

AMENDED IN ASSEMBLY JUNE 26, 2000

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

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~~ *and to amend Section 26.1 and 26.2 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1973, as amended, Perata. ~~Public Utilities Commission: water conveyance: fair compensation~~ *Water charges.*

(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.~~

The Castaic Lake Water Agency Law prescribes the powers and duties of the Castaic Lake Water Agency. The agency law authorizes that agency to impose a prescribed facility capacity fee and requires the agency to calculate the fee pursuant to a method and basis where the fee is as nearly as reasonably practicable an amount proportionate to the benefit to the

land. The agency law provides for the collection of delinquent and unpaid facility capacity fees.

This bill would require the fee to be based on the amount of water actually supplied by the agency to the water user paying the fee. The bill would allow the agency to impose the fee only upon the completion of the retail water connection. The bill, for the purposes of calculating the fee, would prohibit the agency from considering the costs of supplying water to the water user from sources other than the retail water distributor. The bill would provide for a specified credit if the water user upon whom a facility capacity fee is imposed has been required by the retail water distributor, for the purposes of receiving a new retail connection, to fund or construct any water storage or pumping facility, as prescribed. The bill would revise certain provisions of agency law relating to the collection of delinquent and unpaid facility capacity fees to apply those provisions to those facility capacity fees that are either uncontested or the subject of a final judgment as to their validity.

(3) 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 specified reasons.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

CHAPTER 8.3. DETERMINATION OF FAIR COMPENSATION
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”

1 have the same meanings as defined in Section 1811 of the
2 Water Code.

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

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

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

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

32 (d) (1) For the purposes of this chapter, a water
33 conveyance facilities owner and a bona fide transferor
34 shall provide the commission access to its books, records,
35 documents, and reports in accordance with Sections 312
36 to 314, inclusive, and Sections 581 to 587, inclusive. A
37 water conveyance facilities owner and a bona fide
38 transferor shall also be subject to the commission
39 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 4, of Part 4~~ 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 fide transferor other than as specifically set forth in this chapter.

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

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

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

1811.5. (a) Pursuant to Section 1452 of the Public Utilities Code, on or before December 31, 2001, the Public Utilities Commission shall establish guidelines on the

1 meaning of “fair compensation” as defined in Section
2 1811.

3 (b) Any complaint as to a determination by a state,
4 regional, or local public agency with regard to fair
5 compensation *for the proposed use of unused capacity in*
6 *a water conveyance facility for the purposes of a*
7 *wholesale water transfer* is subject to Chapter 8.3
8 (commencing with Section 1450) of Part 1 of Division 1
9 of the Public Utilities Code.

10 ~~SEC. 3. No reimbursement is required by this act~~
11 ~~pursuant to Section 6 of Article XIII B of the California~~
12 ~~Constitution because the only costs that may be incurred~~
13 ~~by a local agency or school district will be incurred~~
14 ~~because this act creates a new crime or infraction,~~
15 ~~eliminates a crime or infraction, or changes the penalty~~
16 ~~for a crime or infraction, within the meaning of Section~~
17 ~~17556 of the Government Code, or changes the definition~~
18 ~~of a crime within the meaning of Section 6 of Article~~
19 ~~XIII B of the California Constitution.~~

20 ~~SEC. 4. No reimbursement is required by this act~~
21 ~~pursuant to Section 6 of Article XIII B of the California~~
22 ~~Constitution because this act provides for offsetting~~
23 ~~savings to local agencies or school districts that result in~~
24 ~~no net costs to the local agencies or school districts, within~~
25 ~~the meaning of Section 17556 of the Government Code.~~

26
27 *SEC. 3. Section 26.1 of the Castaic Lake Water*
28 *Agency Law (Chapter 28 of the Statutes of 1962, First*
29 *Extraordinary Session) is amended to read:*

30 Sec. 26.1. (a) In addition to the other powers
31 provided in this act, the agency may establish and impose
32 a charge referred to as a facility capacity fee, and which
33 is in the nature of a connection fee, for the right to make
34 a new retail connection to the water distribution system
35 of any retail water distributor within the agency that
36 obtains all, or any portion, of its water supplies from the
37 agency. The necessity for the fee, and the amounts
38 thereof, shall be determined, established, imposed,
39 collected, and used in the manner provided in this
40 section.

1 (b) If the board of directors determines that its
2 existing water importation, transportation, and delivery
3 facilities and other related works, property, and
4 improvements are not adequate for the purpose of
5 receiving, importing, transporting, and delivering
6 additional needed quantities of water available from the
7 State Water Resources Development System or from
8 other sources, the board of directors may adopt and carry
9 out a plan for any of the following purposes:

10 (1) To obtain additional facilities, works, property,
11 improvements, and supplies of water.

12 (2) To increase or enlarge, as may be appropriate, its
13 existing capacity and facilities for obtaining, importing,
14 transporting, and delivering additional quantity of water
15 to retail water distributors within the agency which are
16 in need of additional water supplies.

17 (3) To finance or reimburse the agency for advancing
18 the cost of acquiring facilities, works, property,
19 improvements, and supplies of water and to allocate that
20 cost among lands within water service areas of the agency
21 which, by reason of new development or new
22 construction thereon, will need new water service and
23 will be benefited by making the additional supplies of
24 agency water available for purchase by the retail water
25 distributors that will supply those lands with water.

26 (c) (1) Prior to adopting any plans pursuant to
27 subdivision (b), the board of directors shall hold at least
28 one public hearing, at which oral or written presentations
29 may be made, as part of a regularly scheduled meeting to
30 establish water service areas within the agency.

31 (2) Notwithstanding any other notice requirements of
32 this act, notice of the time and place of the hearing and
33 meeting, including a general explanation of the matters
34 to be considered, and a statement that the data required
35 by this subdivision is available, shall be mailed at least 14
36 days prior to the hearing to any interested party who files
37 a written request with the agency for mailed notice of the
38 hearing on those plans and on allocation of the costs
39 thereof. Any written request for that mailed notice shall
40 be valid only for one year from the date on which it is filed

1 with the agency unless a renewal request is filed. Renewal
2 requests for the mailed notices shall be filed on or before
3 April 1st of each year. The board of directors may
4 establish a reasonable annual charge for sending the
5 notices based on the agency's estimated cost of providing
6 the service.

7 (3) At least 10 days prior to the hearing, the agency
8 shall make available to the public data indicating the cost,
9 or estimated cost, to acquire, construct, and provide the
10 water importation, transportation, and delivery facilities
11 and other works, property, and improvements necessary
12 to obtain and provide the additional water to those retail
13 water distributors who will serve water to the lands on
14 which the new developments and new construction will
15 be located, and the proposed method and basis for
16 allocating the costs as among those lands.

17 (d) (1) Following the public hearing or hearings, the
18 board of directors shall make both of the following
19 determinations:

20 (A) The extent of the need for the additional property
21 and supplies of water to be supplied by the agency.

22 (B) Whether existing facilities and other works and
23 improvements of the agency are adequate to import,
24 receive, transport, and deliver those additional quantities
25 of water.

26 (2) If the board of directors determines that there is a
27 need or that the agency's existing facilities, works,
28 property, and improvements are inadequate to serve that
29 water, or both, the board of directors shall adopt the plan
30 or plans specified in subdivision (b).

31 (e) (1) In making its determinations as to how to
32 allocate the costs of the plan or plans within water service
33 areas of the agency, the board of directors shall determine
34 the amount of the facility capacity fee to be imposed for
35 and upon each new connection to the delivery facilities
36 of the retail water distributors that will supply those lands
37 with imported or local water. The facility capacity fee
38 shall be ~~fixed and determined pursuant to a method and~~
39 ~~basis whereby the fee is as nearly as reasonably~~
40 ~~practicable an amount proportionate to the benefit to the~~

1 ~~land, including consideration of the volume of water to be~~
2 ~~delivered to the new retail connection based on the~~
3 ~~amount of water actually supplied by the agency to the~~
4 ~~water user paying the facility capacity fee. The agency~~
5 ~~may impose the fee only upon the completion of the retail~~
6 ~~water connection.~~

7 (2) (A) For the purposes of calculating the facility
8 capacity fee, the agency shall not consider the costs of
9 supplying water to the water user from sources other than
10 the retail water distributor.

11 (B) If a water user on whom a facility capacity fee is
12 imposed determines that the agency has estimated an
13 amount of water that exceeds that which will be required
14 on an annual basis by the water user from the retail water
15 distributor, the water user, not later than 30 days from the
16 date on which the water user receives a copy of that
17 estimated amount, may inform the agency, in writing, as
18 to the maximum amount of water that the water user
19 plans to use from the retail water distributor on an annual
20 basis. Upon receipt of that notice, the agency shall
21 calculate the facility capacity fee based on that estimated
22 annual amount of water, as determined by the water user.

23 (C) If the amount of water required from the retail
24 water distributor exceeds the maximum annual amount
25 estimated by the water user pursuant to subparagraph
26 (B) during the three-year period commencing on the
27 date of the imposition of the facility capacity fee, the
28 agency may impose an additional charge to reflect actual
29 water usage and may impose a penalty of 10 percent on
30 that additional charge.

31 (3) If a water user upon whom a facility capacity fee
32 is imposed has been required by the retail water
33 distributor, for the purposes of receiving a new retail
34 connection, to fund or construct any water storage or
35 pumping facility with capacity to serve users in addition
36 to the water user subject to the fee, and the water storage
37 or pumping facility is not subject to a reimbursement
38 agreement between the water user and the retail water
39 distributor, the agency shall credit the amount paid by
40 the water user for that facility against any facility capacity

1 *fee otherwise required to be paid by the water user to the*
2 *agency.*

3 (f) The board of directors may contract with the
4 counties, or cities on or after January 1, 1992, in which the
5 agency is located for the collection of the facility capacity
6 fee along with building permit fees or other fees related
7 to the improvement of property, or may contract for
8 collection of the facility capacity fee by the retail water
9 distributor.

10 (g) The proceeds of the facility capacity fee imposed
11 and collected pursuant to this section shall be used
12 exclusively by the board of directors for the annual capital
13 budget of the agency, as described in Section 29.1, for
14 purposes authorized by this section as specified in the
15 plans adopted pursuant to subdivisions (b), (d), and (e).

16 (h) Any action taken by the board of directors
17 pursuant to this section shall be taken only by resolution.

18 (i) Any judicial action or proceeding to attack, review,
19 set aside, void, or annul any resolution imposing a facility
20 capacity charge of the agency, or a resolution modifying
21 or amending an existing charge imposed by the agency,
22 shall be commenced within 120 days of the effective date
23 of the resolution. Any action or proceeding shall be
24 brought pursuant to Chapter 9 (commencing with
25 Section 860) of Title 10 of Part 2 of the Code of Civil
26 Procedure.

27 *SEC. 4. Section 26.2 of the Castaic Lake Water*
28 *Agency Law (Chapter 28 of the Statutes of 1962, First*
29 *Extraordinary Session) is amended to read:*

30 *Sec. 26.2. (a) The agency may prescribe, by rules and*
31 *regulations adopted by resolution or ordinance, that,*
32 *when any facility capacity fees adopted pursuant to*
33 *Section 26.1 and Sections 29.1 to 29.5, inclusive, become*
34 *due and are unpaid* ~~*under and in accordance with the*~~
35 ~~*rules and regulations concerning those fees, and are*~~
36 ~~*either uncontested or the subject of a final judgment as*~~
37 ~~*to their validity as imposed,*~~ *the fees may be secured and*
38 *collected in accordance with the procedures specified in*
39 *Sections 26.3 and 26.4. The security and collection*
40 *procedures set forth pursuant to Sections 26.3 and 26.4*

1 shall only be operative with respect to facility capacity
2 fees first becoming delinquent on or after January 1, 1990.

3 *(b) For the purposes of this section, a facility capacity*
4 *fee is contested if an administrative or judicial challenge*
5 *is brought by the party on whom the fee is imposed not*
6 *later than 90 days from the date on which the party*
7 *receives written notice that specifies the amount of the*
8 *fee, the basis of the calculation of the fee, the means by*
9 *which a party may contest the fee during the 90-day*
10 *period, and the rules governing any administrative*
11 *appeal pertaining to the imposition of the fee.*

12 SEC. 5. *(a) No reimbursement is required by this act*
13 *pursuant to Section 6 of Article XIII B of the California*
14 *Constitution for certain costs that may be incurred by a*
15 *local agency or school district because in that regard this*
16 *act creates a new crime or infraction, eliminates a crime*
17 *or infraction, or changes the penalty for a crime or*
18 *infraction, within the meaning of Section 17556 of the*
19 *Government Code, or changes the definition of a crime*
20 *within the meaning of Section 6 of Article XIII B of the*
21 *California Constitution.*

22 *(b) No reimbursement is required by this act pursuant*
23 *to Section 6 of Article XIII B of the California*
24 *Constitution for certain costs that may be incurred by a*
25 *local agency or school district because in that regard a*
26 *local agency or school district has the authority to levy*
27 *service charges, fees, or assessments sufficient to pay for*
28 *the program or level of service mandated by this act,*
29 *within the meaning of Section 17556 of the Government*
30 *Code.*

31 *(c) However, notwithstanding Section 17610 of the*
32 *Government Code, if the Commission on State Mandates*
33 *determines that this act contains other costs mandated by*
34 *the state, reimbursement to local agencies and school*
35 *districts for those costs shall be made pursuant to Part 7*
36 *(commencing with Section 17500) of Division 4 of Title*
37 *2 of the Government Code. If the statewide cost of the*
38 *claim for reimbursement does not exceed one million*

1 *dollars (\$1,000,000), reimbursement shall be made from*
2 *the State Mandates Claims Fund.*

O

