

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Derek Evans, Clerk, Public Utilities Revenue Bond Oversight Committee

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee *fw*

DATE: May 13, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Mayor Lee:

**File No. 160471**

**Ordinance authorizing the issuance and sale of tax-exempt or taxable Wastewater Revenue Bonds and other forms of indebtedness by the San Francisco Public Utilities Commission (Commission) in an aggregate principal amount not to exceed \$1,112,601,280 to finance the costs of various capital wastewater projects benefitting the Wastewater Enterprise pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; authorizing the issuance of Wastewater Revenue Refunding Bonds; declaring the Official Intent of the Commission to Reimburse Itself with one or more issues of tax-exempt or taxable bonds or other forms of indebtedness; and ratifying previous actions taken in connection therewith, as defined herein.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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1 [Public Utilities Commission - Issuance Wastewater Revenue Bonds - Not to Exceed  
2 \$1,112,601,280]

3 **Ordinance authorizing the issuance and sale of tax-exempt or taxable Wastewater**  
4 **Revenue Bonds and other forms of indebtedness by the San Francisco Public Utilities**  
5 **Commission (Commission) in an aggregate principal amount not to exceed**  
6 **\$1,112,601,280 to finance the costs of various capital wastewater projects benefitting**  
7 **the Wastewater Enterprise pursuant to amendments to the Charter of the City and**  
8 **County of San Francisco enacted by the voters on November 5, 2002, as Proposition E;**  
9 **authorizing the issuance of Wastewater Revenue Refunding Bonds; declaring the**  
10 **Official Intent of the Commission to Reimburse Itself with one or more issues of tax-**  
11 **exempt or taxable bonds or other forms of indebtedness; and ratifying previous**  
12 **actions taken in connection therewith, as defined herein.**

13 NOTE: Additions are single-underline italics Times New Roman;  
14 deletions are ~~strike-through italics Times New Roman~~.  
15 Board amendment additions are double-underlined;  
16 Board amendment deletions are ~~strikethrough normal~~.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings. The Board of Supervisors (the "Board") of the City hereby finds  
18 and declares as follows:

19 A. On November 5, 2002, the voters of the City and County of San Francisco (the  
20 "City") approved Proposition E ("Proposition E"), which among other things, authorized the  
21 San Francisco Public Utilities Commission (the "Commission") to issue revenue bonds,  
22 including notes, commercial paper or other forms of indebtedness, when authorized by  
23 ordinance approved by a two-thirds vote of the Board of Supervisors, for the purpose of  
24 reconstructing, replacing, expanding, repairing or improving water facilities or clean water  
25

1 facilities or combinations of water and clean water facilities under the jurisdiction of the  
2 Commission; and

3 B. The Commission adopted the Indenture dated as of January 1, 2003, as further  
4 amended and supplemented from time to time (the "Indenture"), between the Commission and  
5 U. S. Bank National Association and in connection therewith, has from time to time issued  
6 revenue bonds to finance projects benefitting the Wastewater Enterprise; and

7 C. By Resolution 16-0035 adopted by the Commission on February 9, 2016 (the  
8 "Commission Resolution") the Commission has determined to issue Wastewater Revenue  
9 Bonds (the "Wastewater Revenue Bonds") and other forms of indebtedness (including SRF  
10 Loans, as described below) to finance the costs of various capital wastewater projects  
11 benefitting the Wastewater Enterprise (the "Capital Improvement Projects" such projects  
12 being more fully described in the Commission Resolution), pursuant to Proposition E, and has  
13 formally requested this Board to authorize the issuance and sale of Wastewater Revenue  
14 Bonds for such purposes, such Commission Resolution being on file with the Clerk of the  
15 Board in File No. \_\_\_\_\_, which is hereby declared to be a part of this Ordinance as if set  
16 forth fully herein; and

17 D. In order to finance the costs of the Capital Improvement Projects, the Board now  
18 desires to authorize the issuance and sale of Wastewater Revenue Bonds and other forms of  
19 indebtedness for such purposes, including obtaining State Revolving Fund Loans and/or  
20 grants from the State Water Resources Control Board (collectively "SRF Loans"); and

21 E. The Commission has paid, beginning no earlier than 60 days prior to the  
22 adoption of this Ordinance and will pay, on and after the date hereof, certain expenditures (the  
23 "Expenditures") in connection with the acquisition, construction and/or equipping of the Capital  
24 Improvement Projects, and



1 F. This Board is concurrently considering with this Ordinance a Capital  
2 Improvement Program related supplemental appropriations Ordinance totaling  
3 \$1,215,201,280 for fiscal years ending 2017 and 2018, such amount being inclusive of the  
4 Wastewater Revenue Bonds and other forms of indebtedness (including SRF Loans).

5 G. This Board, on behalf of the Commission, adopts this Ordinance as official  
6 action of the Commission in order to comply with Treasury Regulation §1.150-2 and any other  
7 regulations of the Internal Revenue Service relating to the qualification for reimbursement of  
8 Commission expenditures incurred prior to the date of issue of the Wastewater Revenue  
9 Bonds, and

10 Section 2. Authorization to Issue Wastewater Revenue Bonds and other forms of  
11 indebtedness. The Board hereby authorizes the issuance and sale of Wastewater Revenue  
12 Bonds in one or more series from time to time by the Commission pursuant to Proposition E  
13 and in accordance with the Commission Resolution, and the execution and delivery of SRF  
14 Loan agreements, in an aggregate principal amount not to exceed \$1,112,601,280 (inclusive  
15 of financing costs), at a maximum rate or rates of interest of not to exceed twelve percent  
16 (12%) per annum to finance a portion of the costs of the design, acquisition and construction  
17 of the Capital Improvement Projects. Without limiting the foregoing, the Commission shall  
18 also be authorized to enter into agreements to obtain State Revolving Fund Loans and/or  
19 grants (collectively "SRF Loans") from the State Water Resources Control Board on such  
20 terms as the Commission may deem advantageous. The Commission is hereby authorized to  
21 determine the timing, amount and manner of sale (i.e., competitive or negotiated) of each  
22 series of Wastewater Revenue Bonds or the delivery of other forms of indebtedness (including  
23 SRF Loans) pursuant to this authorization; provided however, the Commission's authorization  
24 to issue Wastewater Revenue Bonds or incur other forms of indebtedness (including SRF  
25 Loans) is subject to approval by the Commission of the form of substantially final offering

1 document related to such Bonds (if any) and the approval of any related agreements,  
2 financing documents and the filing with its Board and the Clerk of the Board any certifications  
3 required by Proposition E prior to the issuance of any bonds herein authorized.  
4

5 Section 3. Authorization to Issue Wastewater Revenue Refunding Bonds. The Board  
6 further authorizes and approves the issuance by the Commission of Wastewater Revenue  
7 Refunding Bonds and other forms of indebtedness (including SRF Loans) (the "Refunding  
8 Bonds") to refund any outstanding obligations of the Wastewater Enterprise, without limitation  
9 as to principal amount, in one or more series on one or more dates, at a maximum interest  
10 rate or rates of interest not to exceed twelve percent (12%) per annum, provided that each  
11 such Refunding Bond issue or obligation is permitted under the applicable policies and  
12 procedures of the City and authorized by either Section 9.109 of the Charter or Proposition E  
13 of 2002 (including related ordinances and resolutions of the Board). The Refunding Bonds  
14 may be issued as tax-exempt or taxable bonds, or any combination thereof. Refunding Bonds  
15 authorized hereunder shall be subject to the further following conditions, that: (i) three percent  
16 (3%) net present value debt service savings or greater is achieved to ensure ratepayer  
17 savings; (ii) this authorization is subject to a 2-year term through June 30, 2018, at which time  
18 this Board may consider an extension; principal payments and term may be adjusted, where  
19 permitted under federal and state tax law, only if and when the underlying capital asset funded  
20 through said refunded bonds has a useful life not in excess of any limit permitted under  
21 federal and state tax law than the refunded term; and (iii) the Commission shall within 30 days  
22 of any executed refunding transaction provide a savings report prepared by its financial  
23 advisors (that reflects at least a three percent (3%) net present value debt service savings) to  
24 the Board, together with a copy of the final Official Statement with respect to such series of  
25 Refunding Bonds.



1           Section 4. Declaration of Official Intent. The Board, on behalf of the Commission,  
2 hereby declares the official intent of the Commission to reimburse the Commission with  
3 proceeds of the Wastewater Revenue Bonds or other forms of indebtedness (including SRF  
4 Loans) for the Expenditures with respect to the Capital Improvement Projects made on and  
5 after a date that is no more than 60 days prior to the adoption of this Ordinance. The  
6 Commission reasonably expects on the date hereof that it will reimburse the Expenditures  
7 with proceeds of the Wastewater Revenue Bonds or other forms of indebtedness (including  
8 SRF Loans). Each said Expenditure was and will be either (A) of a type properly chargeable  
9 to a capital account under general federal income tax principles (determined in each case as  
10 of the date of the Expenditure), (B) a cost of issuance with respect to the Wastewater  
11 Revenue Bonds or other forms of indebtedness (including SRF Loans), (C) a nonrecurring  
12 item that is not customarily payable from current revenues, or (D) a grant to pay a party that is  
13 not related to or an agent of the issuer so long as such grant does not impose any obligation  
14 or condition (directly or indirectly) to repay any amount to or for the benefit of the Commission.  
15 The maximum principal amount of the Wastewater Revenue Bonds or other forms of  
16 indebtedness (including SRF Loans) to be issued for the Capital Improvement Projects is  
17 \$1,112,601,280 (inclusive of financing costs).

18           The Commission will make a reimbursement allocation, which is a written allocation by  
19 the Issuer that evidences the Commission's use of proceeds of the Wastewater Revenue  
20 Bonds or other forms of indebtedness (including SRF Loans) to reimburse an Expenditure, no  
21 later than 18 months after the later of the date on which the Expenditure is paid or the  
22 component of the Capital Improvement Projects is placed in service or abandoned, but in no  
23 event more than three years after the date on which the Expenditure is paid. The  
24 Commission recognizes that exceptions are available for certain "preliminary expenditures,"  
25 costs of issuance, certain *de minimis* amounts, expenditures by "small issuers" (based on the

1 year of issuance and not the year of expenditure) and expenditures for construction projects  
2 of at least 5 years.

3 Section 5. General Authority. The Controller, Treasurer, the City Attorney and other  
4 officers of the City and their duly authorized deputies and agents are hereby authorized and  
5 directed, jointly and severally, to take such actions and to execute and deliver such  
6 certificates, agreements, requests or other documents, as they may deem necessary or  
7 desirable to facilitate the issuance, sale and delivery of the Wastewater Revenue Bonds,  
8 Refunding Bonds , to obtain bond insurance or other credit enhancements with respect to  
9 such obligations, to obtain surety, to obtain title and other insurance with respect to the  
10 facilities to be financed, and otherwise to carry out the provisions of this Ordinance. The  
11 Commission is hereby directed to provide the final form to the Clerk of the Board of any  
12 disclosure document prepared in connection with the execution of any Wastewater Revenue  
13 Bonds or Refunding Bonds, and the final executed Installment Sale Agreement or other  
14 document reflecting the incurrence of an SRF Loan, within 30 days of the closing of such  
15 transactions.

16 Section 6. Ratification of Prior Actions. All actions authorized and directed by this  
17 Ordinance in connection with the issuance of the Wastewater Revenue Bonds or other forms  
18 of indebtedness (including SRF Loans), Refunding Bonds, and heretofore taken are hereby  
19 ratified, approved and confirmed by this Board.

20 Section 7. File Documents. All documents referred to as on file with the Clerk of the  
21 Board are in File Nos. \_\_\_\_\_.

1           Section 8. Effective Date. Pursuant to Charter Section 8B.124, this Ordinance shall  
2 take effect thirty (30) days after its adoption.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By:   
7       MARK D. BLAKE  
8       Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Public Utilities Commission - Issuance Wastewater Revenue Bonds - Not to Exceed \$1,112,601,280]

**Ordinance authorizing the issuance and sale of tax-exempt or taxable Wastewater Revenue Bonds and other forms of indebtedness by the San Francisco Public Utilities Commission (Commission) in an aggregate principal amount not to exceed \$1,112,601,280 to finance the costs of various capital wastewater projects benefitting the Wastewater Enterprise pursuant to amendments to the Charter of the City and County of San Francisco enacted by the voters on November 5, 2002, as Proposition E; authorizing the issuance of Wastewater Revenue Refunding Bonds; declaring the Official Intent of the Commission to Reimburse Itself with one or more issues of tax-exempt or taxable bonds or other forms of indebtedness; and ratifying previous actions taken in connection therewith, as defined herein.**

Existing Law

This is new legislation.

Background Information

On November 5, 2002, the voters of the City and County of San Francisco approved Proposition E ("Proposition E") which authorized the Commission to issue revenue bonds, including notes, commercial paper or other forms of indebtedness, when authorized by ordinance approved by a two-thirds vote of the Board of Supervisors, for the purpose of reconstructing, replacing, expanding, repairing or improving water facilities or clean water facilities or combinations of water and clean water facilities under the jurisdiction of the Commission.

The proposed Ordinance authorizes the Commission to issue and sell its Wastewater Enterprise Revenue Bonds in an amount not greater than \$1,112,601,280 at a maximum rate of interest of not in excess of twelve percent (12%) payable from and secured by Water Enterprise Revenues under the terms of Proposition E. The Bonds will be issued under an Indenture dated as of January 1, 2003, as further amended and supplemented from time to time, between the Commission and U. S. Bank National Association. Bonds can be issued for any purposes of the Wastewater Enterprise, including, without limitation, the financing or refinancing of capital additions, improvements, repairs and replacements to the Wastewater Enterprise.

The Commission is authorized to determine the timing, amount and manner of sale (i.e., competitive or negotiated) of each series of Wastewater Enterprise Revenue Bonds or the delivery of other forms of indebtedness (including New Clean Renewable Energy Bonds and Qualified Energy Conservation Bonds) pursuant to the proposed Ordinance; but the Commission's authority to issue Wastewater Enterprise Revenue Bonds or incur other forms of indebtedness is subject to further approval by the Commission of the form of substantially

FILE NO. 160471

final offering document related to such bonds (if any) and the approval of any related financing documents.

Finally the Ordinance provides for the issuance of Refunding Bonds under Charter Section 9.109 without returning to the Board for approval provided that the Commission achieves at least 3% present value debt service savings. The authority to issue Refunding Bonds ends June 30, 2018.