

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 2296 (Quirk) – As Amended May 5, 2020

SUBJECT: State Water Resources Control Board: local primacy delegation: funding stabilization program

SUMMARY: Authorizes Local Primacy Agency (LPA) counties to elect to participate in a funding stabilization program, administered by the State Water Resources Control Board (State Water Board), to fund regulatory oversight of small public drinking water systems. Specifically, **this bill:**

- 1) Authorizes the State Water Board to delegate partial responsibility for the administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement.
- 2) Authorizes the State Water Board to offer counties the opportunity to apply for delegation of partial or primary responsibility for the administration and enforcement of public water system compliance if a local primacy delegation agreement does not exist as of January 1, 2021.
- 3) Requires the State Water Board's annual evaluation of each LPA's oversight program to include deficiencies in the program and requires the evaluation be posted online. Requires an LPA to make program improvements within two years.
- 4) Authorizes any LPA to elect to participate in a funding stabilization program effective for the 2022-23 fiscal year and thereafter. Requires LPAs electing to participate in the funding stabilization program to apply to the State Water Board with the approval of the county board of supervisors within one year of when participation is sought.
- 5) Authorizes the State Water Board to approve applications for the funding stabilization program if the LPA program is in good standing and the State Water Board has determined the LPA has a need for state fund augmentation. Requires the determination of need to be based on a finding that the local health officer does not have a sufficient fee base to fully fund oversight activities in the LPA delegation agreement.
- 6) Authorizes, if approved, LPA participation in the funding stabilization program to continue annually until the LPA terminates participation or the State Water Board terminates participation because it determines the LPA is no longer in compliance with its delegation agreement or no longer needs state funding augmentation.
- 7) Authorizes the State Water Board to provide funds for the funding stabilization program through a grant, contract, or other expenditure.
- 8) Requires LPAs to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account.

- 9) Requires the State Water Board under the funding stabilization program to provide funding to the LPA for each year of costs incurred for activities set forth in the LPA work plan, including inspection, monitoring, surveillance, water quality evaluations, and enforcement, approved by the State Water Board. Prohibits an LPA from charging or collecting any additional fees from public water systems.
- 10) Requires the State Water Board to adopt policies, guidelines, or procedures for the preparation of the LPA work plan and the terms of payment for work done by the LPA.
- 11) Requires the LPA to maintain accurate accounting records of all costs incurred associated with the activities described in the LPA delegation agreement, and to periodically make them available to the State Water Board.
- 12) Requires a participating LPA to identify small water systems in their jurisdiction that may be suitable for consolidation based on the size, compliance history, location, and its technical, management, and financial resources, and report an identified small water system to the State Water Board at least annually.

EXISTING LAW:

- 1) Authorizes, pursuant to the federal Safe Drinking Water Act (SDWA), the United States Environmental Protection Agency (US EPA) to set standards for drinking water quality and to oversee the states, localities, and water suppliers who implement those standards. (42 United States Code § 300(f) et seq.)
- 2) Declares that it is the established 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. (Water Code § 106.3)
- 3) Requires, pursuant to the California SDWA, the State Water Board to regulate drinking water and to enforce the federal SDWA and other regulations. (Health and Safety Code (HSC) § 116275 et seq.)
- 4) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275(h))
- 5) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system compliance to local health officers in a county through a local primacy delegation agreement. Declares that the delegation shall not include community water systems serving 200 or more service connections. (HSC § 116330 et seq.)
- 6) Defines "small water systems," for the purposes of local primacy delegations, as community water systems except those serving 200 or more service connections, or non-community transient or non-community non-transient water systems. (California Code of Regulations (CCR) Title 22 § 64251)

- 7) Authorizes a public water system to request and receive from the State Water Board a reduced fee if its entire service area serves a disadvantaged community, defined as a community with a median annual household income of less than 80% of the statewide median annual household income. (CCR Title 22 § 64300(a) and 64310)
- 8) Establishes the Safe and Affordable Drinking Water Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near-and long-term. (HSC § 116766 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "California recognizes that all individuals have a human right to safe, clean, affordable, and accessible water, including disadvantaged groups and communities in rural areas. The State seeks to protect these rights by enforcing the Safe Drinking Water Act. LPA delegation agreements help ensure that small water systems deliver adequate and safe drinking water. Compared to larger systems, small water systems often require more resources per consumer to ensure compliance with state requirements, but also generate less regulatory fee revenue. However, increasing regulatory fees to match program cost is difficult, especially when the communities served are also disadvantaged. LPAs currently regulate more than half of all public drinking water systems, but are at risk of relinquishing oversight authority to the state without a continuous source of funding. It is in the state's interest to ensure that LPAs can continue to provide oversight to ensure that the systems they regulate deliver adequate and safe drinking water."

Human Right to Water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems (PWS), especially in disadvantaged communities, and many other factors continue to challenge progress.

Classification of public water systems: Public water systems supply water for human consumption to 15 or more service connections or regularly serve 25 individuals at least 60 days per year. (A "service connection" is usually the point of access between a water system's service pipe and a user's piping.) A public water system is not necessarily a public entity, and most public water systems are privately owned. There are three legal distinctions between the types of public water systems: community, non-community non-transient, and non-community transient. The type of water system is based on how often people consume the water. Community water systems are city, county, regulated utilities, regional water systems, or small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. Drinking water regulations impose the most stringent monitoring requirements on community and non-community non-transient water systems because the people they serve obtain all or much of their water from that system each day. Non-community transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water source. Most people that consume the water neither reside nor regularly spend time there.

Regulation of public water systems: The State Water Board has regulatory oversight of approximately 7,500 public drinking water systems in California. 30 of California's 58 counties have LPA delegation agreements with the State Water Board, and therefore have primary responsibility of regulatory oversight of the public drinking water systems in their counties. LPA counties regulate a total of approximately 4,500 public drinking water systems, which consist of community water systems with more than 14 and less than 200 connections, non-community non-transient systems, and non-community transient systems. In the remaining 28 counties, all public water systems, regardless of size, are directly overseen by the State Water Board. In all 58 counties, public water systems with 200 service connections or more are directly overseen by the State Water Board.

"State small water systems" serve more than 5 and less than 14 service connections and do not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days per year. (HSC § 116275(n)) These water systems are not considered public and are not regulated by the State Water Board. Instead, state small water systems are regulated by county health officials, regardless of LPA status. (CCR Title 22 § 64211) Private domestic wells (systems with 1-4 service connections) are currently not regulated by any entity.

The regulation of public water systems includes: (1) issuance of permits covering the approval of water system design and operation procedures; (2) inspection of water systems; (3) the enforcement of laws and regulations to assure that all public water systems routinely monitor water quality and meet current standards; and, (4) assuring notification is provided to consumers when standards are not being met. These regulatory responsibilities are the same, whether the water system is overseen by the State Water Board or an LPA.

Under LPA delegation agreements, the State Water Board reviews the performance of each LPA annually and makes recommendations for program improvement, to be completed by the LPA in a "reasonable amount of time." In order to provide additional oversight of LPAs, AB 2296 would require the State Water Board to include program deficiencies in their evaluation, post the evaluation online, and require LPAs to make program improvements within two years. The State Water Board has the authority to revoke an LPA's delegation agreement if the LPA fails to make needed improvements.

State Water Board regulatory fees for public water systems: The State Water Board establishes regulatory fees, paid annually by public water systems, based on costs of activities associated with regulating public water systems. The total collected revenue cannot exceed the amount allocated by the legislature in the annual budget, while also taking into account available reserves. For community water systems serving more than 100 service connections, a graduated flat fee is applied based on the number of service connections. For non-community non-transient water systems, the fee is based on the number of people the public water systems serves, while non-community transient water systems pay a flat fee per system. Fees collected by the State Water Board are deposited in the Safe Drinking Water Account.

According to the 2015 Safe Drinking Water Plan, "The Safe Drinking Water Account derives the majority of its funding from fee-for-service cost recovery for activities associated with the oversight of PWS serving 1,000 or more service connections. A lesser amount comes from smaller PWS and non-community water systems. There are also fees that cover the costs of writing permits and enforcement actions."

LPA regulatory fees for public water systems: LPAs establish and collect oversight fees independently from the State Water Board and do not deposit revenue into the Safe Drinking Water Account. Fee revenue collected by LPAs are used to fund all costs associated with oversight.

Challenges in regulating water systems in LPAs: According to the 2015 Safe Drinking Water Plan, several challenges face LPAs seeking to continue the delegation of primacy including, "(1) the increasing number and complexity of drinking water standards and regulations; (2) the technical expertise required to operate water treatment facilities; (3) the amount of time and resources required to carry out enforcement actions; and, (4) complex compliance issues, such as regional nitrate and arsenic problems that disproportionately impact small water systems. The problem with this funding structure is that the greatest need for oversight is among those smaller PWS serving less than 1,000 service connections, but the fees to cover this activity are insufficient. As a result, it has been a struggle to maintain a program that provides sufficient oversight of smaller PWS. In recent years, more LPAs have returned the small PWS regulatory oversight program because their funding is inadequate to effectively administer the program."

Several LPAs have had difficulty administering their oversight programs. From 2007-2014, six counties have returned oversight authority back to the State Water Board: Fresno (2007), Marin (2010), Tuolumne (2010), San Mateo (2011), Tulare (2014), and Merced (2014). In these cases, the State Water Board assumed regulatory jurisdiction for these water systems. In 2014, the State Water Board provided one-time grant funding to the remaining LPAs to assist with data reporting, training, staffing, equipment, and other drinking water related items.

In their 2015 Safe Drinking Water Plan, the State Water Board recommended the Legislature implement a funding strategy to address the need for more oversight and technical assistance to small PWS, especially those serving disadvantaged communities.

Drinking water violations in small water systems: In November 2018 the Public Policy Institute of California (PPIC) reported in *California's Waters*, "According to state data, in July 2018 more than 230 systems, serving roughly 357,000 people (0.9% of the population), had unsafe drinking water. More than 400 schools have their own water systems, and 33 of them (serving 13,000 people) were also out of compliance." According to the US EPA's ECHO portal, of the 190 systems with violations for three or more years, 94% are small, serving fewer than 3,300 people; 77% serve fewer than 500 people.

The State Water Board estimates that one million Californians in more than 300 communities lack access to safe drinking water because of contamination in smaller poorly maintained older water systems in disadvantaged communities (State Water Board, *Safe and Affordable Drinking Water Fund Fact Sheet*, 2019). To ensure that disadvantaged communities could afford drinking water oversight, in 2017, the State Water Board limited its own oversight fees to \$100 per system (for systems with greater than 100 connections, an additional graduated flat fee per service connection greater than 100 applies). (CCR Title 22 § 64310)

The Safe and Affordable Drinking Water Fund: SB 200 (Monning, Chapter 120, Statutes of 2019) established the Safe and Affordable Drinking Water (SADW) Fund to address longstanding issues with water supply, infrastructure, and operations. The fund provides \$130 million annually for the State Water Board to support operations and maintenance for small community water systems unable to meet safe drinking water standards. The State Water Board adopted a resolution in August 2019 to issue grants and contracts for funding appropriated in the

Fiscal Year 2019-20 Budget. In December 2019, the Advisory Group was formed pursuant to SB 200 to help identify needs and designate spending priorities for the SADW Fund.

Previous attempts at funding stabilization for small drinking water systems: AB 402 (Quirk, 2019) would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of small public drinking water systems in LPA counties. Under AB 402, the State Water Board would have provided funding for approved LPA activities including inspection, monitoring, and enforcement, with the goal of continued local oversight of small water systems, as opposed to remitting oversight back to the State Water Board. AB 402 did not mandate LPAs to participate in the funding stabilization program, instead allowing LPA counties to decide on their own how best to fund their activities. AB 402 was held on suspense in the Senate Appropriations Committee.

AB 2296 picks up where AB 402 left off, including additional provisions that expand potential sources for the funding stabilization program. AB 2296 provides the intent of the Legislature to consider funding sources from the General Fund, the Safe Drinking Water Account, including regulatory fees on public water systems, or other appropriate sources. LPAs would be required to remit all penalties, fines, and reimbursement of costs to the State Water Board for deposit into the Safe Drinking Water Account. AB 2296 includes additional requirements for the State Water Board to approve an application for the funding stabilization program, providing that the board of supervisors of the LPA applicant will make a determination that the LPA has a need for state fund augmentation. The determination of need is required to be based on a finding that the local health officer does not have a sufficient fee base to fully fund the oversight activities described in the local primacy agency delegation agreement. AB 2296 also specifies the fate of the funding stabilization program if approved. The funding stabilization program would continue annually until either the LPA terminates participation or the State Water Board determines the LPA is no longer in compliance with the delegation agreement or the board of supervisors determines the LPA does not have a need for state funding augmentation.

Consolidation of water systems: According to the US EPA, restructuring can be an effective means to help small water systems achieve and maintain technical, managerial, and financial capacity, and to reduce the oversight and resources that states need to devote to these systems. The State Water Board maintains that consolidating public water systems and extending service from existing public water systems to communities and areas that currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidation does this by extending costs to a larger pool of ratepayers.

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system to consolidate with, or receive an extension of service from, a compliant public water system. While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate. As of summer 2018, there were 13 mandatory consolidations. Voluntary consolidations have also increased, numbering 72 by summer 2018.

Under AB 2296, an LPA participating in the funding stabilization program would be required to identify small water systems under the LPA's jurisdiction that may be suitable for consolidation

and report the identified small water systems to the State Water Board at least annually and work with the State Water Board to consolidate the systems.

Related legislation:

- 1) SB 1096 (Caballero). Would authorize a water or sewer system corporation to apply to the Public Utilities Commission to consolidate their system with a public water system or state small water system. This bill is double referred to the Senate Energy, Utilities, and Communications Committee and Senate Environmental Quality Committee.
- 2) SB 1280 (Monning). Would authorize the State Water Board to order consolidation between a public water system and an at-risk water system if the State Water Board receives a petition from the water system's governing body or at least 30% of the households served by the water system. This bill is double referred to the Senate Environmental Quality Committee and the Senate Governance and Finance Committee.
- 3) AB 402 (Quirk, 2019). Would have created an opt-in program, administered by the State Water Board, to fund regulatory oversight of LPA counties. This bill was held on suspense in the Senate Appropriations Committee.
- 4) SB 200 (Monning, Chapter 120, Statutes of 2019). Created the Safe and Affordable Drinking Water Fund to help water systems provide an adequate and affordable supply of safe drinking water in both the near-and long-term.
- 5) AB 386 (Aghazarian, 2003). Would have required the Department of Health Services (responsible for drinking water regulation at the time) to meet with local health officers to provide sufficient funding prior to passing or expanding any new mandates. This bill died in the Assembly Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Environmental Health Administrators (CAEHA) (Sponsor)
California State Association of Counties (CSAC)
Health Officers Association of California
Rural County Representatives of California (RCRC)

Opposition

None on file.

Analysis Prepared by: Rachel Silvern / E.S. & T.M. /