
THIRD READING

Bill No: AB 2296
Author: Quirk (D)
Amended: 5/5/20 in Assembly
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 4-0, 8/11/20
AYES: Allen, Hill, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle, Skinner

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 63-6, 6/10/20 - See last page for vote

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

SOURCE: California Association of Environmental Health Administrators

DIGEST: This bill 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.

ANALYSIS:

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) 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.)
- 3) 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))
- 4) Authorizes the State Water Board to delegate primary responsibility of administration and enforcement of public water system (PWS) 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.)

This bill:

- 1) Authorizes the State Water Board to delegate *partial* responsibility for the administration and enforcement of PWS 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 PWS 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 PWSs.
- 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.

Background

- 1) *Regulation of PWSs.* 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 PWSs, regardless of size, are directly overseen by the State Water Board. In all 58 counties, PWSs with 200 service connections or more are directly overseen by the State Water Board.

"State small water systems" serve more than five 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 PWSs includes: (a) issuance of permits covering the approval of water system design and operation procedures; (b) inspection of water systems; (c) the enforcement of laws and regulations to assure that all PWSs routinely monitor water quality and meet current standards; and, (d) 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 requires 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 a LPA's delegation agreement if the LPA fails to make needed improvements.

- 2) *State Water Board regulatory fees for PWSs.* The State Water Board establishes regulatory fees, paid annually by PWSs, based on costs of activities associated with regulating PWSs. 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 PWS 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."

- 3) *LPA regulatory fees for PWSs.* 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.
- 4) *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.

- 5) *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 community water systems, 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).

- 6) *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 PWSs and extending service from existing PWSs 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 PWS 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 PWS. While for many years the state's drinking water program had encouraged voluntary consolidation of PWSs, 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.

Comments

- 1) *Purpose of 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."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, 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.

SUPPORT: (Verified 8/20/20)

California Association of Environmental Health Administrators (source)

California Fire Chiefs Association

California State Association of Counties

County of Plumas

County of San Luis Obispo

County of Yolo

Fire District Association of California

Health Officers Association of California

Rural County Representatives of California

OPPOSITION: (Verified 8/20/20)

Howard Jarvis Taxpayers Association

ASSEMBLY FLOOR: 63-6, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Cooley, Cooper,
Daly, Diep, Eggman, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia,
Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin,
Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, Mathis,
Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-
Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca
Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NOES: Brough, Cunningham, Fong, Kiley, Lackey, Obernolte

NO VOTE RECORDED: Bigelow, Cervantes, Chen, Choi, Megan Dahle, Flora,
Patterson, Quirk, Voepel, Waldron

Prepared by: Gabrielle Meindl / E.Q. / (916) 651-4108

8/22/20 11:54:26

****** END ******