

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 850 (Gallagher) – As Amended March 22, 2021

**SUBJECT:** City property: sale of water utility property.

**SUMMARY:** Extends the deadline for the cities of El Monte, Montebello, and Willows to utilize alternative procedures to sell their public water utilities for consolidation by two years, from 2022 to 2024.

**EXISTING LAW:**

- 1) Defines a small community water system to mean a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons.
- 2) Establishes a policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- 3) Encourages consolidation of, and gives funding priority to, the consolidation of small community water systems that serve disadvantaged communities, under specified conditions.
- 4) Allows, under specified conditions, the State Water Resources Control Board (State Water Board) to order the consolidation of a public water system or a state small water system within a disadvantaged community.
- 5) Limits the liability of any agency in the chain of distribution that delivers water to a consolidated water system.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Background.** According to the 2019 Annual Compliance Report from the State Water Board, 369 out of the 7,403 active public water systems are out of compliance with state standards. Of these systems in non-compliance, over 91 percent are the smaller public water systems. Currently, small water systems are working to remove contaminants exceeding the maximum contaminant levels (MCL).

A community water system is a public water system that serves at least 15 service connections used by yearlong residents, or regularly serves at least 25 yearlong residents. These water systems primarily serve cities, neighborhoods, schools and businesses. The State Water Board data primarily captures community water systems; of systems in the State Water Board data, 61 percent are very small systems serving populations of 25-500 people. Those very small systems represent 84 percent of all drinking water standard violations in 2019. The disproportionate number of violations occurring in small systems is due to small systems having a small rate base. The small rate base is more likely to hinder ability to pay

for the asset management necessary to maintain the system.

In 1997, the Public Utilities Commission (PUC) was required to use fair market value when setting rates creating a greater incentive for PUC regulated water providers to consolidate. In 2015, the State Water Board was given the authority to order consolidation of a public water system within a disadvantaged community under specified conditions. In 2016, the State Water Board was given the authority to evaluate of the ability of a proposed new public water system's ability to meet drinking water standards for the foreseeable future and to deny a permit if it is determined that the new public water system will not be sustainable into the future. Today, it is generally the policy of the state to encourage the consolidation of small water systems.

There are continuing challenges within small water systems. Groundwater is becoming increasingly more polluted, leaving communities to look to surface water as a water source. The majority of non-compliant water systems are small water systems, due to contaminants exceeding the MCLs mandated by the State Water Board. In order to meet compliance, the water systems often require additional infrastructure investments to filter and remove the contaminants. These contaminant treatment approaches may be more cost effective for the systems as they consolidate with larger, better financed investor-owned water systems.

- 2) **Sales of Water Utilities.** Cities can own and operate public utilities. The city can sell its public utility when the public interest and necessity demand with 2/3 vote of the governing board and voters when it provides any authorized service. However, the Legislature provided that cities can lease, sell, or transfer their water utilities with majority governing board and voter approval instead [SB 2111 (Beverly), Chapter 169, Statutes of 1996]. The supermajority vote continues to apply to sales of other types of public utilities such as power, drainage, and transportation.

Under SB 2111, a city can sell all or any portion of a utility within its jurisdiction to another public entity or utility upon a majority vote of the board, if the city:

- a) Determines that the utility is not necessary for supplying water to its own inhabitants, or that its inhabitants will be provided with equal or better service by the acquiring entity on terms that are just and reasonable and do not discriminate against the customers of the acquired entity;
  - b) The city submits the issue to the qualified voters of the municipality at a special or general election, and a majority of voters approve it;
  - c) The acquiring agency concurs; and,
  - d) The acquiring agency discloses to the customers they are seeking to acquire within 30 days of the election a summary of the price and terms of the proposed acquisition, a comparison of the applicable water charges, and the estimated costs or savings resulting from the acquisition.
- 3) **Special Circumstances.** AB 2339 (Gipson), Chapter 866, Statutes of 2018, authorized the Cities of El Monte, Montebello, and Willows, until January 1, 2022, to sell their water systems for the purpose of consolidating with another public water system under specified

circumstances. Specifically, this bill required these cities to determine that it is uneconomical and not in the public interest to own and operate the public water utility and allows the sale if fourth-fifths of the city's legislative body adopts a resolution at a regularly scheduled meeting and all the following requirements have been met:

- a) The sale is not for less than fair market value;
  - b) There are at least two water suppliers that provide drinking water to residents in the city prior to the sale;
  - c) The city has deferred maintenance for the public water system as demonstrated by a study conducted by an independent third party, as specified;
  - d) The potentially subsumed public water system is wholly within the boundaries of the city;
  - e) The receiving water system's service area borders the service area of the subsumed public water system;
  - f) The subsumed water systems' customers will pay the same rates as customers of the receiving water system. The consolidation shall be economically feasible for the rate payers in the subsumed system, the ratepayers will be notified of the applicable rate that will be in effect during the first year after consolidation has been completed, and any rate increases will be phased in;
  - g) Consolidation of the water systems is technically and economically feasible;
  - h) The city has considered oral and written protest at its second regularly scheduled meeting following adoption of a resolution, as specified, to sell the public utility, and has allowed 45 days for hearing protests. The city must state its intended use of the sale proceeds;
  - i) The resolution has been published at least once in a daily newspaper published and circulated in the city, or if there is none, the city council shall choose a newspaper published in the county. The resolution must also be posted for not less than 10 days in at least three conspicuous places within the city;
  - j) The sale is subject to a majority vote of voters voting on the issue if at least 10% of residents of the city protest the sale at a regularly scheduled meeting. If 50% or more protest the sale, the city shall not sell the utility until one year has passed. If the sale fails, the city must wait at least one year before attempting another sale; and,
  - k) The legislative body has adopted a resolution that all of the above provisions have been met.
- 4) **Bills Summary and Author's Statement.** This bill extends the sunset date of the authorization of the Cities of El Monte, Montebello, and Willows to use alternative procedures to sell their water systems from January 1, 2022 to January 1, 2024. This bill is sponsored by the City of Willows.

According to the author, “Consolidated water systems can share costs such as billing, operational personnel, new water sources acquisition, and often can purchase time saving equipment that neither system could afford to purchase alone because they can spread costs over a larger customer base. For these reasons, some cities may want to consolidate their water systems. In 2018, the Governor signed AB 2339 (Gipson), which allowed the cities of El Monte, Montebello, and Willows to use a public protest process to sell their water systems. The statute sunsets January 1, 2022. The City of Willows is seeking to consolidate their water system to ensure the community receives reliable and high-quality drinking water. They have an interested party, but they need additional time to complete the transaction. AB 850 would give the City until January 1, 2024 to complete the transaction utilizing the process provided for in the AB 2339 pilot program.”

- 5) **Related Legislation.** AB 272 (Gipson) of 2018, was substantially similar to AB 2339 (Gipson) of 2018. AB 272 was held in Assembly Appropriations Committee.

SB 1263 (Wieckowski) Chapter 843, Statutes of 2016, required a person submitting an application for a permit for a proposed new public water system to first submit a preliminary technical report, with specified information, to the State Water Board at least six months before initiating construction of any water-related development. Authorized the State Water Board to direct the applicant to engage in negotiations to receive services from existing water systems.

SB 88 (Committee on Budget), Chapter 27, Statutes of 2015, allowed the State Water Board to order consolidation of a public water system or a small water system within a disadvantaged community under specified conditions. Additionally, limits the liability of any agency in the chain of distribution that delivers water to a consolidated water system.

AB 685 (Eng), Chapter 524, Statutes of 2012, established the human right to water policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

- 6) **Arguments in Support.** The City of Willows argues, “The City is urgently working to address several issues with our small industrial water system, which is impacted by hexavalent chromium. While we are working to remediate the issue, we also believe that the best long-term solution is for the water system to be consolidated with the neighboring water utility that has served the Willows community since 1927. This consolidation will allow for a permanent solution that will ensure our residents, farms, and working families have a safe, high-quality drinking water.

“Obviously, these challenges were not fully anticipated in 2018 while Assembly Bill 2339 was advancing through the legislative process. Your Assembly Bill 850 will offer the City and our local provider the time we need to address these water quality issues and complete the consolidation process, which will result in a more stable, cost-effective long-term water solution for the entire city.”

- 7) **Arguments in Opposition.** None on file.

- 8) **Double-referral.** This bill was heard in the Assembly Water Parks and Wildlife Committee on April 8<sup>th</sup> and passed with a vote of 15-0.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

City of Willows [SPONSOR]  
California American Water  
California Water Association  
California Water Service  
City of Montebello  
Golden State Water Company  
San Gabriel Valley Water Company

**Opposition**

None on file

**Analysis Prepared by:** Jimmy MacDonald / L. GOV. / (916) 319-3958