

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.

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