

AMENDED IN SENATE MAY 31, 2000

AMENDED IN SENATE MAY 9, 2000

AMENDED IN SENATE MAY 1, 2000

AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 1973**

**Introduced by Senator Perata**

February 25, 2000

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An act to add Chapter 8.3 (commencing with Section 1450) to Part 1 of Division 1 of the Public Utilities Code, and to add Section 1811.5 to the Water Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1973, as amended, Perata. Public Utilities Commission: water conveyance: fair compensation.

**Existing**

(1) *Existing* law prohibits the state or a regional or local public agency from denying a bona fide transferor of water, as defined, from using a water conveyance facility that has unused capacity for the period of time for which that capacity is available, if fair compensation is paid for that use and other requirements are met. Existing law defines "fair compensation" to mean the reasonable charges incurred by the owner of the conveyance system, as specified.

This bill would authorize any bona fide transferor to file a petition with the Public Utilities Commission for an adjudication of whether the determination of the amount of fair compensation, as defined, made by a state, regional, or

local public agency for the proposed use of unused capacity in a water conveyance facility is consistent with a specified definition and guidelines. *The bill would require that any determination by the commission regarding certain facilities involving the Sacramento-San Joaquin Delta and the San Francisco Bay include a certification, as prescribed. The bill would provide that a water conveyance facilities owner and a bona fide transferor are subject to the jurisdiction of the commission, as specified, would make violations of these provisions a crime, and would require these entities to provide information to the commission, as prescribed, thereby imposing a state-mandated local program.* The bill would require the commission to remand the case to the state, regional, or local public agency for a redetermination, unless the commission determines that the public interest would be impaired by a delay. In that case, the commission would be authorized to determine the amount of fair compensation, as prescribed.

(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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reasons.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Chapter 8.3 (commencing with Section  
2 1450) is added to Part 1 of Division 1 of the Public Utilities  
3 Code, to read:

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5 CHAPTER 8.3. DETERMINATION OF FAIR COMPENSATION  
6 FOR JOINT USE OF CAPACITY IN WATER CONVEYANCE

FACILITIES

1450. The Legislature finds and declares all of the following:

(a) In 1986, the Legislature enacted Article 4 (commencing with Section 1810) of Chapter 10.5 of Part 2 of Division 2 of the Water Code, commonly referred to as the wheeling statutes, declaring at that time that it was the policy of the state to facilitate the voluntary sale, lease, and exchange of water and to allow open access to water conveyance facilities where there is unused capacity, if fair compensation is paid.

(b) The purpose of a voluntary water market is to create greater efficiencies and meet increasing demands for additional water supplies while creating relatively equal opportunities for all market participants.

(c) A functioning wholesale water market, which necessarily includes the assurance of reasonable wheeling charges for unused capacity, should provide voluntary sellers of water with the opportunity to sell to more than one buyer, and should provide voluntary buyers of water with the opportunity to buy from more than one seller. By contrast, without the assurance of reasonable wheeling charges, competition among voluntary buyers and sellers of water will be reduced or eliminated. In addition, wholesale water customers should benefit from the assurance of reasonable wheeling charges because it should facilitate cost-effective options for locating additional water supplies.

1451. (a) As used in this section, the terms “bona fide transferor,” “fair compensation,” and “unused capacity” have the same meanings as defined in Section 1811 of the Water Code.

(b) (1) Any bona fide transferor may file a complaint with the commission concerning the determination of the amount of fair compensation for the proposed use of unused capacity in a water conveyance facility that a state, regional, or local public agency establishes pursuant to Section 1812 of the Water Code.

(2) The commission may adjudicate complaints filed pursuant to paragraph (1) as soon as the commission establishes and publishes the guidelines on the meaning of “fair compensation” required by Section 1452.

(c) (1) The commission, upon the filing of a complaint pursuant to subdivision (b), has the exclusive authority to adjudicate whether the determination of the amount of fair compensation is consistent with the definition of “fair compensation” as interpreted by the guidelines established pursuant to Section 1452. If the commission finds that the amount of fair compensation is not consistent with the definition of “fair compensation” as interpreted by the guidelines established pursuant to Section 1452, the commission, except as authorized by paragraph (2), shall remand the case back to the state, regional, or local public agency for a redetermination of the amount of fair compensation.

(2) If the commission finds that remanding the case pursuant to paragraph (1) would cause a delay that would impair the public interest, the commission may determine the amount of fair compensation based on the evidence in the complaint record.

*(d) (1) For the purposes of this chapter, a water conveyance facilities owner and a bona fide transferor shall provide the commission access to its books, records, documents, and reports in accordance with Sections 312 to 314, inclusive, and Sections 581 to 587, inclusive. A water conveyance facilities owner and a bona fide transferor shall also be subject to the commission pursuant to subdivisions (a) and (b) of Section 311.*

*(2) The commission may enforce the provisions of Chapter 11 (commencing with Section 2100) of Division 1, of Part 1 regarding violations against a water conveyance facilities owner and a bona fide transferor, in the same manner as the provisions are enforced against a public utility.*

*(3) Notwithstanding paragraphs (1) and (2), this section does not grant the commission jurisdiction to regulate a water conveyance facilities owner or a bona*

1 *fide transferor other than as specifically set forth in this*  
2 *chapter.*

3 1452. The commission shall open a proceeding to  
4 establish guidelines on the meaning of “fair  
5 compensation” as defined in Section 1811 of the Water  
6 Code. *The guidelines established by the commission shall*  
7 *include, but not be limited to, a requirement that any*  
8 *proposed transferee of water provide proof that it is in full*  
9 *compliance with the provisions of Chapter 3*  
10 *(commencing with Section 10620) of Part 2.6 of Division*  
11 *6 of the Water Code, relating to urban water*  
12 *management plans and with the best management*  
13 *practices for urban water conservation for the state. This*  
14 *proceeding shall be opened on or before January 31, 2001,*  
15 *and shall be completed on or before December 31, 2001.*

16 1453. *Any determination of the commission involving*  
17 *facilities that control the inflow into the Sacramento-San*  
18 *Joaquin Delta and the San Francisco Bay and that divert*  
19 *water from the delta shall include a certification by the*  
20 *State Water Resources Control Board that the proposed*  
21 *wheeling will not harm fish or wildlife, will not degrade*  
22 *delta water quality, and will not reduce water levels so as*  
23 *to interfere with diversions or navigation in the delta.*

24 SEC. 2. Section 1811.5 is added to the Water Code, to  
25 read:

26 1811.5. (a) Pursuant to Section 1452 of the Public  
27 Utilities Code, on or before December 31, 2001, the Public  
28 Utilities Commission shall establish guidelines on the  
29 meaning of “fair compensation” as defined in Section  
30 1811.

31 (b) Any complaint as to a determination by a state,  
32 regional, or local public agency with regard to fair  
33 compensation is subject to Chapter 8.3 (commencing  
34 with Section 1450) of Part 1 of Division 1 of the Public  
35 ~~Utilities~~ Utilities Code.

36 SEC. 3. *No reimbursement is required by this act*  
37 *pursuant to Section 6 of Article XIII B of the California*  
38 *Constitution because the only costs that may be incurred*  
39 *by a local agency or school district will be incurred*  
40 *because this act creates a new crime or infraction,*

1 *eliminates a crime or infraction, or changes the penalty*  
2 *for a crime or infraction, within the meaning of Section*  
3 *17556 of the Government Code, or changes the definition*  
4 *of a crime within the meaning of Section 6 of Article*  
5 *XIII B of the California Constitution.*

6 *SEC. 4. No reimbursement is required by this act*  
7 *pursuant to Section 6 of Article XIII B of the California*  
8 *Constitution because this act provides for offsetting*  
9 *savings to local agencies or school districts that result in*  
10 *no net costs to the local agencies or school districts, within*  
11 *the meaning of Section 17556 of the Government Code.*

