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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### **AB 2296 (Quirk) - State Water Resources Control Board: local primacy delegation: funding stabilization program**

**Version:** May 5, 2020

**Urgency:** No

**Hearing Date:** August 17, 2020

**Policy Vote:** E.Q. 4 - 0

**Mandate:** Yes

**Consultant:** Ashley Ames

**Bill Summary:** This bill would authorize 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.

#### **Fiscal Impact:**

- The State Water Board estimates ongoing costs of \$200,000 annually (special fund) to negotiate with the LPAs, enter into agreements with each LPA, oversee LPA performance relative to provisions of the agreements, and extend the State Water Board's regulatory fee program, including billing and collections, to include the small water systems regulated by participating LPAs.
- Unknown one-time costs, likely in the millions of dollars, to fund local primacy agreement grants for all participating agencies (see staff comments).

**Background:** The State Water Board has regulatory oversight of approximately 7,500 public drinking water systems in California. Thirty 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. 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. 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.

**Proposed Law:** 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.

**Related Legislation:**

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 was held in the Senate Energy, Utilities, and Communications Committee.

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 was held in the Senate Environmental Quality Committee.

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.

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.

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.

**Staff Comments:** The State Water Board indicated that it is unable to develop a clear estimate of the costs of funding the LPAs at this time because it does not know how many LPAs would choose to participate in the program and therefore what the actual costs would be to fund the local agencies under the bill.

According to a 2019 survey of LPA counties conducted by the bill's sponsor, if all current LPA counties were to choose to participate in the new funding stabilization program proposed in this bill, it would result in total costs of approximately \$13 million to fund local primacy agreement grants for all participating agencies.

However, the bill limits the LPAs that can participate in the program to those where the County Board of Supervisors make 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. As a result, it is certain that not all LPAs would choose to participate in the program authorized by the bill, because not all LPAs would be able to meet this criterion. The State Water Board, however, is unable to determine at this time which LPAs would choose to participate in the program authorized by the bill and where their Board of Supervisors would make the necessary findings. Accordingly, the State Water Board is unable to develop a specific cost estimate. The costs, however, would likely be in the millions of dollars.

It is important to note, however, that under current law, any LPA can choose to discontinue their regulation of state small drinking water systems at any time and to return the program to the State. Where this occurs, the State Water Board is required to hire staff and increase fees to pay for the costs of assuming this regulatory responsibility. As a result, the State Water Board would likely incur significant increased costs for the regulation of state small water system with or without this bill. This bill would help fund the LPAs to administer the program and result in increased state costs and fee increases. Without this bill, many LPAs (particularly those where their Board of Supervisors determines that they don't have a sufficient fee base to adequately fund the regulatory program) will likely relinquish the program and turn it back to the State Water Board, and the State Water Board will be required to correspondingly hire staff and increase fees to pay for the costs of assuming this regulatory responsibility.

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