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AB-1765 Marks-Roos Local Bond Pooling Act of 1985: rate reduction bonds: review. (2021-2022)

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Assembly Bill No. 1765

CHAPTER 322

An act to amend Section 6588.7 of the Government Code, relating to local government.

[Approved by Governor September 15, 2022. Filed with Secretary of State September 15, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1765, Nazarian. Marks-Roos Local Bond Pooling Act of 1985: rate reduction bonds: review.

Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes certain joint powers authorities to issue rate reduction bonds to finance utility projects, as provided. Existing law requires the California Pollution Control Financing Authority to review each issue of bonds and determine whether the issue is qualified for issuance, if certain requirements are met. Existing law exempts an issuance from the authority's review where certain determinations concerning the issuance are subject to review by a ratepayer advocate, or similar entity, on the relation of the public utility's actions to water or wastewater rates. Existing law authorizes the authority to establish procedures for the expeditious review of a proposed issuance, including the establishment of reasonable application fees to reimburse the authority.

This bill would additionally exempt an issuance from the authority's review when the issuance is subject to review by a ratepayer advocate, or similar entity, on the relation of the public utility's actions to electric rates. The bill would authorize the authority to charge additional, nonrefundable fees, as specified, incurred in retaining an independent financial advisor to review the application under circumstances involving the verification of all stated requirements.

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

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

SECTION 1. Section 6588.7 of the Government Code is amended to read:

6588.7. (a) An authority whose financing activities are limited to financing utility projects and projects for the use or benefit of public agencies providing water, wastewater, or electrical service may finance utility projects as provided in this section, including the issuance of rate reduction bonds and the imposition and adjustment of utility project charges.

(b) (1) A local agency that owns and operates a publicly owned utility may apply to an authority specified in subdivision (a) to finance costs of a utility project for the publicly owned utility with the proceeds of rate reduction bonds if at the time of application, bonds payable from revenues of the publicly owned utility are, or upon issuance would be, rated investment grade by a nationally recognized rating agency. In its application to an authority for the financing or refinancing, the local agency shall specify the utility project to be financed by the rate reduction bonds, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the rate reduction bonds.

(2) (A) In order to allow the state to review the issuance of rate reduction bonds, collect data, ensure transparency, and conduct an independent analysis of the effectiveness of the use of rate reduction bonds pursuant to this section, the California Pollution Control Financing Authority, as defined in Section 44504 of the Health and Safety Code, shall review each issue of bonds and shall determine whether the issue is qualified for issuance under the provisions of this section. The California Pollution Control Financing Authority shall determine that an issue of rate reduction bonds is qualified for issuance under this section, if the issuance satisfies all of the following:

(i) The issuance meets the criteria specified in paragraphs (1) to (3), inclusive, of subdivision (c), or, if the local agency elects to make a determination under paragraph (4) of subdivision (c), meets the criteria specified in paragraphs (1), (2), and (4) of subdivision (c).

(ii) The projected financing costs fall within the normal range of financing costs for comparable types of debt issuance.

(B) The authority shall determine that an issue of rate reduction bonds is qualified for issuance pursuant to subparagraph (A) solely on the basis of the submitted documentation referred to in subparagraph (A), and the determination shall not be conditional in any respect, including conditional on the submission or review of additional material after the determination.

(3) The California Pollution Control Financing Authority shall establish procedures for the expeditious review of a proposed issuance pursuant to this section, including, but not limited to, the establishment of reasonable application fees to reimburse the California Pollution Control Financing Authority for costs incurred in administering this section. The California Pollution Control Financing Authority may charge additional fees in an amount equal to the amount of any additional expenses incurred by the authority in retaining an independent financial advisor to review the application under circumstances involving the verification of all requirements of this section. Any fees for review and processing of the application shall be nonrefundable.

(4) The California Pollution Control Financing Authority shall provide an explanation in writing for any refusal to qualify a proposed issuance but may not alter or modify any term or condition related to the utility project property.

(5) The California Pollution Control Financing Authority shall take action on any completed application submitted to it pursuant to this section no later than the next meeting of the California Pollution Control Financing Authority that occurs after at least 60 days following receipt of the application.

(6) The review and qualification pursuant to this section may be concurrent with an authority's processing of an application for financing or refinancing so as to allow for the issuance of rate reduction bonds as quickly as feasible.

(7) Notwithstanding any other law, the California Pollution Control Financing Authority may adopt regulations relating to this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. For purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(8) (A) Annually, no later than March 31, the California Pollution Control Financing Authority shall submit to the Legislature, including to the relevant legislative policy committees having jurisdiction over energy and public utilities issues, a report of its activities pursuant to this section for the preceding calendar year ending December 31. The California Pollution Control Financing Authority shall require information from applicants to ensure that the necessary data is available to complete this report. The report may be submitted as a part of the report required pursuant to Section 44538 of the Health and Safety Code. The report shall include all of the following:

(i) A listing of applications received.

(ii) A listing of proposed issuances qualified under the provisions of this section.

(iii) A report of bonds sold, the interest rates on the bonds, whether the bond sales were pursuant to public bid or were negotiated, and any rating given the bonds by a nationally recognized securities rating organization.

(iv) A specification of proposed issuances qualified but not yet issued.

(v) A comparison of the interest rates and transactional costs on issuances qualified under this section with interest rates on comparable types of debt issuance occurring at or near the same time as the issuances.

(B) A report to be submitted pursuant to this paragraph shall be submitted in compliance with Section 9795.

(9) The provisions of paragraphs (2) to (8), inclusive, shall not apply to the issuance of rate reduction bonds for a publicly owned utility if the determinations of the local agency pursuant to subdivision (c) are subject to review by a ratepayer advocate or similar entity whose function is to provide public independent analysis of a public utility's actions as they relate to water, wastewater, or electric rates.

(c) A local agency shall not apply to an authority for financing or refinancing of a utility project pursuant to this section unless the legislative body of the local agency has determined all of the following:

(1) The project to be financed or refinanced is a utility project.

(2) The local agency is electing to finance or refinance costs of the utility project pursuant to this section and the financing costs associated with the financing or refinancing are to be paid from utility project property, including the utility project charge for the rate reduction bonds issued for the utility project in accordance with this section.

(3) Based on information available to, and projections used by, the legislative body, the rates of the publicly owned utility plus the utility project charge resulting from the financing or refinancing of the utility project with rate reduction bonds are expected to be lower than the rates of the publicly owned utility if the utility project was financed or refinanced with bonds payable from revenues of the publicly owned utility.

(4) A local agency with a publicly owned utility having 500,000 or more retail customers may, in lieu of making the determination in paragraph (3), determine that the use of rate reduction bonds to finance or refinance utility projects provides substantial benefits to the publicly owned utility. These benefits may include, but are not limited to, lower interest rates on rate reduction bonds and more favorable capitalization and debt service coverage ratio treatment that results in gross or present value lifetime savings for the publicly owned utility.

(d) (1) Subject to the requirements of Article XIII D of the California Constitution, to the extent applicable, an authority financing the costs of a utility project or projects for a local agency's publicly owned utility with rate reduction bonds is authorized and directed to impose and collect a utility project charge with respect to the rate reduction bonds as provided in this section. The imposition of the utility project charge shall be made and evidenced by the adoption of a financing resolution by the governing body of the authority. Upon the issuance of rate reduction bonds, the financing resolution adopted in connection with the issuance of rate reduction bonds shall be irrevocable. The financing resolution with respect to financing or refinancing a utility project or projects with rate reduction bonds for a publicly owned utility shall include all of the following:

(A) The addition of a separate charge to the bill of each customer of the publicly owned utility in the class or classes of customers specified in the financing resolution.

(B) A description of the financial calculation, formula, or other method that the authority is to use to determine the utility project charge. The calculation, formula, or other method shall include a periodic adjustment method to the then current utility project charge, to be applied at least annually, that shall be used by the authority to correct for any overcollection or undercollection of financing costs from the utility project charge or any other adjustment necessary to ensure timely payment of the financing costs of the rate reduction bonds, including, but not limited to, the adjustment of the utility project charge to pay any debt service coverage requirement for the rate reduction bonds. The financial calculation, formula, or other method, including the periodic adjustment method, established in the financing resolution pursuant to this section, and the allocation of utility project charges to, and among, customers of the publicly owned utility shall be decided solely by the governing body of the authority and shall be final and conclusive. In no event shall the periodic adjustment method established in the financing resolution be applied less frequently than required by the financing resolution and the documents relating to the applicable rate reduction bonds. Once the financial calculation, formula, or other method for determining the utility project charge, and the periodic adjustment method, have been established in the financing resolution and have become final and conclusive as provided in this section, they shall not be changed.

(C) Notwithstanding any other provision of this section, the imposition of a utility project charge shall comply with the requirements of Article XIII D of the California Constitution, to the extent applicable, including, but not limited to, the provision of a notice containing the initial amount of the proposed utility project charge and the periodic adjustment method by which the utility project charge amount could subsequently change.

(D) A requirement that the authority enter into a servicing agreement for the collection of the utility project charge with the local agency for which the financing is undertaken or its publicly owned utility and the local agency or its publicly owned utility shall act as a servicing agent for purposes of collecting the utility project charge as long as the servicing agreement remains in effect. Moneys collected by the local agency or its publicly owned utility, acting as a servicing agent on behalf of the authority, as a utility project charge 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 utility project charge and shall not lose their character as revenues of the authority by virtue of possession by the local agency or its publicly owned utility. The local agency or its publicly owned utility shall provide the authority with the information as to estimated sales of water, wastewater, or electrical services and any other information concerning the publicly owned utility required by the authority in connection with the initial establishment and the adjustment of the utility project charge.

(2) The determination of the legislative body of the local agency that a project to be financed with rate reduction bonds is a utility project shall be final and conclusive and the rate reduction bonds issued to finance the utility project and the utility project charge imposed relating to the rate reduction bonds shall be valid and enforceable in accordance with the terms of the financing resolution and the documents relating to the rate reduction bonds. The authority shall require, in its financing resolution with respect to a utility project charge, that as long as a customer in the class or classes of customers specified in the financing resolution receive water or electricity or discharge wastewater through the facilities of the publicly owned utility, the customer shall pay the utility project charge regardless of whether or not the customer has an agreement to purchase water or electricity or discharge wastewater from a person or entity other than the publicly owned utility. The utility project charge shall be a nonbypassable charge to all customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of adoption of the financing resolution and all future customers in that class or classes. If a customer of the publicly owned utility that is subject to a utility project charge enters into an agreement to purchase water or electricity or discharge wastewater from a person or entity other than the publicly owned utility, the customer shall remain liable for the payment of its share of the utility project charge as if it had not entered into the agreement. The liability may be discharged by the continued payment of its share of the utility project charge as it accrues or by a one-time payment, as determined by the authority. All provisions of a financing resolution adopted pursuant to this subdivision shall be binding on the authority.

(3) The timely and complete payment of all utility project charges by a person liable for the charges shall be a condition of receiving water, wastewater, or electrical service, as applicable, from the publicly owned utility of the local agency and each of the local agencies and their publicly owned utilities is authorized to use its established collection policies and all rights and remedies provided by law to enforce payment and collection of the utility project charge. In no event shall a person liable for a utility project charge be entitled or authorized to withhold payment, in whole or in part, of the utility project charge for any reason.

(4) The authority shall determine whether adjustments to the utility project charge relating to rate reduction bonds are required upon the issuance of the rate reduction bonds and at least annually, and at additional intervals as may be provided for in the financing resolution or the documents relating to the rate reduction bonds. Each adjustment shall be made and put into effect in accordance with the financial calculation, formula, or other method that the authority is to use to determine the utility project charge pursuant to the financing resolution expeditiously after the authority's determination that the adjustment is required.

(5) All revenues with respect to utility project property related to rate reduction bonds, including payments of the utility project charge, shall be applied first to the payment of the financing costs of the related rate reduction bonds then due, including the funding of reserves for the rate reduction bonds, with any excess being applied as determined by the authority for the benefit of the utility for which the rate reduction bonds were issued.

(6) The authority shall be obligated to impose and collect the utility project charge relating to rate reduction bonds in amounts, based on estimates of water or electricity usage or wastewater discharge subject to the utility project charge, sufficient to pay on a timely basis the financing costs associated with the rate reduction bonds when due. The pledge of a utility project charge to secure the payment of rate reduction bonds shall be irrevocable, and the State of California, the authority, or any limited liability company acting pursuant to subdivision (j) shall not reduce, impair, or otherwise adjust the utility project charge, except that the authority shall implement the periodic adjustments to the utility project charge relating to rate reduction bonds as required by the applicable financing resolution and the documents relating to the rate reduction bonds. Revenue from a utility project 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, without limitation, 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.

(7) A utility project charge shall constitute utility project property when, and to the extent that, a financing resolution authorizing the utility project charge has become effective in accordance with its terms, and the utility project property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this section for the period, and to the extent, provided in the financing resolution, but in any event until all financing costs with respect to the related rate reduction bonds are paid in full, including all arrearages thereon.

(8) Utility project property shall constitute a current property right notwithstanding that the value of the property right will depend on consumers using water, wastewater, or electrical services or, in those instances where consumers are customers of the publicly owned utility, the publicly owned utility performing certain services.

(9) If a local agency for which rate reduction bonds have been issued and remain outstanding ceases to operate a water, wastewater, or electric 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 to the entity providing water, wastewater, or electrical services in lieu of the local agency and the entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this section and the servicing agreement with the local agency while the rate reduction bonds remain outstanding.

(e) (1) Rate reduction bonds shall be within the parameters of the financing or refinancing set forth by the local agency pursuant to subdivision (b) in connection with the rate reduction bonds and the proceeds of the rate reduction bonds made available to the local agency or its publicly owned utility shall be used for the utility project identified in the application for financing or refinancing of the utility project or projects pursuant to subdivision (b).

(2) An authority shall authorize the issuance of rate reduction bonds by a resolution of its governing body. An authority issuing rate reduction bonds shall include in its preliminary notice and final report for the rate reduction bonds submitted to the California Debt and Investment Advisory Commission pursuant to Section 8855 a statement that the rate reduction bonds are being issued pursuant to this section. An authority issuing rate reduction bonds shall include in its final report for the rate reduction bonds submitted to the California Debt and Investment Advisory Commission pursuant to Section 8855 the estimated savings or local agency benefit, if applicable pursuant to paragraph (4) of subdivision (c), realized by issuing the rate reduction bonds rather than bonds payable from the revenues of the publicly owned utility for whose benefit the rate reduction bonds were issued. Rate reduction bonds shall be nonrecourse to the credit or any assets of the local agency and the publicly owned utility for which the utility project is financed and shall be payable from, and secured by a pledge of, the utility project property relating to the rate reduction bonds and any additional security or credit enhancement specified in the documents relating to the rate reduction bonds.

(3) An authority issuing rate reduction bonds shall pledge the utility project property relating to the rate reduction bonds as security for the payment of the rate reduction bonds, which pledge shall be made pursuant to, and with the effect set forth in Section 5451. All rights of an authority with respect to utility project property pledged as security for the payment of rate reduction bonds shall be for the benefit of, and enforceable by, the beneficiaries of the pledge to the extent provided in the documents relating to the rate reduction bonds.

(4) To the extent that any interest in utility project property is pledged as security for the payment of rate reduction bonds, the applicable local agency or its publicly owned utility shall contract with the authority, which contract shall be part of the utility project property, that the local agency or its publicly owned utility will continue to operate its publicly owned utility system that includes the financed utility project to provide service to its customers, will, as servicer, collect amounts in respect of the utility project charge for the benefit and account of the authority and the beneficiaries of the pledge of the utility project charge and will account for and remit these amounts to, or for the account of, the authority.

(5) Notwithstanding any other law, any requirement under this section, a financing resolution, any other resolution of the authority, or the provisions of the documents relating to rate reduction bonds to the effect that the authority shall take action with respect to the utility project property relating to the rate reduction bonds shall be binding upon the authority, as its governing body may be constituted from time to time, and the authority shall have no power or right to rescind, alter, or amend any resolution or document containing the requirement.

(6) Notwithstanding any other law, except as otherwise provided in this section with respect to adjustments to a utility project charge, the recovery of the financing costs for the rate reduction bonds from the utility project charge shall be irrevocable and the authority shall not have the power either by rescinding, altering, or amending the applicable financing resolution or otherwise, to revalue or revise for ratemaking purposes the financing costs of rate reduction bonds, determine that the financing costs for the related rate reduction bonds or the utility project charge is unjust or unreasonable, or in any way reduce or impair the value of utility project property that includes the utility project charge, either directly or indirectly; nor shall the amount of revenues arising with respect to the financing costs for the related rate reduction bonds or the utility project charge be subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the utility project charge are fully met and discharged. Except as otherwise provided in this section with respect to adjustments to a utility project charge, the State of California does hereby pledge and agree with the owners of rate reduction bonds that the State of California shall neither limit nor alter the financing costs or the utility project property, including the utility project charge, relating to the rate reduction bonds, or any rights in, to, or under, the utility project property until all financing costs with respect to the rate reduction bonds are fully met and discharged. This section does not preclude limitation or alteration if and when adequate provision shall be made by law for the protection of the owners. The authority is authorized to include this pledge and undertaking by the State of California in the governing documents for rate reduction bonds. Notwithstanding any other provision of this section, the authority shall make the adjustments to the utility project charge relating to rate reduction bonds provided by this section and the documents related to those rate reduction bonds as may be necessary to ensure timely payment of all financing costs with respect to the rate reduction bonds. The adjustments shall not impose the utility project charge upon classes of customers that were not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

(f) (1) Financing costs in connection with rate reduction bonds do not constitute a debt or liability of the State of California or of any political subdivision thereof, other than the special obligation of the authority, and do not constitute a pledge of the full faith and credit of the State of California or any of its political subdivisions, including the authority, but are payable solely from the funds provided therefor under this section and in the documents relating to the rate reduction bonds. This subdivision shall in no

way preclude guarantees or credit enhancements in connection with rate reduction bonds. All the rate reduction bonds shall contain on the face thereof a statement to the following effect:

Neither the full faith and credit nor the taxing power of the State of California or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond.

(2) The issuance of rate reduction bonds shall not directly, indirectly, or contingently obligate the State of California or any political subdivision thereof to levy or to pledge any form of taxation to pay the rate reduction bonds or to make any appropriation for their payment.

(g) (1) Utility project property shall constitute property for all purposes, including for contracts securing rate reduction bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(2) Subject to the terms of the pledge document with respect to a pledge of utility project property, the validity and relative priority of a pledge created or authorized under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

(h) (1) There shall exist a statutory lien on the utility project property relating to rate reduction bonds. Upon the effective date of the financing resolution relating to rate reduction bonds, there shall exist a first priority statutory lien on all utility project property, then existing or, thereafter arising, to secure the payment of the rate reduction bonds. This lien shall arise pursuant to law by operation of this section automatically without any action on the part of the authority, the local agency or its publicly owned utility, or any other person. This lien shall secure the payment of all financing costs, then existing or subsequently arising, to the holders of the rate reduction bonds, the trustee or representative for the holders of the rate reduction bonds, and any other entity specified in the financing resolution or the documents relating to the rate reduction bonds. This lien shall attach to the utility project property regardless of who shall own, or shall subsequently be determined to own, the utility project property including any local agency or its publicly owned utility, the authority, or any other person. This lien shall be valid and enforceable against the owner of the utility project property and all third parties upon the effectiveness of the financing resolution without any further public notice.

(2) The statutory lien on utility project property created by this section is a continuously perfected lien on all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Utility project property shall constitute property for all purposes, including for contracts securing rate reduction bonds, whether or not the revenues or proceeds arising with respect thereto have accrued.

(3) In addition, the authority may require, in a financing resolution creating utility project property, that, in the event of default by the local agency or its publicly owned utility, in payment of revenues arising with respect to the utility project property, any court in the state, upon the application by the beneficiaries of the statutory lien, 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 utility project property.

(i) Notwithstanding any other law, an authority or a limited liability company acting pursuant to subdivision (j) that has financed a utility project through the issuance of rate reduction bonds is not authorized, and no governmental officer or organization shall be empowered to authorize the authority, to become a debtor in a case under the United States Bankruptcy Code (11 U.S.C. Sec. 101 et seq.) or to become the subject of any similar case or proceeding under any other law, whether federal or State of California, as long as any payment obligation from utility project property remains with respect to the rate reduction bonds.

(j) An authority may elect to implement a financing of a utility project pursuant to this section by forming a single member limited liability company and by authorizing the company to adopt the financing resolution. The authority may issue rate reduction bonds payable from, and secured by a pledge of, amounts paid by the company to the authority from the applicable utility project property pursuant to an agreement. The provisions of subdivisions (g) and (h) shall apply to and be the exclusive method of perfecting a pledge of utility project property by the company securing the payment of financing costs under any agreement of the company in connection with the issuance of rate reduction bonds. Reference to the authority in this section and in all related defined terms shall mean or include the company as necessary to implement this subdivision.

(k) After December 31, 2036, the authority to issue rate reduction bonds under this section terminates.