

Date of Hearing: April 22, 2019

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 689 (McCarty) – As Amended April 11, 2019

SUBJECT: Municipal Utility District Act: nonstock security

SUMMARY: Authorizes the Sacramento Municipal Utility District (SMUD) to operate a pilot project to allow the board of directors to acquire nonstock security in private entities.

Specifically, **this bill:**

- 1) Allows SMUD to take by grant, purchase, gift, devise, lease, or otherwise acquire and hold nonstock security in a corporation or other private entity.
- 2) Requires the board of directors to make the following findings:
 - a) The acquisition furthers the purposes of the district.
 - b) The acquisition is in the interest of the district's ratepayers and the public.
- 3) Requires the board of directors to establish a policy governing acquisitions that shall include, but not be limited to, the following:
 - a) Procedures for preventing conflicts of interest.
 - b) Procedures for determining how much of an acquisition to accept in lieu of, or in addition to, other forms of remuneration, in order to ensure the district secures a reasonable return on any intellectual property or other resources it provides the private entity.
 - c) Procedures governing the approval process for accepting any acquisitions.
- 4) Post the policy on the district's internet website.
- 5) Adopt a resolution at a regular meeting of the board stating the intent of the board to exercise the authority provided under this pilot program.

The authority provided SMUD shall be limited to a total of three acquisitions. Any profit or other gain earned by these acquisitions shall be used to benefit the district's ratepayers.

The pilot program shall remain in effect only until January 1, 2025, and as of that date is repealed.

EXISTING LAW: Provides, pursuant to the California Constitution, that the Legislature shall not have power to authorize the state, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever. Provides limited exceptions for: irrigation districts for narrow purposes; and, counties, cities and other political corporations or subdivisions of the state who join together for the payment of workers' compensation, unemployment compensation, tort liability, or public liability via an insurance pooling arrangement, as specified.

Defines, pursuant to in section 25019 of the Corporations Code, “security” to mean any note; stock; treasury stock; membership in an incorporated or unincorporated association; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; life settlement contract or a fractionalized or pooled interest therein; voting trust certificate; certificate of deposit for a security; interest in a limited liability company and any class or series of those interests (including any fractional or other interest in that interest), except a membership interest in a limited liability company in which the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; provided that evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease; put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; any beneficial interest or other security issued in connection with a funded employees’ pension, profit sharing, stock bonus, or similar benefit plan; or, in general, any interest or instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by a written document. “Security” does not include: (1) any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business or solely for the purpose of voting, or (2) any beneficial interest in any testamentary trust, or (3) any insurance or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period, or (4) any franchise subject to registration under the Franchise Investment Law (Division 5 (commencing with Section 31000)), or exempted from registration by Section 31100 or 31101.

Authorizes, pursuant to the Municipal Utility District Act (MUD Act), the formation of a MUD and authorizes a MUD to acquire, construct, own, operate, control, or use works for supplying the inhabitants of the district and public agencies with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the collection, treatment, or disposition of garbage, sewage, or refuse matter.

FISCAL EFFECT: Unknown

COMMENTS:

This bill is sponsored by SMUD. SMUD reports that, for many years, it has worked with private companies via contractual arrangements to help develop new energy products, services, and programs – such as rooftop solar, energy storage, or data analytics – that assist SMUD in meeting its clean energy mandates under state law. SMUD asserts these contractual

arrangements have typically included either direct payment to SMUD for its trade secrets, intellectual property and other resources, and/or royalty agreements. When these companies take their products into the marketplace, they extract value from SMUD's contributions. SMUD argues that direct payments and/or royalties can impose limitations on the potential return SMUD could realize, or can sometimes be impractical or infeasible, depending on a company's commercialization strategy.

For example, SMUD reports that it provided a company with market research and product development expertise for a software product that helps customers determine the financial viability of rooftop solar. The software now includes a similar evaluation for an electric vehicle purchase and energy storage installation. In addition, "years ago, SMUD invested time and resources with a small company to develop a new software product that analyzes meter data to compare customer usage. If SMUD had held a security interest in that company, our customers would have recouped a substantial return for our time and intellectual property when that company sold for millions."

SMUD argues that allowing it to hold nonstock security will result in no additional risk to SMUD's investments or ratepayer dollars. "Through an optional nonstock security, SMUD would not be required to provide any upfront cash payment for the equity and would not have to spend money to exercise the equity. SMUD would only receive the economic benefits if the partnering company succeeds but would not suffer any losses if the company does not succeed."

This bill creates a three-year pilot program for SMUD to engage in no more than three acquisitions. Further, it requires the establishment of procedures that will prevent conflict of interest, determine the appropriate degree of acquisition and the procedure whereby those acquisitions are made.

This bill ensures any profit or other gain earned by these acquisitions shall be used to benefit the SMUD's ratepayers.

Arguments in Support. SMUD, sponsor of this bill, states, "This (bill) will provide SMUD the ability to monetize our intellectual value and investment in companies with which we partner on innovative products and services. AB 689 will help SMUD spur innovation to meet our aggressive climate change and clean energy goals, while creating an opportunity for new revenue streams in an electric utility industry that is experiencing significant change... Passage of this bill will provide SMUD the opportunity to realize a return on its investment in the products and services that we must work to develop, which will assist in stabilizing SMUD's rates associated with (integrated resource plan) investments, bring economic development to the region, and spur innovation to assist in achieving the state's climate goals."

Arguments in Opposition.

None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

City Of Sacramento

City of Sacramento, Mayor

DBL Partners

Natural Resources Defense Council

Sacramento Black Chamber Of Commerce

Sacramento Metropolitan Chamber of Commerce

Sacramento Municipal Utility District

Valley Vision

Opposition

None on file

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