

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

RULES COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Yee, Chair
Rules Committee

FROM: Linda Wong, Committee Clerk

DATE: November 25, 2013

SUBJECT: **COMMITTEE REPORT**

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting on Tuesday, November 26, 2013. This item was acted upon at the Rules Committee Meeting on Thursday, November 21, 2013, at 1:30 p.m., by the vote indicated.

Item No. 30

File 131088

[Appointment, Director of the San Francisco Bay Area Regional Water System Financing Authority - Harlan L. Kelly, Jr.]

Resolution appointing Harlan L. Kelly, Jr., for a four-year term, to commence upon Board of Supervisors' approval, as a Director of the San Francisco Bay Area Regional Water System Financing Authority.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Yee - Aye
Supervisor Breed - Aye
Supervisor Cohen - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
John Givner, Deputy City Attorney
Rick Caldeira, Legislative Deputy Director

File No. 131088

Committee Item No. 8

Board Item No. 30

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date November 21, 2013

Board of Supervisors Meeting

Date November 26, 2013

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Senate Bill No. 1870</u> |
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Completed by: Linda Wong Date November 18, 2013

Completed by: L.W. Date November 25, 2013

1 [Appointment, Director of the San Francisco Bay Area Regional Water System Financing
2 Authority - Harlan L. Kelly, Jr.]

3 **Resolution appointing Harlan L. Kelly, Jr., for a four-year term, to commence upon**
4 **Board of Supervisors' approval, as a Director of the San Francisco Bay Area Regional**
5 **Water System Financing Authority.**

6
7 WHEREAS, The State Legislature has created the San Francisco Bay Area Regional
8 Water System Financing Authority (SFBARWSFA) for the purpose of enabling the City and
9 County of San Francisco, and the entities in Alameda, San Mateo, and Santa Clara Counties
10 that rely on the San Francisco regional water system, acting collectively, to secure funds
11 necessary to implement the prompt construction and reconstruction of the San Francisco
12 regional water system, and to make those funds available to the City and County of
13 San Francisco for projects designed and intended in substantial part to improve the reliability
14 of the regional water system, including but not limited to, strengthening the system's ability to
15 withstand seismic events; and,

16 WHEREAS, The State legislation provides that the Board of Supervisors shall appoint
17 a member to the Board of Directors of the SFBARWSA for a four-year term; and,

18 WHEREAS, The voters of the City and County of San Francisco have complied with all
19 requirements to make the appointment a voting member of the Board of Directors by
20 approving Propositions E and A at the November, 2002, election; now, therefore, be it

21 **RESOLVED**, That the Board of Supervisors does hereby appoint Harlan L. Kelly, Jr. to
22 the Board of Directors of SFBARWSA, to serve a four-year term, to commence upon approval
23 of this Resolution.

Harlan L. Kelly, Jr. Bio



Harlan L. Kelly, Jr., General Manager of the San Francisco Public Utilities Commission

Harlan L. Kelly, Jr. previously served as SFPUC's Assistant General Manager, Infrastructure, and was responsible for implementing over \$10 billion in capital programs for water, sewer and power, including the \$4.6 billion Water System Improvement Program, the \$6.9 billion Sewer System Improvement Program, and the \$191 million SFPUC Headquarters and Administration Building at 525 Golden Gate Avenue.

His civil engineering career spans nearly three decades and includes his tenure as the City Engineer of San Francisco. At San Francisco Department of Public Works, he held functional and project management positions, including Acting General Manager, and Deputy Director of Engineering, during which he managed complex capital improvement programs that included the rebuild and seismic retrofit of City Hall, and expansions of convention, hospital, county jail, and public arts facilities.

Senate Bill No. 1870

CHAPTER 849

An act to add Division 31.7 (commencing with Section 81600) to the Water Code, relating to water.

[Approved by Governor September 24, 2002. Filed with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1870, Speier. San Francisco Bay Area Regional Water System Financing Authority.

(1) Under existing law, the City and County of San Francisco (San Francisco) operates the Hetch Hetchy Project as a regional water delivery system, supplying water to persons and entities in San Francisco and the Counties of Alameda, San Mateo, and Santa Clara.

This bill would enact the San Francisco Bay Area Regional Water System Financing Authority Act. The bill would create the San Francisco Bay Area Regional Water System Financing Authority, consisting of San Francisco, certain public entities that purchase water from San Francisco, Stanford University, and the California Water Service Company.

The bill would require the governing body of each member public entity of the authority, other than San Francisco, and the Boards of Supervisors of San Mateo and Santa Clara Counties, to appoint one voting member to the board, and would require the governing body of San Francisco to appoint one nonvoting member, to a 4-year term on the board. The bill would require San Francisco to become a voting member of the authority if a certain requirement is met. The bill would allow each director who is not an officer or employee of an appointing entity to receive compensation prescribed by the board, and would provide for the reimbursement of reasonable expenses incurred in the performance of duties. The bill would grant each voting director one vote on any ordinance, resolution, or motion.

The bill would authorize the authority to issue revenue bonds until December 31, 2020, pursuant to certain procedures, to improve the reliability of San Francisco's regional water system. The bill would require the bond proceeds to be made available upon terms and conditions that include San Francisco's entering contracts with the authority that, among other things, require San Francisco, on behalf of the authority, to impose a surcharge to generate revenue to pay the debt service on the revenue bonds issued by the authority and the operating

expenses of the authority. The bill would require San Francisco to submit an annual report to the Joint Legislative Audit Committee describing the progress made on projects financed by the authority and on the implementation by the capital improvement program for the regional water system.

The bill would require the authority to dissolve upon the repayment of all revenue bonds issued by the authority and the satisfaction of all other debts and obligations of the authority.

The various requirements established by the bill for local public entities in connection with the formation and operation of the authority would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Division 31.7 (commencing with Section 81600) is added to the Water Code, to read:

DIVISION 31.7. SAN FRANCISCO BAY AREA REGIONAL
WATER SYSTEM FINANCING AUTHORITY

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

81600. This division shall be known and may be cited as the San Francisco Bay Area Regional Water System Financing Authority Act.

81601. The Legislature finds and declares all of the following:

(a) The City and County of San Francisco has acquired or constructed a system of reservoirs, pipelines and tunnels, and treatment plants that provides water to 2.4 million Californians who live in San Francisco and in neighboring communities in Alameda, San Mateo, and Santa Clara Counties.

(b) Over two-thirds of the Californians who rely on San Francisco's regional water system, approximately 1.6 million persons, live outside San Francisco. A substantial majority of industrial, commercial, institutional, and governmental users are also located in neighboring communities rather than in San Francisco itself.

(c) The reliability of this water infrastructure system is of vital importance to the health, welfare, safety, and economy of the region which it supplies.

(d) In turn, this region is of vital importance to the entire State of California, because of the resident industries, universities, and commercial enterprises that employ millions of Californians and generate billions of dollars in exports and tax revenues to the state.

(e) The regional water system is old, designed to outdated seismic safety standards, and either crosses or is located on, or adjacent to, three major active earthquake faults, the Calaveras Fault, the San Andreas Fault, and the Hayward Fault. Engineering investigations have disclosed that the system is at risk of catastrophic failure in a major earthquake. Many areas in all four counties now served, in the event of a major earthquake, face possible interruptions in their supplies of potable water for up to 30 days, and some areas could be without water for as long as 60 days.

(f) Interruptions in water supply of this magnitude and duration to a densely populated metropolitan region could be disastrous for public health and safety and for the regional and state economy. In addition, uncontrolled releases of water from pipelines, tunnels, and reservoirs could create severe flood damage and environmental harm to fish and wildlife habitat in the communities in which those facilities are located.

(g) Pursuant to the terms of the master water sales contract between the City and County of San Francisco and its wholesale customers, the retail water customers of the City and County of San Francisco provide the initial financing for the construction of improvements to the regional water system, and the wholesale customers do not pay for those improvements until those improvements are placed into service.

(h) Many separate cities, special districts, and public utilities are responsible for the distribution of water in portions of the bay area served, on a wholesale basis, by the San Francisco regional water supply system. The distribution of responsibility among many agencies impedes coordinated regional actions, including financing, to respond to the crisis.

(i) It is the intent of the Legislature to enable the City and County of San Francisco, and the entities in Alameda, San Mateo, and Santa Clara Counties that rely on the San Francisco regional water system, acting collectively, to secure funds necessary to implement the prompt construction and reconstruction of the San Francisco regional water system, and to make those funds available to the City and County of San Francisco for projects designed and intended in substantial part to improve the reliability of the regional water system, including, but not

limited to, strengthening the system's ability to withstand seismic events.

(j) It is not the intent of the Legislature to change the governance structure, operational control, or existing ownership of San Francisco's regional water system.

Article 2. Definitions

81602. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

81603. "Authority" means the San Francisco Bay Area Regional Water System Financing Authority.

81604. "Board" means the board of directors of the authority.

81606. "Master water sales contract" means the document entitled "Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County, and Alameda County," dated July 1, 1984.

81608. "Project" means a work and all of the activities related to, or necessary for, the acquisition, construction, operation, and maintenance of a work including, but not limited to, planning, design, financing, contracting, project management, and administration.

81608.5. "Public entities" means San Francisco and the public entities in the Counties of Alameda, San Mateo, and Santa Clara that purchase water from San Francisco pursuant to the master water sales contract, that include Alameda County Water District, City of Brisbane, City of Burlingame, Coastside County Water District, City of Daly City, City of East Palo Alto, Estero Municipal Improvement District, Guadalupe Valley Municipal Improvement District, City of Hayward, Town of Hillsborough, Los Trancos County Water District, City of Menlo Park, Mid-Peninsula Water District, City of Millbrae, City of Milpitas, City of Mountain View, North Coast County Water District, City of Palo Alto, Purissima Hills Water District, City of Redwood City, City of San Bruno, City of San Jose, City of Santa Clara, Skyline County Water District, City of Sunnyvale, and Westborough Water District.

81609. "Regional water system" means facilities for the storage, treatment, and transmission of water operated and maintained by San Francisco located in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo, and three terminal reservoirs in San Francisco.

81610. "San Francisco" means the City and County of San Francisco.

CHAPTER 2. CREATION OF AUTHORITY

81615. (a) The San Francisco Bay Area Regional Water System Financing Authority is hereby created.

(b) The members of the authority include the public entities identified in Section 81608.5, Stanford University, and the California Water Service Company.

CHAPTER 3. GOVERNMENT OF AUTHORITY

Article 1. Board of Directors

81628. The authority shall be governed by a board of directors.

81629. (a) The governing body of each member public entity, other than San Francisco, shall appoint one voting member to the board of the authority. Subject to Section 81673, the governing body of San Francisco shall appoint one nonvoting member to the board of the authority. Each director shall be a registered voter and reside within the boundaries of the member public entity whose governing board appoints him or her.

(b) For the purposes of subdivision (a), the governing body of a member public entity may appoint one of its own members to the board if the person otherwise meets the requirements of that subdivision.

(c) (1) The Board of Supervisors of San Mateo County shall appoint one voting member to the board who is a resident of San Mateo County, receives water from the California Water Service Company, and is not an officer or employee of the California Water Service Company.

(2) The Board of Supervisors of Santa Clara County shall appoint one voting member to the board who is a resident of Santa Clara County, receives water from Stanford University, and is not an officer or employee of Stanford University.

(d) If a person appointed pursuant to this section ceases to possess the qualifications for this office set forth in this section, the office shall become vacant and the vacancy shall be filled pursuant to subdivision (c) of Section 81631.

(e) No incompatibility of office shall result from an elected official serving on the board of the authority and on the governing board of a member public entity.

(f) The initial appointments shall be made not later than March 1, 2003.

81630. Each director, before entering upon the duties of his or her office, shall take the oath of office as provided for in the Constitution and laws of the state.

81631. (a) Each director shall serve for a term of four years.

(b) Notwithstanding subdivision (a), the directors initially appointed to the board shall determine, by lot, that one-half plus one of their number shall serve for four years and the remaining directors shall serve for two years. Thereafter, each appointing authority shall appoint a person to replace its respective director or may reappoint its director for an unlimited number of terms.

(c) A vacancy on the board shall be filled by the respective appointing authority not later than 90 days from the date of the occurrence of the vacancy.

81632. Each director who is not an officer or employee of an appointing entity may receive compensation in an amount prescribed by the board, not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board, not to exceed four meetings in any calendar month. In addition, each director may be reimbursed for actual, necessary, and reasonable expenses incurred in the performance of duties performed at the request of the board. The compensation of directors may be increased pursuant to Chapter 2 (commencing with Section 20200) of Division 10.

81633. A majority of the voting members of the board constitutes a quorum for the transaction of business. The board may act only by ordinance, resolution, or motion.

81634. The board shall hold its first meeting as soon as possible after the appointment of the initial directors. At its first meeting, and at its first meeting in January each year thereafter, the board shall elect a chairperson and a vice-chairperson from among its members.

81635. The board shall provide for the time and place of holding its regular meetings. All meetings of the board shall be called and held in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

81636. Each voting director has one vote on any ordinance, resolution, or motion before the board. Except as provided in Section 81653, the affirmative vote of a majority of all voting members of the board is necessary and sufficient to carry any motion, resolution, or ordinance.

81637. (a) On all ordinances and resolutions, the roll shall be called and ayes and noes recorded in the minutes of the proceedings of the board.

(b) Motions may be adopted by voice vote, except that the roll shall be called at the request of any director.

Article 2. Officers and Employees

81640. The board shall appoint a general manager, a financial officer, and a secretary. The board may establish other offices that may be necessary or convenient. The board shall appoint, and prescribe the duties, compensation, and terms and conditions of employment of, all officers.

81641. The board may employ other employees that the board determines are necessary or convenient and may delegate to the general manager the authority to employ or contract for the services of additional assistants or employees that the general manager determines to be necessary or convenient to operate the authority.

81642. The board may require, and establish the amount of, official bonds of officers and employees that are necessary for the protection of the funds and property of the authority.

81643. (a) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code applies to all officers and employees of the authority, except that a director may vote on a contract between the authority and the public entity that appointed him or her to the authority's board. Notwithstanding the membership on the board of the members appointed pursuant to subdivision (c) of Section 81629, a contract between the authority and the California Water Service Company or between the authority and Stanford University does not violate Section 1090 of the Government Code, nor is that contract void or voidable under Section 1092 of the Government Code.

(b) The authority is a "local government agency" for purposes of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

CHAPTER 4. POWERS AND FUNCTIONS OF AUTHORITY

Article 1. Powers

81645. The authority may exercise the powers that are expressly granted by this division, together with other powers that are reasonably implied from those expressed powers, and powers necessary and proper to carry out this division.

81646. (a) The authority may make contracts of any nature, including, but not limited to, contracts to employ labor, to indemnify and hold harmless, and to do all acts necessary or convenient for the full exercise of its powers.

(b) The authority may contract with any department or agency of the United States or the state, or with any public or private entity, or person.

81647. The authority may take by grant, purchase, bequest, devise, or lease and may hold, enjoy, lease, sell, or otherwise dispose of real and personal property of any kind, within or outside the boundaries of the authority.

81648. The authority may apply for and receive state and federal grants, loans, and other financial assistance.

81649. Nothing in this division changes the governance, control, or ownership of the regional water system.

Article 2. Financial Matters

81650. The board shall adopt a budget for each fiscal year.

81651. The accounts of the authority shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants with experience in auditing the accounts of local public entities.

81652. The authority may borrow money, incur indebtedness, and issue notes and bonds as provided in this division, or as otherwise authorized by law.

81653. (a) The authority may issue revenue bonds upon the adoption of an ordinance by a two-thirds vote of all of the voting members of the board, after notice and public hearing. For the purposes of issuing bonds pursuant to this subdivision, the authority need not conduct an election or otherwise secure the approval of the voters within the boundaries of the authority.

(b) The authority shall publish a notice in a newspaper of general circulation at least 15 days before the date of the meeting at which the issuance of revenue bonds is to be considered and shall provide an opportunity for public comments during that meeting and before the directors vote on the issuance of those bonds.

(c) The authority may not issue any revenue bonds after December 31, 2020.

81654. The authority may issue bonds for the purpose of refunding any revenue bonds of the authority, whether due or not due.

81655. The authority may issue negotiable promissory notes to acquire funds for any authority purpose. The notes shall have a term not to exceed five years. The total amount of notes issued pursuant to this section that may be outstanding at any one time may not exceed one million dollars (\$1,000,000).

81656. Bonds and other evidences of indebtedness issued by the authority are legal investments for all trust funds and for funds of all insurers, commercial and savings banks, trust companies, and state schools. Funds that may be invested in bonds of cities, cities and

counties, counties, school districts, or other local entities may also be invested in bonds and other evidences of indebtedness of the authority.

81658. (a) The proceeds of revenue bonds issued by the authority in accordance with this division may be used only on projects designed and intended in substantial part to improve the reliability of the regional water system, including, but not limited to, strengthening the system's ability to withstand seismic events.

(b) The proceeds shall be made available for the purposes set forth in subdivision (a) upon terms and conditions that the board determines necessary and appropriate. The terms and conditions shall include, but are not limited to, San Francisco's entering into one or more legally binding contracts with the authority that, at a minimum, do all of the following:

(1) Identify specific projects and proposed completion dates, subject to reasonable delays, for which the proceeds are to be used.

(2) Grant to the authority the authority to oversee and audit the disposition of proceeds to third party consultants, suppliers, and contractors.

(3) Grant to the authority the authority to determine the procedure by which contracts are awarded to consultants, suppliers, and contractors, consistent with the requirements of San Francisco's charter and ordinances.

(4) Grant to the authority the authority to inspect the construction of projects on which bond proceeds are expended.

(5) Require San Francisco to provide complete, accurate, and timely information to the authority on the expenditure of the bond proceeds.

(6) (A) (i) Require San Francisco, on behalf of the authority, to impose a surcharge on Stanford University, the California Water Service Company, and each of the public entities identified in Section 81608.5, other than San Francisco, in an amount that will generate sufficient revenue to pay the debt service on bonds issued by the authority and the operating expenses of the authority.

(ii) The surcharge shall be calculated annually by the authority as a uniform percentage of each entity's water bill.

(B) Require San Francisco to impose the surcharge described in clause (i) of subparagraph (A) on its retail water customers upon the occurrence of either of the following events:

(i) The voters of San Francisco approve a ballot measure authorizing retail water rates to be increased to pay for the retail water customer's share of the debt service on bonds issued by the authority and the operating expenses of the authority.

(ii) The restrictions on water rate increases set forth in "Proposition H," adopted by the voters of San Francisco on June 2, 1998, are not in effect.

(7) Require San Francisco to transmit the proceeds of the surcharge collected by San Francisco to the authority in the manner determined by the authority.

(8) Provide that, for the purposes of the master water sales contract, the revenue generated by the surcharge imposed pursuant to paragraph (6) does not constitute revenue of the regional water system or revenue as defined in San Francisco's indenture of trust relating to its revenue bonds.

(9) Provide that the facilities constructed with the proceeds of bonds issued by the authority shall not be included in the wholesale system rate base.

(10) Provide for the continuation of the surcharge imposed pursuant to paragraph (6) after the expiration of the master water sales contract in 2009.

(11) Provide that the ownership and operational control of improvements to the regional water system that are financed in any part by the authority shall remain with San Francisco, unless San Francisco agrees to a change in that ownership or operational control.

(c) San Francisco may require the authority to reimburse San Francisco for the direct and reasonable costs San Francisco actually incurs in implementing the requirements of paragraphs (6) and (7) of subdivision (b).

(d) The authority may not take any action that results in an affirmative or defacto pledge of any facilities of, or improvements to, the regional water system. The authority may not take any action that results in a pledge of revenue collected by San Francisco, other than revenue generated by the imposition of the surcharge described in paragraph (6) of subdivision (b).

Article 3. Controversies

81660. The authority may sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

81661. All claims for money or damages against the authority are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

81662. An action to determine the validity of any contract, bond, note, or other evidence of indebtedness may be brought pursuant to

Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

CHAPTER 5. MISCELLANEOUS

81670. Membership of any public entity in the authority does not affect the identity or legal existence, nor impair the powers, of that public entity.

81671. San Francisco shall provide the authority with prompt access to any public records requested by the authority unless those records are exempt from disclosure pursuant to Section 6254 of the Government Code. San Francisco may not withhold public records from the authority pursuant to a balancing of the public interest in accordance with Section 6255 of the Government Code.

81671.5. If the proceeds of bonds issued by the authority are made available for use on projects described in subdivision (a) of Section 81658, with the agreement and consent of San Francisco as required by subdivision (b) of Section 81658, San Francisco may not, for as long as those bonds are outstanding, sell, lease, or otherwise transfer title to, or control over, any facility used for the storage, transmission, or treatment of water to any private person or corporation.

81671.6. This division does not modify the provisions of the master water sales contract.

81671.7. The authority shall dissolve upon the repayment of all revenue bonds issued pursuant to this division and the satisfaction of all other debts and obligations of the authority.

81672. This division shall be liberally construed to carry out its purposes.

81673. San Francisco shall become a voting member of the authority if the surcharge is imposed on San Francisco's retail water customers in accordance with subparagraph (B) of paragraph (6) of subdivision (b) of Section 81658.

81674. (a) San Francisco shall submit a report to the Joint Legislative Audit Committee on or before September 1 of each year describing the progress made on projects financed by the authority and on the implementation of the capital improvement program for the regional water system.

(b) With regard to the projects financed by the authority, San Francisco shall include in the report, to the degree feasible, all of the following information:

- (1) The expenditure of the bond proceeds.
- (2) The expenditure on each project relative to budget and schedule.

(3) A description of the physical portion of each project completed compared to schedule.

(4) Significant revisions to a budget or schedule, including the reason for the change and the plan or effort taken to complete the project in accordance with the original budget and schedule.

(5) A description of potential service impacts of schedule delays and measures planned or being taken to reduce the risks of long-term service interruptions.

(6) The plan for work remaining, including projected schedule and cost for each project completion relative to original budget and schedule.

(c) With regard to the implementation of the regional water system's capital improvement program, San Francisco shall include in the report all of the following information:

(1) The status of current projects, without regard to the source of financing.

(2) Modifications to the capital improvement program relative to the capital improvement program adopted by the San Francisco Public Utilities Commission in May 2002, noting the significance of any change in schedule and project completion dates that decrease or increase the risk of long-term service interruptions to the customers of the regional water system.

(3) A description of measures planned or taken to reduce risk if a project is delayed.

SEC. 2. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. The Legislature finds and declares that the act adding this section, which is applicable only to the San Francisco Bay Area Regional Water System Financing Authority, is necessary because of the unique and special water supply problems prevailing in the geographic area that may be included in the boundaries of the authority. It is, therefore, hereby declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable to the authority and the enactment of this special law is necessary for the conservation, development, control, and use of water supplied to that geographic area for the public good.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service

mandated by this act, within the meaning of Section 17556 of the Government Code.

o



TEXT OF PROPOSED ORDINANCE PROPOSITION A

Resolution calling and providing for a special election to be held in the City and County of San Francisco for the purpose of submitting to the qualified voters of said City and County on November 5, 2002 a proposition for the issuance of revenue bonds and/or other forms of revenue financing by the Public Utilities Commission in a principal amount not to exceed \$1,628,000,000 to finance the acquisition and construction of improvements to the City's water system; making issuance of the bonds subject to the requirement that San Francisco Administrative Code Chapter 37 (Residential Rent Stabilization and Arbitration Ordinance) be amended to provide that (1) 50% of the costs resulting from increased water rates may be passed through from landlords to residential tenants where a unit is in compliance with any applicable laws requiring water conservation devices, and (2) tenants may file hardship applications with the Rent Board for relief from all or part of the cost passthrough and their affected landlords may utilize any available Public Utilities Commission low-income rate discount program or similar program for water bill reduction based on the tenants' hardship status; and for the possible imposition of a surcharge on retail water customers; complying with Article 83 of the San Francisco Administrative Code (First Source Hiring Program); and consolidating said special election with the General Municipal Election to be held on November 5, 2002; complying with Section 53410 of the California Government Code; finding the proposed project is in conformity with the priority policies of Planning Code Section 101.1(b) and the City's General Plan.

Note: Additions are single-underline italics.
Deletions are ~~strikethrough italics~~.

WHEREAS, The Board of Supervisors (the "Board") of the City and County of San Francisco (the "City") is authorized to provide for the issuance of revenue bonds subject to the revenue bond voter approval requirements of Section 9.107 of the City Charter; and,

WHEREAS, This Board hereby finds and determines that it is in the best interests of the City to submit to the qualified voters of the City, at an election to be held for that purpose on November 5, 2002, a proposition for the issuance of revenue bonds and/or other forms of revenue financing by the Public Utilities Commission, or any successor thereto, in the principal amount not to exceed \$1,628,000,000 to finance the acquisition and construction of improvements to the City's water system; now, therefore, be it,

RESOLVED, By the Board of the City, as follows:

Section 1. A special election is hereby called and ordered to be held by the City on Tuesday, November 5, 2002, at which election there shall

be submitted to the qualified voters of the City the following proposition:

WATER SYSTEM IMPROVEMENT REVENUE BONDS AND IMPOSITION OF SURCHARGE ON RETAIL WATER CUSTOMERS.

Shall the Public Utilities Commission, or any successor thereto, issue revenue bonds and/or other forms of revenue financing in a principal amount not to exceed \$1,628,000,000 (the "Bonds"), to finance the acquisition and construction of improvements to the City's water system; provided that the bonds may not be issued unless Administrative Code Chapter 37 (Residential Rent Stabilization and Arbitration Ordinance) is amended to provide that landlords may pass through to residential tenants 50% of the water bill costs attributable to water rate increases resulting from issuance of the Bonds where a unit is in compliance with any applicable laws requiring water conservation devices, tenants may file hardship applications with the Rent Board for relief from all or part of the cost passthrough and their affected landlords may utilize any available Public Utilities Commission low-income rate discount program or similar program for water bill reduction based on the tenants' hardship status; and further provided that the principal amount of the Bonds may be reduced if the City's Board of Supervisors determines the greatest economic value to San Francisco ratepayers will derive from having the San Francisco Bay Area Regional Water System Financing Authority finance, in whole or in part, those projects designed and intended in substantial part to improve the reliability of the City's regional water system, and if the Authority does finance such projects, shall the Public Utilities Commission be authorized to impose a surcharge on retail water rates for San Francisco customers' to pay the retail water customer's share of the debt service on bonds issued by the Authority and the operating expenses of the Authority?

For purposes of this Resolution and the proposition, the following terms shall have the following respective meanings: "improvements" shall mean improvements that will restore, rehabilitate and enhance the ability of the Public Utilities Commission to deliver water to users of the City's water system, such improvements to include, but are not limited to, water delivery and seismic improvements, water quality improvements, water supply improvements, and watershed and environmental improvements as set forth in the San Francisco Public Utilities Commission's Capital Improvement Program (the "CIP"), as such CIP may be amended from time to time; the "City's water system" shall mean the entire water supply, storage, treatment and distribution system and auxiliary and related facilities under the jurisdiction of the Public Utilities Commission, as such system may be modified and extended from time to time; "other forms

of revenue financing" shall include notes, debentures, commercial paper, variable rate demand notes and bonds, auction rate securities, lease revenue bonds, installment sale agreements and other forms of similar financial products which may be created from time to time; and the "City's regional water system" shall mean facilities for the storage, treatment, and transmission of water operated and maintained by San Francisco in the Counties of Tuolumne, Stanislaus, San Joaquin, Alameda, Santa Clara, San Mateo, and three terminal reservoirs in San Francisco.

Section 2. The Bonds are proposed to be issued to finance improvements to the enterprise consisting of the City's water system (the "Enterprise"). The City's water system and the proposed improvements thereto shall constitute a single, unified, integrated enterprise, and the revenue therefrom shall be pledged to the repayment of the Bonds. The Board hereby finds and determines that the City's water system is necessary and desirable to enable the City to exercise its municipal powers and functions, namely to furnish water supply, storage, treatment and distribution services for any present or future beneficial use of the City. The purpose for which the Bonds are proposed to be issued is to finance the acquisition and construction of improvements to the City's water system, including without limitation capitalized interest on the Bonds and any other expenses incidental thereto or connected therewith. The estimated cost of the improvements is \$1,628,000,000. Said estimated costs includes all costs and expenses incidental thereto or connected therewith, including, but not limited to, engineering, inspection, auditing, legal and fiscal agent fees, cost of the revenue bond election and costs of the issuance of the Bonds. The maximum principal amount of the Bonds proposed to be issued is \$1,628,000,000.

Section 3. The City shall comply with the provisions of Article 83 of the City's Administrative Code (First Source Hiring Program) in connection with the construction of the improvements to the City's water system. Proceeds of the Bonds, if authorized and issued, shall be used to pay actual and verifiable costs directly associated with the administrative costs of implementing and monitoring such contractors' compliance with the City's First Source Hiring Program.

Section 4. The Board hereby submits to the qualified voters of the City at such special election the proposition set forth in Section 1 of this Resolution, and designates and refers to such proposition in the form of ballot hereinafter prescribed for use at said election. The special election hereby called and ordered to be held shall be held and conducted and votes thereat received and canvassed, and the returns thereof made and the results thereof ascertained, deter-

(Continued on next page)

LEGAL TEXT OF PROPOSITION A (CONTINUED)

mined and declared as herein provided, and in all particulars not herein recited said election shall be held and the votes canvassed according to the applicable laws of the State of California and the Charter of the City and any regulations adopted pursuant thereto, providing for and governing elections in the City, and the polls for such election shall be and remain open during the time required by said laws and regulations.

Section ~~4~~5. The special election hereby called shall be and hereby is consolidated with the General Election of the City to be held Tuesday, November 5, 2002, and the voting precincts, polling places and officers of election for said General Election are hereby adopted, established, designated and named, respectively, as the voting precincts, polling places and officers of elections for such special election hereby called. The ballots to be used at the special election shall be the ballots to be used at the General Election.

Section ~~5~~6. In addition to any other matter required by law to be printed on the ballots, there shall appear thereon the proposition set forth in Section 1 of this Resolution.

Each voter to vote for the proposition hereby submitted and in favor of the issuance of the Bonds shall mark the ballot card in the location corresponding to a "YES" vote for the proposition, and to vote against the proposition and against the issuance of the Bonds shall mark the ballot card in the location corresponding to a "NO" vote for the proposition.

On absentee voter ballots, the voter to vote for the proposition and in favor of the issuance of the Bonds shall mark the ballot card in the location corresponding to a "YES" vote for the proposition, and to vote against said proposition and against the issuance of the Bonds shall mark the ballot card in the location corresponding to a "NO" vote for the proposition.

Section ~~6~~7. If at such special election it shall appear that a majority of all the voters voting on the proposition voted in favor of and approve the issuance of the Bonds for the purposes set forth in this Resolution, then such proposition shall have been authorized by the electors, and the Bonds may be issued and sold for the purpose set forth in this Resolution. The rate of interest on such bonds shall not exceed the maximum rate allowed by law, may be fixed or variable, and shall be payable at such times and in such manner as the Public Utilities Commission shall hereafter determine.

Section ~~7~~8. The Bonds, if authorized, shall be special, limited obligations of the City, payable exclusively from and secured by a lien on the revenues of the Enterprise and such other funds as may be legally available and pledged for such purpose. The Bonds shall not be secured by the taxing power of the City, and shall be issued under Section 9.107 of the Charter of the City and any state law or any procedure provided for by ordinance. The principal of and interest on the Bonds and any premiums upon the redemption thereof shall not constitute or evidence a debt of the City, nor a

legal or equitable pledge, charge, lien or encumbrance upon any of its property, or upon any of its income, receipts or revenues, except the revenues of the Enterprise and such other funds as may be legally available and pledged for such purpose.

Section ~~9~~9. This Resolution shall be published in accordance with any state law requirements, and such publication shall constitute notice of said election and no other notice of the election hereby called need be given.

Section ~~10~~10. The appropriate officers, employees, agents and representatives of the City are hereby authorized and directed to do everything necessary or desirable to the calling and holding of said special election, and to otherwise carry out the provisions of this Resolution.

Section ~~11~~11. Pursuant to Section 53410 of the California Government Code, the Bonds shall be for the specific purpose authorized herein and the proceeds of such Bonds shall be applied only to the project described herein. The Public Utilities Commission will comply with the requirements of Sections 53410(c) and 53410(d) of the California Government Code.

Section ~~12~~12. The Board having reviewed the proposed legislation, finds and declares that the proposed Bond special election is in conformity with the priority policies of Section 101.1(b) of the City Planning Code and with the City's General Plan, and hereby adopts the findings of the City Planning Department, as set forth in the General Plan Referral.

TEXT OF PROPOSED CHARTER AMENDMENT PROPOSITION E

Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco to amend the Charter of said City and County by creating a new Article VIII B by adding Sections 8B.120 through 8B.127, and deleting Section 9.111-1 and amending Section 16.103, to establish exclusive control of utilities; rate setting standards and methods; planning and reporting requirements; transfer of surplus funds between utilities; independence in contracting; revenue bonds or other financing methods.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of said City and County at an election to be held therein on November 5, 2002, a proposal to amend the Charter of said City and County by creating a new Article VIII B Sections 8B.120 through 8B.128, and deleting Section 9.111-1 and amending Section 16.103 to read as follows:

Note: Additions are single-underline italics.
Deletions are ~~strikethrough italics~~.

Section 1. The San Francisco Charter is hereby amended by creating a new Article VIII B: Public Utilities, to read as follows:

SEC. 8B.120. PREAMBLE

The Public Utilities Commission operates the Water, Clean Water and Power Utilities of the City and County of San Francisco. Hetch Hetchy Water and Power System is an irreplaceable asset of the people of the City and County of San Francisco. The system is fundamental to the economic vitality of San Francisco and the Bay Area. The voters of the City and County of San Francisco are committed to preserving and protecting the system as well as safeguarding the extraordinary quality of the water from Yosemite and local watersheds. The voters find that the protection, maintenance and repair of the system are among their highest priorities.

San Francisco faces an unprecedented challenge: to restore its aging water system to ensure a reliable Bay Area water supply through the next century. Repairs must be accomplished as quickly as possible to avoid system outages, which could be caused by natural disasters such as earthquake. In planning for its future needs and those of its wholesale customers, the City must promote water conservation and responsible stewardship of its natural resources. The effectiveness of the City's Public Utilities Commission, which has jurisdiction over the system, is essential to achieving these goals.

In addition, San Francisco must upgrade and repair its clean water system to meet changes in state and federal water quality requirements, and to ensure reliability of the system, parts of which are outdated, aged or seismically vulner-

able. The voters find that the operation of the clean water system should not unnecessarily place a disproportionate environmental burden on any community.

This measure is intended to enhance public confidence in the City's stewardship of public utilities by:

1. Clarifying that the Public Utilities Commission has exclusive control of water, clean water and power assets owned or maintained by the City and County of San Francisco;
2. Establishing rates sufficient to meet operation, maintenance and financial needs of the system based on costs and sound budgeting and auditing procedures to protect retail ratepayers and reduce interest paid on bonds and other indebtedness while ensuring public review;
3. Establishing the Public Utilities Commission as an independent revenue department not subject to undue financial pressures to contribute to the City's general fund;
4. Requiring the development of long term Capital, Financial and Strategic Plans to ensure that the utilities are operated efficiently in accordance with best public utility practice;
5. Authorizing the Public Utilities Commission to independently enter into certain contracts;
6. Giving the Public Utilities Commission the ability to finance needed capital improvements through revenue bonds or other financing methods consistent with the powers of other major public utilities in California; and
7. Promoting labor stability to ensure that the Capital Improvement Plan is completed expeditiously and efficiently.

SEC. 8B.121. PUBLIC UTILITIES COMMISSION

- (a) Notwithstanding Charter section 4.112, the Public Utilities Commission shall have exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City as well as the real, personal and financial assets, that are under the Commission's jurisdiction or assigned to the Commission under Section 4.132.
- (b) The Public Utilities Commission may enter into Joint Powers Agreements with other public entities in furtherance of the responsibilities of the Commission.
- (c) Except to the extent otherwise provided in this Article, the Public Utilities Commission shall be subject to the provisions of Charter sections 4.100 et seq. generally applicable to boards and commissions of the City and County.
- (d) The General Manager shall have the authority to organize and reorganize the

department. The General Manager shall adopt rules and regulations governing all matters within the jurisdiction of the department subject to section 4.102 as applicable.

- (e) Ownership or control of any public utility or any part thereof under the jurisdiction of the Public Utilities Commission may not be transferred or conveyed absent approval by the Public Utilities Commission and approval by a vote of the electors of the City at the election next ensuing not less than 90 days after the adoption of such ordinance, which shall not go into effect until ratified by a majority of the voters voting thereon. Voter approval shall not be required for sales or transfers of real property declared surplus to the needs of any utility by the Public Utilities Commission or to leases or permits for the use of utility real property approved by the Public Utilities Commission.

SEC. 8B.122. GOALS AND OBJECTIVES RELATED TO WATER AND CLEAN WATER

- (a) The Commission shall develop, periodically update and implement programs to achieve goals and objectives consistent with the following:
 - (1) Provide water and clean water services to San Francisco and water service to its wholesale customers while maintaining stewardship of the system by the City;
 - (2) Establish equitable rates sufficient to meet and maintain operation, maintenance and financial health of the system;
 - (3) Provide reliable water and clean water services and optimize the systems' ability to withstand disasters;
 - (4) Protect and manage lands and natural resources used by the Commission to provide utility services consistent with applicable laws in an environmentally sustainable manner. Operate hydroelectric generation facilities in a manner that causes no reasonably anticipated adverse impacts on water service and habitat;
 - (5) Develop and implement priority programs to increase and to monitor water conservation and efficiency system-wide;
 - (6) Utilize state-of-the-art innovative technologies where feasible and beneficial;
 - (7) Develop and implement a comprehensive set of environmental justice guidelines for use in connection with its operations and projects in the City;
 - (8) Create opportunities for meaningful community participation in development

(Continued on next page)

LEGAL TEXT OF PROPOSITION E (CONTINUED)

and implementation of the Commission's policies and programs; and

- (9) Improve drinking water quality with a goal of exceeding applicable drinking water standards if feasible.

SEC. 8B.123 PLANNING AND REPORTING

(A) Planning and Reporting

The Public Utilities Commission shall annually hold public hearings to review, update and adopt:

- (1) A Long-Term Capital Improvement Program, covering projects during the next 10-year period; including cost estimates and schedules.
- (2) A Long-Range Financial Plan, for a 10-year period, including estimates of operation and maintenance expenses, repair and replacement costs, debt costs and rate increase requirements.
- (3) A Long-Term Strategic Plan, setting forth strategic goals and objectives and establishing performance standards as appropriate.

The Capital Improvement Program and Long-Range Financial Plan shall serve as a basis and supporting documentation for the Commission's capital budget, the issuance of revenue bonds, other forms of indebtedness and execution of governmental loans under this Charter.

(B) Citizens' Advisory Committee

The Board of Supervisors, in consultation with the General Manager of the Public Utilities Commission, shall establish by ordinance a Citizens' Advisory Committee to provide recommendations to the General Manager of the Public Utilities Commission, the Public Utilities Commission and the Board of Supervisors.

SEC. 8B.124. WATER AND CLEAN WATER REVENUE BONDS

Notwithstanding, and in addition to, the authority granted under Charter Section 9.107, the Public Utilities Commission is hereby authorized 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 Public Utilities Commission.

Any legislation authorizing the issuance of revenue bonds (except for refunding bonds) under this section shall be subject to the referendum requirements of Section 14.102 of this Charter. The ordinance authorizing the issuance of such revenue bonds shall not become effective until 30 days after its adoption.

Notwithstanding any other provision of this Charter or of any ordinance of the City and

County, the Board of Supervisors may take any and all actions necessary to authorize, issue and repay such bonds, including, but not limited to, modifying schedules of rates and charges to provide for the payment and retirement of such bonds, subject to the following conditions:

(a) Certification by an independent engineer retained by the Public Utilities Commission that:

- (1) the projects to be financed by the bonds, including the prioritization, cost estimates and scheduling, meet utility standards; and
- (2) that estimated net revenue after payment of operating and maintenance expenses will be sufficient to meet debt service coverage and other indenture or resolution requirements, including debt service on the bonds to be issued, and estimated repair and replacement costs.

(b) Certification by the San Francisco Planning Department that facilities under the jurisdiction of the Public Utilities Commission funded with such bonds will comply with applicable requirements of the California Environmental Quality Act.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure appointed for by ordinance of the Board of Supervisors.

SEC. 8B.125. RATES

Notwithstanding Charter sections 2.109, 3.100 and 4.102 or any ordinance (including, without limitation, Administrative Code Appendix 39), the Public Utilities Commission shall set rates, fees and other charges in connection with providing the utility services under its jurisdiction, subject to rejection -- within 30 days of submission -- by resolution of the Board of Supervisors. If the Board of Supervisors fails to act within 30 days the rates shall become effective without further action.

In setting retail rates, fees and charges the Commission shall:

1. Establish rates, fees and charges at levels sufficient to improve or maintain financial condition and bond ratings at or above levels equivalent to highly rated utilities of each enterprise under its jurisdiction, meet requirements and covenants under all bond resolutions and indentures, (including, without limitation, increases necessary to pay for the retail water customers' share of the debt service on bonds and operating expenses of any state financing authority such as the Regional Water System Financing Authority), and provide sufficient resources for the continued financial health (including appropriate reserves), operation, maintenance and repair of each enterprise, consistent with good utility practice;
2. Retain an independent rate consultant to conduct rate and cost of service studies for each utility at least every five years;

3. Set retail rates, fees and charges based on the cost of service;

4. Conduct all studies mandated by applicable state and federal law to consider implementing connection fees for water and clean water facilities servicing new development;

5. Conduct studies of rate-based conservation incentives and/or lifeline rates and similar rate structures to provide assistance to low income users, and take the results of such studies into account when establishing rates, fees and charges, in accordance with applicable state and federal laws;

6. Adopt annually a rolling 5-year forecast of rates, fees and other charges; and

7. Establish a Rate Fairness Board consisting of seven members: the City Administrator or his or her designee; the Controller or his or her designee; the Director of the Mayor's Office of Public Finance or his or her designee; two residential city retail customers, consisting of one appointed by the Mayor and one by the Board of Supervisors; and two city retail business customers, consisting of a large business customer appointed by the Mayor and a small business customer appointed by the Board of Supervisors. The Rate Fairness Board may:

- i. Review the five-year rate forecast;
- ii. Hold one or more public hearings on annual rate recommendations before the Public Utilities Commission adopts rates;
- iii. Provide a report and recommendations to the Public Utilities Commission on the rate proposal; and
- iv. In connection with periodic rate studies, submit to the Public Utilities Commission rate policy recommendations for the Commission's consideration, including recommendations to reallocate costs among various retail utility customer classifications, subject to any outstanding bond requirements.

These provisions shall be effective January 3, 2003 for the setting of retail rates, fees and charges related to the clean water system. If the voters approve bonds for the Public Utilities Commission's Capital Improvement Program at the November 5, 2002 election then the provisions of this section shall take effect on July 2, 2006 for the setting of retail rates, fees and charges related to the water system. If the voters do not approve such bonds then this section will take effect on January 3, 2003.

SEC. 8B.126. PERSONNEL AND MERIT SYSTEM

- (a) The General Manager shall be selected under the provisions of Charter sections

(Continued on next page)

LEGAL TEXT OF PROPOSITION E (CONTINUED)

3.100 and 4.102. The General Manager may be employed under an individual contract. His or her compensation shall be comparable to the compensation of the chief executive officers of the public water, wastewater and/or power systems in the United States that the Commission, after an independent survey, determines most closely resemble the Public Utilities Commission in size, mission, and complexity. In addition, the Public Utilities Commission may provide an incentive compensation bonus plan for the General Manager based on performance goals established by the Commission.

(b) The General Manager may negotiate an individual contract with the employee appointed to perform the duties of general infrastructure management and oversight of the Capital Improvement Program subject to approval by the Commission and notwithstanding Charter Section A8.409 et seq.

(c) For purposes of approving individual employment contracts the Public Utilities Commission may exercise all powers of the City and County, the Board of Supervisors, the Mayor, and the Director of Human Resources under Article XI of this charter. Individual employment contracts shall utilize and shall not alter or interfere with, the Retirement or Vacation provisions of this Charter or the Health Plans established by the City's Health Service Board; provided however, that the Commission may contribute toward defraying the cost of the employee's health premiums and retirement pick-up.

SEC. 8B.127. CONTRACTING AND PURCHASING

Notwithstanding Charter Section 9.118 or any ordinance, the Public Utilities Commission shall have the sole authority to enter into agreements for the purchase of water; the sale of water to wholesale customers; and agreements necessary to implement Joint Powers Agreements with any wholesale water customer.

In order to promote labor stability and to ensure the Capital Improvement Program is completed expeditiously and efficiently, the Public Utilities Commission is authorized to the extent legally appropriate, to enter into project labor agreements, with appropriate Building Construction and Trades Councils, covering significant capital projects.

Section 2. The San Francisco Charter is hereby amended by deleting Section 9.111-1 as follows:

SEC. 9.111-1. ENVIRONMENT PROTECTION LOANS

Notwithstanding any other provision in the Charter, the City and County and its commissions shall have the authority to enter into loans (or other indebtedness) directly or indirectly with, or have any of its indebtedness

~~guaranteed or subsidized by, the State of California or United States of America. All loans or other indebtedness must comply with the following provisions:~~

- ~~a. proceeds must be used for projects which protect, preserve, or enhance water resources or the environment; and~~
- ~~b. must be the most cost effective method of financing a project; and~~
- ~~c. shall be subject to the approval of the Board of Supervisors; and~~
- ~~d.~~
 - ~~(i) cannot increase the amount of approved debt; or~~
 - ~~(ii) in the case of a refinancing of revenue or general obligation bonds of the City and County or any commission, must result in net debt service savings to the City and County or commission, calculated as provided by ordinance.~~

~~For purposes of this Section 9.111-1, the determination of what constitutes the most cost effective method of financing shall be certified by the Controller.~~

Section 3. The San Francisco Charter is hereby amended by amending Section 16.103 as follows:

SEC. 16.103. UTILITY REVENUES AND EXPENDITURES

(a) Receipts from each utility operated by the Public Utilities Commission shall be paid into the City and County treasury and maintained in a separate fund for each such utility. Appropriations from such funds shall be made for the following purposes for each such utility in the order named, ~~viz~~:

1. For the payment of operating expenses, pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the Commission may establish or the Board of Supervisors may require;
2. For repairs and maintenance;
3. For reconstruction and replacements as hereinafter described;
4. For the payment of interest and sinking funds on the bonds issued ~~for acquisition, construction or extension by the Public Utilities Commission pursuant to this charter.~~
5. For extensions and improvements; and
6. For a surplus fund.

For any utility with outstanding bonds for which the indenture requires different payment priorities, the bond priorities will control over the priorities set forth in this section.

(b) For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the Commission, the Commission must create and maintain a reconstruction and replacement fund for each such utility, sufficient for the purposes mentioned in this section, and in accordance with an

established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements.

~~1. (c) If, at the end of any fiscal year, the Controller certifies that excess surplus funds of a utility exist, then such excess surplus funds may be transferred by the Board of Supervisors to the General Fund of the City and County, and shall be deposited by the Commission with the Treasurer to the credit of such General Fund. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds from hydropower assets or water or clean water assets in excess of 25 percent of the total expenditures of such utility in the previous fiscal year for costs of operation, repair and maintenance., maintenance and debt service coverage and required debt service reserves, the Public Utilities Commission may transfer that surplus revenue, in whole or in part, to any other utility system under the Commission's jurisdiction on the operative date of this section.~~

~~(2) (d) Any surplus revenue which the Public Utilities Commission unanimously finds is not required for utility purposes pursuant to sections (a) and (b) of this section may be transferred to the General Fund by the Public Utilities Commission with the concurrence of If, as part of the budgeting process, the Controller estimates that there will exist, at the end of the budget year, excess surplus funds of a utility, three-fourths of the Board of Supervisors may budget such excess as revenue to the General Fund for that budget year. During the budget year, the Commission shall deposit with the Treasurer a pro rata portion of the then-estimated excess surplus funds no less frequently than quarterly. For the purposes of this subsection, excess surplus funds shall exist if the utility has unappropriated, unencumbered funds in excess of 25 percent of the total expenditure of such utility in the previous fiscal year for costs of operation, repair and maintenance.~~

~~3. At any time, the Commission may, with the concurrence of two thirds of the Board of Supervisors, authorize the transfer of any portion of a utility's surplus funds to the General Fund upon making all of the following findings of fact and judgment:~~

~~(A) (a) That a surplus exists or is projected to exist after meeting the requirements of this section;~~

~~(B) (b) That there is no unfunded operating or capital program or required reserve~~

(Continued on next page)

LEGAL TEXT OF PROPOSITION E (CONTINUED)

that by its lack of funding could jeopardize bond ratings, health, safety, water supply or power production;

~~(C)~~ (c) That there is no reasonably foreseeable operating contingency that cannot be funded without General Fund subsidy; and

~~(D)~~ (d) That such a transfer of funds in all other respects reflects prudent utility practice.

The Commission shall make such findings having received reports ~~from the manager of utilities and a public hearing and an affirmative recommendation from the General Manager and a public hearing~~, which shall have received no less than 30 days of public notice.

~~4-~~(e) The provisions of subsection ~~(b)~~(c) above shall not be applied in a manner that would be inconsistent with the provisions of any outstanding or future indentures, resolutions, contracts or other agreements of the City and County relating to bonded indebtedness issued in connection with the utility, or with any applicable state or federal laws.

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *for* Mayor Edwin M. Lee *JE*
RE: Appointment, Director of the San Francisco Bay Area Regional Water System Financing Authority - [Harlan L. Kelly, Jr.]
DATE: November 5, 2013

Attached for introduction to the Board of Supervisors is the resolution appointing Harlan L. Kelly, Jr., to an indefinite term as a Director of the San Francisco Bay Area Regional Water System Financing Authority.

I request that this item be calendared in Rules Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 NOV -5 PM 2:52

Wong, Linda (BOS)

From: Low, Jen (BOS)
Sent: Friday, November 15, 2013 11:28 AM
To: Calvillo, Angela
Cc: Yee, Norman (BOS); Mormino, Matthias; Wong, Linda (BOS)
Subject: Yee - Committee Request - File No. 131088
Attachments: Yee - Committee Report Request - File No. 131088.pdf

Dear Angela,

We would like to request that File No. 131088 - Appointment, Director of the San Francisco Bay Area Regional Water System Financing Authority - Harlan L. Kelly, Jr. be considered as a Committee report to be considered by the full Board on November 26, 2013. I am attaching a memo from Supervisor Yee for this request.

Thank you for your consideration.

Sincerely,

Jen

Jen Low
Legislative Aide to Supervisor Norman Yee
District 7
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102
Phone: 415.554.6521
Fax: 415.554.6546

Member, Board of Supervisors
District 7



City and County of San Francisco

NORMAN YEE

DATE: November 15, 2013

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Norman Yee
Chairperson

RE: Rules Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Rules Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on November 26, 2013, as a Committee Report:

131088 Appointment, Director of the San Francisco Bay Area Regional Water System Financing Authority - Harlan L. Kelly, Jr.

Resolution appointing Harlan L. Kelly, Jr., for a four-year term, to commence upon Board of Supervisors' approval, as a Director of the San Francisco Bay Area Regional Water System Financing Authority.

This matter will be heard in the Rules Committee on November 21, 2013 at 1:30 p.m.

C: Rules member

Wong, Linda (BOS)

From: Wheaton, Nicole
Sent: Thursday, November 21, 2013 10:44 AM
To: Wong, Linda (BOS)
Cc: Fox, Radhika
Subject: FW: Letter to SFBOS regarding Appointment of Harlan Kelly to the RFA Board
Attachments: 13_November20_NS_LTO_SFBOS_re_RFAAppointment.pdf

Linda,

Please place this in file no. 131088.

Thank you,
Nicole

Nicole A. Wheaton
Director of Appointments
Commission & Board Liaison
Office of Mayor Edwin M. Lee
(415) 554-7940

From: Lourdes Enriquez [mailto:LEnriquez@bawsca.org]
Sent: Wednesday, November 20, 2013 2:04 PM
To: Wheaton, Nicole
Cc: Michelle Novotny (mnovotny@sflower.org); Hood, Donna; Fox, Radhika; Ellis, Juliet; Nicole Sandkulla
Subject: Letter to SFBOS regarding Appointment of Harlan Kelly to the RFA Board

Hi Nicole,

Attached is a copy of Nicole Sandkulla's letter addressed to SFBOS President, David Chiu, regarding the appointment of Harlan Kelly to fill the SF seat on the RFA Board.
Hard copies were mailed out today.

Please give me a call at 650-349-3000 if you have any questions.

Regards,
Lourdes

Lourdes Verzosa-Enriquez
Assistant to the Chief Executive Officer
155 Bovet Road, Suite 650
San Mateo, CA 94402
Phone: 650-349-3000
Fax: 650-349-8395
lenriquez@bawsca.org

BAWSCA

Bay Area Water Supply & Conservation Agency

November 19, 2013

The Hon. David Chiu, President of the Board
San Francisco Board of Supervisors
City Hall, Room #244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Subject: Appointment of a Director to the Board of San Francisco Bay Area Regional Water System Financing Authority (RFA)

Dear President Chiu,

This letter requests that the San Francisco Board of Supervisors appoint Harlan Kelly, Jr. General Manager of the San Francisco Public Utilities Commission (SFPUC), to the San Francisco Bay Area Regional Water Financing Authority (RFA). Former SFPUC General Manager, Ed Harrington, was appointed to the RFA in 2003.

As general manager of the San Francisco Public Utilities Commission, Mr. Kelly is knowledgeable about both the Regional Financing Authority on which he would serve and the Bay Area Water Supply and Conservation Agency, a companion, legislatively authorized agency, and attends its regular meetings.

The enabling act for the RFA allows the City and County of San Francisco (City) to reappoint its director for an unlimited number of terms, confirming its re-appointment at the end of each term, or to replace him or her at the end of each term. This appointment will be for a term expiring June 30, 2015.

Attached, for your reference, is a copy of Resolution #031071 adopted by the San Francisco Board of Supervisors in June 2003, appointing former SFPUC General Manager Edward Harrington to an "indefinite" term as a director of the San Francisco Bay Area Regional Water System Financing Authority (RFA).

The statutory qualifications for the appointment to the RFA board are:

- The appointee must be a registered voter and reside within the boundaries of the member public entity whose governing board appoints him or her.
- He or she may not be a member of the governing board that appoints him or her.

The mechanics of the appointment are such that the:

- The appointment must be made at a public meeting of the board of Supervisors and be properly agendized.
- The appointment must be made by action of the full Board, rather than by unilateral action of the President.

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- The appointments do not need to be memorialized in a resolution; a motion duly passed and recorded in the minutes of the meeting is sufficient.
- A copy of the record of the board action making the appointment should be sent to BAWSCA.
- An Oath of Office shall be taken by the appointee before entering upon the duties of his or her office, as provided for in the Constitution and laws of the state.

We encourage the Board of Supervisors to make the appointment effective immediately so that San Francisco is continuously represented, and a quorum of the RFA board can be ensured at the next meeting on January 17, 2014.

I hope you find this information helpful. I may be reached at 650-349-3000 if you have any questions.

Sincerely,



Nicole M. Sandkulla
Chief Executive Officer/General Manager

NS/le

cc: Nicole Wheaton, Director of Appointment, Office of Mayor Lee
Juliet Ellis, Assistant General Manager, External Affairs, SFPUC
Radhika Fox, Director of Policy and Government Affairs, SFPUC
Donna Hood, Commission Secretary, SFPUC



San Francisco
Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Jermain Jones, Mayor's Office

FROM: Erin Hagan, Policy and Government Affairs Manager

DATE: November 05, 2013

**SUBJECT: Resolution Appointing Harlan L. Kelly, Jr. as a Director of
the San Francisco Bay Area Regional Water System
Financing Authority**

Thank you for sponsoring this legislation.

Attached please find an original and three copies of a proposed resolution appointing the San Francisco Public Utilities Commission General Manager Harlan L. Kelly, Jr., to an indefinite term as a Director of the San Francisco Bay Area Regional Water System Financing Authority.

The following is a list of accompanying documents (3 sets):

1. Board of Supervisors Resolution
2. California Senate Bill No. 1870
3. Harlan L. Kelly, Jr. Bio

Please contact Erin Hagan at 554-0706 if you need any additional information on these items.

Edwin M. Lee
Mayor

Vince Courtney
President

Ann Moller Caen
Vice President

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Art Torres
Commissioner

Harlan L. Kelly, Jr.
General Manager



