

Date of Hearing: August 14, 2013

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
K.H. "Katcho" Achadjian, Chair
SB 246 (Fuller) – As Amended: August 7, 2013

SENATE VOTE: 37-0

SUBJECT: Bighorn-Desert View Water Agency.

SUMMARY: Revises the special act governing the Bighorn-Desert View Water Agency, and makes other changes to existing law that governs the Bighorn-Desert View Water Agency. Specifically, this bill:

- 1) Repeals the Desert View Water District-Bighorn Mountains Water Agency Consolidation Law that required the Desert View Water District and the Bighorn Mountains Water Agency to separately account and use funds, and deletes cross-references to the consolidation law from the Bighorn-Desert View Water Agency's special act.
- 2) Requires the Bighorn-Desert View Water Agency (Agency) to separately account for and use funds derived from the operation of the Desert View Water District and the Bighorn Mountains Water Agency for the purpose of bond debt service for each of the former systems, and declares that its provisions must not be construed to impair any contract entered into prior to January 1, 2014.
- 3) Decreases, from 3 months to 60 days, the period that any legal action may contest, question, or deny the validity of the Agency's bonds, improvement districts, annexations, or other proceedings.
- 4) Decreases, from six to three, the number of public places that the Agency must post specified hearing notices.
- 5) Makes changes to existing law that governs the Agency's power to enter into contracts, and deletes a requirement that the Agency must get two-thirds voter approval for specified contracts that incur long-term debt.
- 6) Allows the Agency to file legal actions, pursuant to specified statutes in the Code of Civil Procedure, to determine the validity of the Agency's bonds, warrants, promissory notes, contracts, or other evidences of indebtedness.
- 7) Specifies in addition to defined powers in existing law, the Agency may do the following:
 - a) To take by condemnation or to lease, with or without the privilege of purchase, or sell real and personal property useful or necessary to produce water;
 - b) To construct, maintain, and operate water wells; and,
 - c) To enlarge any waterworks or waterworks system acquired by the Agency.

- 8) Deletes the requirement in existing law that the Agency's board shall regulate the use of recreational facilities by ordinance and repeals the violation of those regulations as a misdemeanor, and makes a violation of the specified regulations an infraction, punishable by a fine not to exceed \$300.
- 9) Increases annual interest rate not to exceed 12%, establishes a total aggregate amount of notes outstanding not to exceed \$5,000,000, and requires the maturity of the notes shall not be later than five years for the Agency to issue negotiable promissory notes.
- 10) Increases the annual interest rate to not exceed 12%, pursuant to existing law, for the Agency to incur debt and issue bonds.
- 11) Clarifies that the Agency's power to levy taxes, fees, charges, assessments, and incur debt are subject to constitutional and statutory requirements.
- 12) Specifies that the Agency's board, to restrict the use of water during a drought or water shortage, must comply with specified statutes in the Water Code governing water shortage emergencies.
- 13) Authorizes the Agency to issue bonds in accordance with the Municipal Improvement Act of 1913, the Refunding Assessment Bond Act of 1935, the Improvement Act of 1911, the Improvement Bond Act of 1915, and the Revenue Bond Law of 1941.
- 14) Allows the Agency to sell bonds through negotiated sale or private sale subject to specified conditions, and prohibits bonds from being sold for less than 94% of par value.
- 15) Specifies the manner in which the Agency can record liens for unpaid water service charges.
- 16) Clarifies that bond proceeds and surplus revenues from water rates can be used to pay for replacement of the Agency's works.
- 17) Repeals the Agency's right of eminent domain to take any property necessary to supply the agency with water, which is currently authorized.
- 18) Deletes provisions in existing law relating to vacancies on the Agency's board of directors and specifies that the Agency must fill vacancies on its board pursuant to specified statutes in the Government Code.
- 19) Requires the Agency's board to adopt a resolution specifying the date, time, and place of its meetings and deletes redundant provisions in existing law that relate to board meetings.
- 20) Specifies that the Agency's board can act by minute order and details specific notice, posting, and publication procedures that the board must follow to adopt an ordinance.
- 21) Removes the requirement that the board of directors must include in a resolution to incur bonded indebtedness the designation of precincts, the location of polling places, and the names of the officers selected to conduct the election, as specified. Deletes the seven-day timeframe following the election to incur bonded indebtedness that the returns of the election must be made, and the votes canvassed by the board of directors.

- 22) Deletes the provision in existing law that requires the board to adopt an ordinance to exercise specified powers related to pensions.
- 23) Deletes compensation provisions in existing law for directors, and instead, provides that directors may receive an amount not to exceed \$100 per day for each day's attendance at meetings of the board, if established by an adopted ordinance by the governing board.
- 24) Requires the board to appoint, define duties, and establish compensation, by a majority vote, for an attorney, chief engineer, general manager, and auditor. Provides each of these positions serve at the pleasure of the board. Prohibits a member of the board of directors from serving as any of the positions above. Deletes existing law that authorizes the board to appoint a treasurer and to consolidate specified offices.
- 25) Requires the board of directors at the first meeting in January in each even numbered year to choose a vice president and secretary from among its members.
- 26) Requires the board to adopt an annual appropriations limit and budget.
- 27) Authorizes the voters in the Agency to pass an initiative or disapprove of an ordinance by referendum subject to specified statutes in the Elections Code, and deletes current statutory language governing the Agency's elections.
- 28) Clarifies that the Agency shall not dissolve until all indebtedness is fully satisfied.
- 29) Specifies that the Agency is subject to the California Public Records Act.
- 30) Updates the statutory metes-and-bounds description of the Agency's boundaries.
- 31) Replaces 'bonded debt' with 'debt' in numerous places throughout the Bighorn-Desert View Water Agency Law and deletes references to bonds' interest coupons.
- 32) Makes findings and declarations relative to provisions that impose a limitation on the public's right of access to the meeting of public bodies or the writing of public officials and agencies in order for the Agency to reduce costs and staff burdens associated with posting notices of specified hearings, while still providing adequate notice of public hearings, it is necessary to reduce the number of public locations in which the agency must post specified hearing notices.
- 33) Makes numerous technical and non-substantive changes.

EXISTING LAW:

- 1) Establishes the Bighorn Mountains Water Agency Consolidation Law to authorize a consolidation between the Desert View Water District and the Bighorn Mountains Water agency.
- 2) Requires all funds derived from the operation of the former county water district consolidated with the Bighorn Mountains Water Agency to be separately accounted for and used exclusively for the purposes of maintenance, operation, betterments, and bond debt

service, and prohibits funds derived from the former district to be used for any other purpose until all debt of that former district has been paid in full or until a majority vote of the electorate of the area served by the former district has authorized other expenditures.

- 3) Establishes the Bighorn Mountains Water Agency Law and defines its powers and duties.

FISCAL EFFECT: None

COMMENTS:

- 1) In 1969, SB 1175 (Coombs) established the Bighorn Mountains Water Agency Law, a special act in the Water Code Appendix. In 1989, the Desert View Water District-Bighorn Mountains Water Agency Consolidation Law (AB 1819, Woodruff) merged the Bighorn Mountains Water Agency with the Desert View Water District that was governed by the County Water District Law.
- 2) This bill repeals the Desert View Water District-Bighorn Mountains Water Agency Consolidation law and rewrites the existing Bighorn Mountains Water Agency Law in the Water Code Appendix to rename the law the Bighorn-Desert View Water Agency Law to govern the Bighorn-Desert View Water Agency (Agency). This bill repeals references from the consolidation law and updates the governing statute.

The 1989 consolidation bill required the Agency to separately account for the funds of the two precursor agencies. This bill maintains the separate accounting of debt acquired by the precursor agencies prior to consolidation, but no longer requires the Agency to financially operate as separate entities. This bill decreases, from three months to 60 days, the amount of time public officials may initiate a validating lawsuit in order to get the court to validate their actions, contract, agreements, and bonds. This bill makes several changes to the requirements of the board in existing law including noticing requirements, compensation, and appointing authority. This bill is sponsored by the Agency.

- 3) According to the author, "The current Water Agency Law is outdated because it does not reflect important additions to the California Constitution, such as Articles XIII A, B, C, and D, which affect the Board of Director's authority to enact taxes and adopt water rates. Moreover, the original Act is not well organized, thereby reducing its usefulness as a reference for Agency staff, public officials and the general public. Additionally, the requirement to keep the two water systems financially separate works against the economic savings that consolidation was expected to bring to the ratepayers."
- 4) The Agency provides retail water service to residents within a 45-square mile area encompassing the San Bernardino County communities of Flamingo Heights, Landers, and Johnson Valley. The Agency is also authorized to develop hydroelectric energy, use falling water for electric energy, and to exercise all powers granted in the County Water District Law. The Agency has several improvement districts, which are geographical subdivisions through which water districts can fund capital improvements that benefit those specific geographic areas.

Current law allows the District to raise revenue by charging service fees, standby charges, and benefit assessments. To raise capital, the Agency can use general obligation bonds,

revenue bonds, and benefit assessment bonds. Existing law also allows the Agency to borrow money with promissory notes. This bill clarifies that the Agency's ability to raise revenue and capital are subject to the California Constitution and state law.

- 5) Support arguments: Supporters argue that this bill removes the requirement that the consolidated agency operate financially as two separate enterprises which negated financial efficiencies expected from the consolidation and modernizes the enabling act so that it is a more transparent and functional statute.

Opposition arguments: None

REGISTERED SUPPORT / OPPOSITION:

Support

Bighorn-Desert View Water Agency [SPONSOR]
Association of California Water Agencies
Hi Desert Water District
Mojave Water Agency
San Bernardino County Local Agency Formation Commission
Special Districts Association
Twentynine Palms Water district

Opposition

None on file

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