
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 230 (Portantino) - State Water Resources Control Board: Constituents of Emerging Concern in Drinking Water Program

Version: January 3, 2022

Urgency: No

Hearing Date: January 18, 2022

Policy Vote: E.Q. 7 - 0

Mandate: No

Consultant: Ashley Ames

Bill Summary: This bill would require the State Water Resources Control Board (Water Board) to establish, maintain, and direct a dedicated Constituents of Emerging Concern (CEC) in Drinking Water Program to assess the state of information and recommend areas for further study on the occurrence of CECs in drinking water, and would establish the CEC Action Fund.

Fiscal Impact:

- Annual costs in the low millions of dollars (General Fund or special fund) for five years for the Water Board to administer the new CEC in Drinking Water Program, and ongoing cost pressure of the same amount thereafter to continue the program rather than allowing it to sunset. While a fiscal estimate for the most recent version of this bill was not available at the time of this analysis, the Water Board previously estimated costs for the prior version of \$1 million annually (special fund) to support five positions, and \$450,000-\$650,000 annually (special fund) for contract costs to administer the new CEC program that would be mandated by this bill. This estimate presumes that the Water Board would be implementing recommendations for the identification, screening, and analysis of new constituents at the recommendation of the science advisory panel, at a rate of two new CECs per year. Staff anticipates that recent amendments would not have a significant impact on annual costs. However, the new sunset provision would limit direct costs of the bill to a five-year timeframe.
- Unknown but potentially significant cost pressure, possibly in the tens of millions of dollars (General Fund or special fund), for the state to fund research, grants, and other CEC-related financial assistance in future years. Should the Legislature appropriate funding for these purposes, the Water Board would also incur costs related to administering CEC-related financial assistance as directed by this bill. These costs would be related to traditional Water Board oversight roles such as adoption of funding guidelines, identification of projects, review of applications for funding, and fraud prevention oversight.

Background: “Constituents of Emerging Concern” or CECs is a term used by water quality professionals to describe pollutants that have been detected in water bodies, that may cause ecological or human health impacts, and typically are not regulated under current environmental laws. CECs can include nanoparticles, pharmaceuticals, personal care products, estrogen-like compounds, flame retardants, detergents, and some industrial chemicals with potential significant impact on human health and aquatic life.

Over the years, CECs have received growing public attention as potential pollutants in drinking water supplies. Yet, the full extent and public health risk of their presence is not well understood.

The federal Safe Drinking Water Act establishes a framework for evaluating *potential* drinking water contaminants. The US EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants suspected to be present in drinking water, but that do not have health-based standards set under the federal Safe Drinking Water Act. California conducts federally required monitoring from the federal UCMR program that can result in California establishing notification levels (NLs) and response levels (RLs) as precautionary measures for contaminants that have not yet undergone or completed the regulatory-standard setting process. When chemicals are found at concentrations greater than their NLs, certain requirements and recommendations apply.

The Water Board has no standing science advisory bodies to address CECs. Panels are convened as necessary to provide recommendations on specific management questions. To date, the State Water Board has convened four science advisory panels to provide recommendations on CECs in aquatic ecosystems.

Proposed Law: This bill would require the Water Board to establish, maintain, and direct a dedicated CEC in Drinking Water Program to assess the state of information and recommend areas for further study on, among other things, the occurrence of CECs in drinking water, and would establish the CEC Action Fund. Specifically, this bill would:

1. Require the Water Board to establish the CEC in Drinking Water Program for five years to assess information on and make recommendations regarding areas for further study related to: the occurrence of CEC in drinking water sources and treated drinking water; the fate, transport, and biodegradation of these constituents; water treatment and laboratory analyses; and the potential public health effects.
 - a. Require the Water Board to review whether to continue the program after the initial five years.
 - b. Specify that this bill would not limit the Water Board's existing authority to act on CECs.
 - c. Specify that this bill would not interfere with the Water Board's ongoing activities on CECs.
2. Require the Water Board to convene the Science Advisory Panel for CECs in drinking water sources and treated drinking water for three years.
 - a. Specify that the panel include at least seven members comprised of experts from the fields of public health sciences, water and wastewater engineering, toxicology, epidemiology, chemical sciences, and biological sciences.
 - b. Require the Water Board to ensure that panel members do not have conflicts of interest.

- c. Require that the panel review and provide recommendations to the Water Board on CECs for further action, excluding perfluoroalkyl and polyfluoroalkyl substances (PFAS), as specified.
 - d. Specify that the Water Board may adjust the panel membership numbers and composition, as necessary.
3. Specify that the panel's advisory duties *may* include all of the following activities, at the Water Board's request, in consultation, as needed, with the Office of Environmental Health Hazard Assessment (OEHHA) and the Department of Toxic Substances Control (DTSC):
 - a. Review existing data for CECs collected by the State Water Board and nationwide by the United States Environmental Protection Agency's Unregulated Contaminant Monitoring Rule Program and recommend to the State Water Board further actions based on state-specific conditions and the state's constituent of emerging concern initiatives.
 - b. Identify CECs candidates based on potential public health effects;
 - c. Incorporate recommendations from other ongoing state efforts evaluating CECs;
 - d. Evaluate and recommend a framework for standardizing and validating detection methods, new screening methods, monitoring approaches, and reporting procedures for CECs;
 - e. Recommend a framework for a risk-based screening program for CECs and appropriate indicators and surrogates that consider their occurrence in drinking water sources and treated drinking water supplies, contribution and fate in the environment, and potential for human exposure;
 - f. Recommend a process to ensure CEC data is integrated with existing state databases; and
 - g. Review the results of any screening program and provide recommendations to assist the State Water Board in prioritizing, monitoring, and making regulatory determinations for CECs.
 - h. Address the United States Environmental Protection Agency's Contaminant Candidate List and not create any impediments to complying with federal law.
4. State that nothing in these provisions duplicates, changes, or interferes with the State Water Board's ongoing efforts on CECs in Recycled Water.
5. Specify that if the State Water Board imposes CEC monitoring requirements based on the recommendations of the panel, the State Water Board may provide financial assistance, upon appropriation by the Legislature for this purpose, to any public water system upon a showing that the costs associated with testing drinking water in compliance with those requirements would impose a financial

hardship. Requires these funds be dedicated for use public water systems serving fewer than 10,000 individuals located in disadvantaged communities.

6. Make findings that the program is intended to help inform the State Water Board in making regulatory determinations for CECs and is not intended to supersede any requirements related to setting a maximum contaminant level, public health goal, a notification level, or a response level, as specified.
7. Establish the CEC Action Fund in the State Treasury and directs the Water Board to administer the Fund.
8. Specify that that monies in the Fund be used, upon appropriation by the Legislature, to support costs associated with:
 - a. Establishing and maintaining the panel, developing standardized methods and a risk-based screening program, collecting occurrence data, and reporting on those activities
 - b. Developing standardized analytical methods internally by the State Water Board or through external contracts or grants;
 - c. Contracts or grants to public or private external research organizations to fill research gaps; and
 - d. Other State Water Board costs associated with the implementation and administration of the program.
9. Require the Water Board to provide for the deposit into the CEC Action Fund of federal contributions, voluntary contributions, gifts, grants, bequests, transfers by the Legislature from the General Fund, and funding from authorized general obligation bond acts.
10. Require the program provide opportunities for public participation.
11. Require the Water Board to maintain a program internet website and make relevant research, reports, and data available to the public.
12. Require the Water Board to provide an annual program update at a regularly noticed meeting of the Water Board.
13. Require the Water Board, by June 1, 2026, to provide a final report to the Legislature in compliance with Section 9795 of the Government Code on the work conducted by the panel. Require the Water Board to complete a public review of the final report before submitting the report to the Legislature.
14. Sunset the requirement for submitting a report on June 1, 2030.

Related Legislation:

SB 996 (Portantino, 2020) would have required the Water Board to establish a dedicated CEC program to support and conduct research on CEC in drinking water that

may pose risks to public health. The measure was held in the Senate Environmental Quality Committee.

AB 1056 (Portantino, 2020) would have required the Water Board to establish an analytical laboratory method, by January 1, 2022, that could be used as a tool to assess the extent of per- and polyfluoroalkyl substances (PFAS) contamination in drinking water, surface water, groundwater, and wastewater. The measure was held in the Senate Environmental Quality Committee.

AB 756 (C. Garcia, Chapter 162, Statutes of 2019) authorizes the Water Board to order one or more public water systems to monitor for per- and polyfluoroalkyl substances (PFASs) and establishes a separate customer notification process as a result of any confirmed detection.

AB 2072 (Quirk, 2018) would have required the Water Board to establish and maintain a dedicated program to research the potential effects of CEC in water sources on human and ecosystem health. The measure was held in Assembly Appropriations Committee.

Staff Comments:

Water Board Costs. Staff notes that the Water Board already has the statutory authority—but not dedicated staff or funding—to accomplish the tasks set forth in this bill. While a fiscal estimate for the most recent version of this bill was not available at the time of this analysis, the Water Board has previously estimated costs of \$1 million annually (special fund) ongoing to support five positions, and \$450,000-\$650,000 annually (special fund) ongoing for contract costs to administer the new CEC program that would be mandated by this bill. This estimate presumes that the Water Board would be implementing recommendations for the identification, screening, and analysis of new constituents at the recommendation of the science advisory panel, at a rate of two new CECs per year. Staff anticipates that recent amendments would not have a significant impact on annual costs of the activities required by this bill, but the latest version does introduce a possible five-year sunset. Staff estimates that this bill would result in direct annual costs in the low millions of dollars until 2026-27, after which it would result in a cost pressure to continue the program rather than sunset it.

Cost Pressure of CEC Action Fund. This bill would establish the CEC Action Fund, thus creating a cost pressure for the Legislature to provide appropriations in future years to the new fund. This fund would support costs associated with developing standardized analytical detection methods for CEC, and fund contracts and grants to external research organizations to fill research gaps, among other things. Should the Legislature appropriate funding for this purpose, the Water Board would also incur costs related to administering CEC-related financial assistance as directed by this bill. These costs would be related to traditional Water Board oversight roles such as adoption of funding guidelines, identification of projects, review of applications for funding, and fraud prevention oversight.

Funding Source. Staff notes that while the bill establishes the CEC Action Fund to provide resources for the new program, it does not include an appropriation or any revenue mechanism for the fund. Without an ongoing funding source, it is possible that the costs of this program could be borne by the Safe Drinking Water Account. The

Water Board indicates that this could necessitate fee increases for drinking water permit holders, which could limit the Water Board's flexibility in generating funds to cover other drinking-water-related expenses given the statutory five-percent cap in annual drinking water fee increases.

The 2021-22 budget provided some funding for CECs and related activities. In November, the Legislative Analyst's Office determined that the state budget has capacity for new ongoing commitments, such as spending increases, over the longer term—through 2025-26—based on its examination of the state budget condition. In addition, the LAO estimates that the Governor had a \$29 billion surplus to allocate in the 2022-23 budget process. These surplus funds could provide General Fund or other funding to the CEC Action Fund that this bill would establish.

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