

- **Board of Directors**
Communications and Legislation Committee

June 10, 2008 Board Meeting

Revised 8-11

Subject

Watch and seek amendments to AB 885 (Calderon, D-Whittier): Metropolitan Water District of Southern California

Description

Assembly Bill 885 (Calderon, D-Whittier) seeks to amend the Metropolitan Water District Act to authorize member public agencies to appoint one alternate director for each existing Metropolitan director. The prior version of the bill proposed to amend the MWD Act to freeze the composition and minimum number of directors representing each member agency. The recent changes to AB 885, amended as a whole in May, take a different approach to assuring member agency representation on the Metropolitan Board by permitting the appointment of alternate directors.

Under the MWD Act, each member agency is entitled to one director plus one additional director for each full five percent of the assessed property valuation within Metropolitan's service area that exists within the boundaries of that member agency. Any individual director may cast the entirety of the weighted votes allotted to that director's member agency. (MWD Act, §§ 51, 52, and 55).

The author and sponsors of AB 885 contend that these provisions unfairly disadvantage member agencies having only one Metropolitan director. If a director from a multi-director member agency is absent, the member agency's other director or directors in attendance may cast the votes otherwise attributable to the absent director. In contrast, if a director appointed by a member agency with only one Metropolitan director cannot attend a meeting, the votes attributable to that member agency cannot be cast. Under AB 885, an alternate director could attend and cast the member agency's votes.

Nevertheless, AB 885 is not intended to be limited to member agencies with only one Metropolitan director. This bill permits each member agency to choose whether to appoint an alternate to its Metropolitan director or directors. Member agencies with more than one director would have the discretion to choose an alternate for each director.

Several member agencies have not taken a position on AB 885. Some member agencies have expressed support; others have expressed concerns. Staff recommends that Metropolitan watch this legislation and seeks board authorization to pursue amendments to clarify how the provisions of AB 885 would be put into operation.

First, as presently drafted AB 885 states that any member agency may appoint one alternate for each representative appointed or selected pursuant to Section 51 or 52 of the MWD Act. Sections 51, 52 and 54 all provide for appointment of Metropolitan directors. The bill should include Section 54 as well, or could permit a member agency to appoint an alternate for each of its Metropolitan directors duly appointed or selected under the MWD Act (without cross-referencing these sections).

Second, AB 885 should provide that the member agencies appointing alternates are responsible for their support. The appointing agencies will determine their level of involvement—whether alternates should attend all meetings, briefings and workshops, receive all materials and stay abreast of issues as fully as regular directors or whether they will attend only in the regular director's absence and be briefed on matters before the board at the meetings they attend. The appointing agencies should provide administrative support to their respective alternates to the extent they determine is necessary and bear those expenses. Requiring Metropolitan to shoulder these

responsibilities would unfairly distribute their cost among all member agencies, including those that do not appoint alternates.

Under AB 885, alternates will be required to file annual statements disclosing their economic interests with the Fair Political Practices Commission and be subject to conflict of interest laws to the same extent as regular directors. In addition, whenever the regular director has a conflict of interest, the same restrictions that apply to the regular director will apply to the alternate. This means that the alternate also will need to know or be informed of all the regular director's direct and indirect economic interests to comply with conflict of interest laws. This is an unavoidable consequence of being an alternate that cannot be mitigated by an amendment to AB 885.

Policy

MWD Act sections 51, 52 and 54 – Appointment and designation by member agencies of their representatives on Metropolitan's Board

California Environmental Quality Act (CEQA)

CEQA determination for Options #1, #2 and #3:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15061(b)(3) and 15378(b)(2) of the State CEQA Guidelines.

Board Options

Option #1

Adopt the CEQA determination, watch AB 885 and authorize staff to seek amendments as described above.

Fiscal Impact: Unknown at this time. Potential increased costs for alternate directors, depending on the number of alternate directors appointed and the level of support that may be required under the final bill.

Option #2

Adopt the CEQA determination and express support for AB 885, if amended as discussed above.

Fiscal Impact: Same

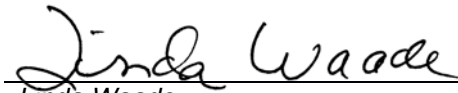
Option #3

Adopt the CEQA determination and oppose AB 885, unless amended as discussed above.

Fiscal Impact: Same

Staff Recommendation

Option #1



Linda Waade
Deputy General Manager, External Affairs

6/5/2008
Date



Jeffrey Kightlinger
General Manager

6/5/2008
Date

Attachment 1 – Assembly Bill 885

BLA #6202

AMENDED IN SENATE MAY 28, 2008
AMENDED IN SENATE MAY 13, 2008
AMENDED IN ASSEMBLY MAY 25, 2007
AMENDED IN ASSEMBLY MAY 21, 2007
AMENDED IN ASSEMBLY APRIL 30, 2007
AMENDED IN ASSEMBLY APRIL 19, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 885

Introduced by Assembly Member Charles Calderon

February 22, 2007

An act to add Section 52.5 to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969), relating to metropolitan water districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 885, as amended, Charles Calderon. Metropolitan Water District of southern California.

The Metropolitan Water District Act provides for the creation of metropolitan water districts, governed by a board of directors composed of at least one representative of each member public agency, ~~designated~~ *appointed* or selected by the member public agency, as prescribed. In addition to the one representative, a member public agency may appoint additional representatives not exceeding one additional representative for each 5% of the assessed valuation of property taxable for district

purposes within the entire district that is within the member public agency.

This bill would authorize a member public agency to appoint one alternate representative for each ~~additional~~ representative that is appointed *or selected pursuant to existing law*. The alternate representative would be authorized to participate and vote in meetings in the absence of the representative for whom he or she is an alternate. The bill would provide that conflict of interest provisions apply to the alternate representative, as specified.

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

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

1 SECTION 1. Section 52.5 is added to the Metropolitan Water
2 District Act (Chapter 209 of the Statutes of 1969), to read:
3 52.5. (a) Any member public agency may appoint one alternate
4 representative for each representative ~~appointed pursuant to Section~~
5 *appointed or selected pursuant to Section 51 or 52*. An alternate
6 representative shall only participate and vote in meetings in the
7 absence of the representative ~~appointed pursuant to Section~~
8 *appointed or selected pursuant to Section 51 or 52*.
9 (b) All provisions of law relating to conflicts of interest that
10 apply to a representative ~~appointed pursuant to Section~~ *appointed*
11 *or selected pursuant to Section 51 or 52* also apply to an alternate
12 representative. Whenever a representative ~~appointed pursuant to~~
13 ~~Section~~ *appointed or selected pursuant to Section 51 or 52* has a
14 conflict of interest on any matter, the same restrictions apply to
15 the alternate representative as would apply to the representative
16 ~~appointed pursuant to Section 52.~~ *appointed or selected pursuant*
17 *to that respective section.*