government Code, is a core component of the provision of "water" utility service, as defined in subdivision (m) of Section 53750 of the Government Code, and makes existing water supplies available for all water

customers by displacing demand for those supplies. Accordingly, a pledge made pursuant to paragraph (5) of subdivision (f) of Section 6588.8 of the Government Code of water enterprise revenue as security for bonds that an authority has secured with a pledge of, and intends to pay from, efficiency charges is an appropriate use of water enterprise revenues as explained in *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1501–1504.

SEC. 2. (a) It is the intent of the Legislature to make water efficiency improvements more affordable and promote the acquisition, installation, and repair of those improvements by allowing local agencies to establish a mechanism by which they may help their water customers to acquire, install, and repair water efficiency improvements on privately owned customer properties.

(b) It is the intent of the Legislature that this act authorize the development of a program to be established by a joint powers authority that would provide a water customer with an alternative and voluntary means to acquire, install, or repair water efficiency improvements. It is further the intent of the Legislature that the cost of this voluntarily acquired, installed, or repaired water efficiency improvement be repaid through an efficiency charge added to the water bill associated with the local agency's or its publicly owned utility's water meter at the customer property upon which the water efficiency improvement is located.

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

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

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

(b) This section does not apply to bonds:

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

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

(3) To finance transportation facilities and vehicles.

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

(A) Local agencies with overlapping boundaries.

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

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

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

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

(7) Issued pursuant to Section 6588.8.

SEC. 5. Section 6588.8 is added to the Government Code, to read:

6588.8. (a) This section shall be known and may be cited as the Water Bill Savings Act.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Bill neutral" means, based on a customer's recent billing history, the total monetary savings achieved by the customer's efficiency improvement is projected to be greater than or equal to the efficiency charge on the customer's monthly water bill.

(2) "Customer" means a person or entity that purchases water from a local agency or its publicly owned utility and is billed for the water by the local agency or its publicly owned utility.

(3) "Customer property" means residential, commercial, industrial, agricultural, or other real property owned, leased, or licensed for occupancy by the customer.

(4) "Efficiency charge" means a charge that is added to the water bill associated with a local agency's or its publicly owned utility's water meter at the customer property upon which the water efficiency improvement is located and that is collected in order to pay for an efficiency improvement pursuant to this section.

(5) "Efficiency improvement" means a water efficiency improvement, as defined by the authority. An efficiency improvement shall comply with the lists of eligible projects and project priorities identified in the program guidelines of the CalConserve Water Use Efficiency Revolving Loan Program established pursuant to Division 30 (commencing with Section 81000) of the Water Code. An efficiency improvement shall not include living vegetation.

(6) "Financing costs" means all of the following:

(A) An interest and redemption premium payable on a bond.

(B) The cost of retiring the principal of a bond, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption.

(C) A cost related to issuing or servicing bonds, including, but not limited to, a servicing fee, trustee fee, legal fee, administrative fee, bond counsel fee, bond placement or underwriting fee, remarketing fee, broker dealer fee, independent manager fee, municipal adviser fee, accounting report fee, engineering report fee, rating agency fee, and payment made under an interest rate swap agreement.

(D) A payment or expense associated with a bond insurance policy, financial guaranty, or a contract, agreement, or other credit enhancement for bonds or a contract, agreement, or other financial agreement entered into in connection with a bond.

(E) The funding of one or more reserve accounts related to a bond.

(7) "Local agency" means a "local government" as defined in subdivision (b) of Section 1 of Article XIII C of the California Constitution in the Counties of Alameda, Contra Costa, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

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

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

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

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

(i) State the intent of the authority to operate the program.

(ii) Define the geographical scope of the operation of the program as an area that is limited to only the territories within which retail water service is provided by those local agencies that have expressly requested the authority to provide funding for the local agency's customers through the program, in accordance with the requirements of paragraph (3).

(iii) Specify the types of efficiency improvements that may be financed by the program.

(iv) Approve a standardized servicing agreement.

(v) Authorize one or more designated officials of the authority to execute and deliver the servicing agreement on behalf of the authority.

(B) The authority acknowledges receipt of the resolution described in subparagraph (C) of paragraph (3).

(C) The authority may determine that all proceedings were valid and in conformity with the requirements of this paragraph and that finding shall be final and conclusive.

(3) The legislative body of the local agency requests the authority to provide funding for its customers through a program established by the authority pursuant to this section by doing all of the following:

(A) The legislative body adopts a resolution declaring its intention to request the authority to establish or extend a program to a customer represented by the legislative body, calling for a public hearing that shall be held at least 30 days later and directing the clerk or secretary of the legislative body to publish a notice of the hearing at least five days before the hearing in a newspaper of general circulation in the boundaries of the local agency. If the local agency wishes to pledge its water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the authority in the event that efficiency charges are insufficient for those purposes pursuant to paragraph (5) of subdivision (f), the legislative body shall declare that intention in the resolution.

(B) The legislative body conducts the noticed public hearing and, after considering the testimony of any interested person, concludes that the program and the proposed pledge of water enterprise revenue, if applicable, would provide significant public benefits in accordance with the criteria specified in Section 6586.

(C) The legislative body adopts a resolution that does all of the following:

(i) Authorizes the authority to establish or extend a program pursuant to this section within the boundaries of the local agency.

(ii) Declares that the operation of the program by the authority in the local agency's geographic boundaries would provide significant public benefits in accordance with the criteria specified in Section 6586.

(iii) Specifies the types of efficiency improvements that may be financed by the program.

(iv) Approves the standardized servicing agreement and authorizes one or more designated officials of the local agency to execute and deliver the servicing agreement with the authority.

(v) If applicable, approves the pledge of water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the authority in the event that efficiency charges are insufficient for those purposes.

(vi) If applicable, authorizes execution and delivery of one or more pledge agreements to evidence a pledge.

(vii) In the resolution, the legislative body may determine that all proceedings were valid and in conformity with the requirements of this section and that finding shall be final and conclusive.

(d) (1) A customer shall repay the authority through an efficiency charge on the customer's water bill that is established and collected by the local agency or its publicly owned utility upon verification that the efficiency improvement has been installed. The duty to pay the efficiency charge shall arise from and be evidenced by a written agreement executed at the time of installation of the efficiency improvement among the customer; all property owners of record, if different than the customer; the authority; and the local agency or its publicly owned utility.

(2) The written agreement shall include all of the following:

(A) An agreement by the customer to pay an efficiency charge for the period and in the amount specified in the agreement unless the efficiency charge is prepaid in the manner set forth in the agreement. The period designated for repayment shall not exceed the estimated useful life of the funded efficiency improvements.

(B) A description of the financial calculation, formula, or other method that the authority used to determine the efficiency charge. The efficiency charge may include a component for reasonable administrative expenses incurred by the local agency or its publicly owned utility and the authority in connection with the program and the funding. A component for reasonable administrative expenses shall be listed separately in the written agreement.

(C) A description of the efficiency improvement funded with the efficiency charge.

(D) A representation by the customer that the customer intends to acquire, install, or repair and use the efficiency improvement on the customer's property for the useful life of the efficiency improvement. Any failure of the efficiency improvement by damage, removal, or other fault of the customer during the useful life of the efficiency improvement shall not affect the customer's obligation to pay the efficiency charge as set forth in the agreement.

(E) A requirement that any failure of the efficiency improvement not involving damage, removal, or other fault of the customer shall result in the efficiency charge being suspended until the efficiency improvement is repaired and returned to service.

(F) A demonstration by the authority that the customer's payment of the efficiency charge will be bill neutral.

(G) When the property is not owner occupied, a requirement that the obligation to pay the efficiency charge appear in the terms through which the customer leases or licenses the property for occupancy.

(3) The written agreement shall not be valid unless the authority entering into the written agreement has verified all of the following information:

(A) The customer entering into the agreement is the utility customer at the address and that all property owners of record, if different from the customer, have consented in writing to the agreement.

(B) The participating customer's account has been in good standing for the prior 12 months or, if the customer's occupancy of the site at which the efficiency improvements will be installed is less than 12 months, has been in good standing for the duration of the customer's occupancy of the site.

(C) The person installing the efficiency improvement has been approved to install efficiency improvements by the authority and the local agency or its publicly owned utility and is in compliance with program requirements established by the authority.

(D) The efficiency improvement included in the agreement complies with program requirements established by the authority, consistent with paragraph (5) of subdivision (b).

(E) The efficiency improvement will generate total utility cost savings that exceed the total cost of the efficiency charge paid by the customer over the duration of the agreement, and will be bill neutral, as defined in paragraph (1) of subdivision (b), for the participating customer.

(4) The timely and complete payment of an efficiency charge by a customer that has agreed to pay an efficiency charge may be a condition of receiving water service from the local agency or its publicly owned utility, and a local agency and its publicly owned utility are authorized to use their established collection policies and all rights and remedies provided by law to enforce payment and collection of the efficiency charge. A person liable for an efficiency charge shall not be entitled or authorized to withhold payment, in whole or in part, of the efficiency charge for any reason. If the property on which the efficiency improvement is located is sold or transferred to a subsequent customer, any portion of the efficiency charge that is past due and owing at the time of the sale or transfer shall not transfer to the transferee of the property. The failure of the prior customer to pay the efficiency charge shall not prevent the subsequent customer from obtaining water service from the local agency or its publicly owned utility.

(5) A customer's obligation to pay the efficiency charge shall remain associated with the meter at the customer property on which the efficiency improvement is located until the efficiency charge related to the efficiency improvement has been repaid in full or the efficiency charge has been transferred to a subsequent customer who receives water service at a property with installed efficiency measures for the remainder of the obligation. Notwithstanding any other provision of this section, the efficiency charge shall not transfer to a subsequent customer, shall not continue to be associated with the meter at the property, and shall remain an obligation of the previous customer if the efficiency improvements were removed or damaged, and not restored to service, by the previous customer. A local agency or its publicly owned utility shall record, no later than 10 days after funding an efficiency improvement, a notice of efficiency charge in the records of the county recorder of the county in which the customer's property is located. A county recorder, upon recording a notice of efficiency charge, shall index the notice of efficiency charge in the general index by the name of the owner of the real property where the meter affected by the efficiency charge will be located. The notice shall include the address or legal description of, the assessor's parcel number of, and the name of the owner of, the real property where the meter affected by the efficiency charge will be located. The notice shall be entitled "NOTICE OF EFFICIENCY CHARGE" and shall comply with Section 27324. The notice shall contain contact information for the person or entity authorized to provide a prompt and accurate written statement of the outstanding charges and payoff amounts related to the efficiency charge for which the notice of efficiency charge was recorded. The recordation of the notice of efficiency charge shall be considered sufficient notice to a subsequent customer at a property with installed efficiency measures of the customer's obligation to pay the efficiency charge for installed measures.

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

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

(7) Because the efficiency charge is a voluntary charge that will be made pursuant to a written agreement among the customer, all property owners of record if these are different than the customer, the authority, and the local agency or its publicly owned utility, the Legislature finds and declares that voluntary efficiency charges under this section are not taxes, assessments, fees, or charges for the purposes of Articles XIII C and XIII D of the California Constitution and therefore the provisions of Articles XIII C and XIII D and Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to voluntary efficiency charges levied pursuant to this section.

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

(2) The authority, local agency, or utility responsible for the collection of the efficiency charges shall ensure that the contact information in the notice of efficiency charge recorded in the records of the county recorder pursuant to this section is accurate so that interested parties may request and promptly receive a written and accurate payoff amount or verification of the outstanding charges associated with the recorded notice of efficiency charge. Furthermore, the authority, local agency, or utility shall on each water bill issued to the customer include a contact number where the customer can obtain the amount of the monthly efficiency charge and a description of the efficiency improvement for which the efficiency charge has been incurred.

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

(4) Any party requesting written payoff amount or verification of outstanding charges from the authority, local agency, or utility identified as the contact on the recorded notice of efficiency charge shall be provided with the payoff amount or verification within seven days of the request and may rely upon the written payoff amount or verification as being accurate for 45 days from the receipt of this written information. If the authority, local agency, or utility provides a written amendment to the written payoff amount or verification, any party may rely on the written amendment for 45 days from receipt of the written amendment.

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

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

(7) The servicing agreement shall provide that the obligation to pay the efficiency charge shall remain associated with the meter at the customer property on which the efficiency improvement is located until the authority is fully repaid.

(8) The servicing agreement may specify, consistent with paragraph (4) of subdivision (d), that the timely and complete payment of all efficiency charges by a customer that has agreed to pay an efficiency charge shall be a condition of receiving service from the publicly owned utility, and the local agency or its publicly owned utility shall use its established collection policies and all rights and remedies provided by law to enforce payment and collection of the efficiency charge.

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

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

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

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

(4) (A) The authority may, pursuant to Section 5451, pledge one or more efficiency charges as security for the bonds issued pursuant to this section. Revenue from an efficiency charge shall be deemed special revenue of the authority and shall not

constitute revenue of the local agency or its publicly owned utility for any purpose, including, but not limited to, any dedication, commitment, or pledge of revenue, receipts, or other income that the local agency or its publicly owned utility has made or will make for the security of any of its obligations.

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

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

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

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

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

(i) An authority administering an efficiency improvement financing program shall compile and publicly post an annual report that includes all of the following:

(1) The number of written agreements entered into.

(2) The estimated and average water efficiency savings achieved.

(3) The amount of upfront financing provided by the authority.

(4) The amount of revenue collected by the authority.

(5) A copy of the authority's report submitted to the California Debt and Investment Advisory Commission pursuant to Section 8855.

(6) A copy or summary of the authority's process for accepting complaints about the program from customers and local agencies or their publicly owned utilities.

(7) A copy or summary of the authority's practices and procedures for overseeing contractors' performance and the marketing of the program.

(8) A copy or summary of the process for appealing determinations of fault for the failure of an efficiency improvement to the authority and the participating local agency or its publicly owned utility.

SEC. 6. 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 opportunities for water conservation in the nine-county San Francisco Bay Area and the County of Los Angeles.