
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 1188
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Urgency: No
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Fiscal: Yes

SUBJECT: Safe Drinking Water State Revolving Fund: financial assistance

DIGEST: Authorizes the State Water Resources Control Board (State Water Board) to provide grants, principal forgiveness funding, and zero percent financing from the state's Drinking Water State Revolving Fund to the extent authorized by federal law by deleting certain existing requirements, including making such funding limited to water systems serving severely disadvantaged communities.

ANALYSIS:

Existing federal law:

- 1) Under the federal Drinking Water State Revolving Fund (DWSRF) statute, provides financial assistance to help water systems and states achieve the health protection objectives of the Safe Drinking Water Act (SDWA). Requires that between 12 and 35% of the capitalization grant be used for subsidies to disadvantaged communities (DACs), to the extent that there are sufficient applications from such communities. (42 United States Code (U.S.C.) §300j)
- 2) Requires the state to prepare annual intended use plans (IUP's) for the DWSRF funds, which are subject to public review and comment, and are submitted to U.S. Environmental Protection Agency (U.S. EPA). Requires, to the maximum extent practicable, priority for the use of funds is based on (i) the most serious risks to human health, (ii) compliance with SDWA Act requirements, and (iii) assisting systems most in need on a per household basis according to state affordability criteria. (42 U.S.C. §300j-12(b)(3)(A))

Existing state law:

- 1) Establishes the California Safe Drinking Water Act (SDWA) and requires the State Water Board to maintain a drinking water program. (Health & Safety Code (HSC) §116270, et seq.)

- 2) Establishes the Safe Drinking Water State Revolving Fund (DWSRF) to provide financial assistance for the design and construction of projects for public water systems to meet safe drinking water standards. (HSC §116706, et seq.)
- 3) Requires the State Water Board's eligibility criteria for project financing under the Safe Drinking Water State Revolving Fund law be consistent with federal requirements. (HSC §116760.50)
- 4) Authorizes the State Water Board, to the extent permitted by federal law, to provide up to 100% grant funding, and principal forgiveness and 0% financing on loans, from the DWSRF to a project for a water system that serves a severely disadvantaged community (SDAC). (HSC §116760.50)
- 5) Requires the interest rate for repayable financing provided from the DWSRF to be 0% if the financing is for a public water system that serves a disadvantaged community with a financial hardship or if the financing is for a public water system that provides matching funds. (HSC §116761.65)
- 6) Authorizes the State Water Board, where a public water system or a state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order a physical or operational consolidation with a receiving water system. (HSC §116682 (a))
- 7) Allows planning and preliminary engineering studies, project design, and construction costs incurred by community water systems and not-for-profit noncommunity water systems to be funded by loans and other repayable financing from the DWSRF and requires the State Water Board to determine what portion of the full costs the water system is capable of repaying. (HSC § 116761.20)
- 8) Authorizes providing grant or principal forgiveness to those water systems from the DWSRF only to the extent the State Water Board finds the water system is unable to repay the full costs of the financing. (HSC §116761.20)
- 9) Imposes limitations on the financial assistance provided pursuant to these provisions to water corporations regulated by the Public Utilities Commission (PUC). (HSC §116761.20)
- 10) Establishes as the 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)

This bill:

- 1) Deletes the requirement that 0% financing be limited to water systems serving severely disadvantaged communities and would instead generally authorize the State Water Board, to the extent authorized by federal law, to provide reduced or 0% financing to further the purposes of the Safe Drinking Water State Revolving Fund law of 1997.
- 2) Deletes the requirement that a water system serve a severely disadvantaged community in order to be provided with up to 100% grant funding or principal forgiveness and instead authorize providing that grant funding or principal forgiveness to certain other water systems.
- 3) Deletes the authorization to provide grant or principal forgiveness to those water systems only to the extent the State Water Board finds the water system is unable to repay the full costs of the financing and also deletes those limitations on the financial assistance provided to water corporations regulated by the PUC.

Background

- 1) *Regulation of Drinking Water.* The State Water Board has the primary authority to enforce federal and state drinking water statutes and is responsible for the regulatory oversight of nearly 8,000 public water systems throughout the state. While the majority of the state receives drinking water that meets federal and state drinking water standards, there are many public water systems, particularly those serving small disadvantaged communities, that fail to provide safe drinking water to residents that rely on them. Currently, approximately 345 of those systems do not meet safe drinking water standards, nearly 300 systems cannot consistently meet public health standards, and there are an unknown number of water systems that are smaller than 15 or more service connections/households, and an untold number of domestic wells that likely tap into contaminated groundwater sources.
- 2) *Lack of Clean Safe Drinking Water.* Disadvantaged communities often lack the rate base, as well as the technical, managerial, and financial capacity to show they can afford and effectively manage operations and maintenance costs related to water treatment. Without being able to pay for maintenance, these communities are effectively barred from accessing capital improvement funding. In contrast, larger water systems have the financial capacity both to

pay treatment costs and to provide for a well-trained and technically competent workforce of water system operators.

- 3) *Consolidation of water systems.* According to the U.S. 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.
- 4) *Drinking Water State Revolving Fund.* The DWRSF program assists public water systems in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements. The U.S. EPA provides funding of approximately \$100 million each year for the state's DWSRF, which the State Water Board uses to provide loans and nonrepayable financing for drinking water projects that protect public health. The U.S. EPA's capitalization grants contain varying terms each year, including eligibility for principal forgiveness. The state DWSRF statute is required to be consistent with federal requirements per existing state statute (HSC § 116760.50).

In the last several years, the U.S. EPA has allocated funding for grants and principal forgiveness for *any* eligible DWSRF recipient, not just for disadvantaged communities. SB 1188 would align the state DWSRF statute with the terms of the federal assistance.

- 5) *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, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

Comments

- 1) *Purpose of Bill.* According to the author, “Currently there are roughly 345 small public water systems in California failing to provide safe and adequate drinking water to the populations they serve, along with an additional 617 water systems at risk of failing. All Californians deserve access to clean and reliable drinking water, and despite their obvious need, many water systems are ineligible for the state’s Drinking Water State Revolving Fund (DWSRF) only because they do not serve disadvantaged communities.

“SB 1188 will bring California in line with federal DWSRF law and make DWSRF grants and principal forgiveness funding available to non-disadvantaged communities for consolidation and public health drinking water projects while continuing to prioritize small disadvantaged communities.”

- 2) *Another Tool in the Tool Box.* Water system consolidations are one of the most cost-effective ways to ensure small communities have access to safe and reliable drinking water. Consolidating smaller water systems also helps with economies of scale when constructing and operating infrastructure and reduces the number of failing and at-risk water systems in California. However, consolidations generally require new infrastructure to connect the merging water systems, which the receiving water system often cannot afford on its own. SB 1188 would allow more water systems considering consolidation with a smaller water system to become eligible for funding from the DWSRF, which could incentivize more consolidations. Under the proposal, such funding would also be available for a broader range of consolidation-related projects.

In cases where a consolidation is impracticable, this bill would also allow the State Water Board to assist non-disadvantaged communities, particularly small communities, to address public health problems with additional grant or principal forgiveness funding, or reduced or zero percent financing, needed to make a project affordable. According to the State Water Board, some small water systems that have failed or are at-risk of failing to provide safe and adequate drinking water do not qualify for grant or principal forgiveness funding because they do not serve a disadvantaged community. Some of these applicants may have median household incomes that are barely above the threshold for qualification as “disadvantaged.” For those small water systems that are not currently eligible, the projects needed to alleviate their failures or at-risk conditions are likely to not move forward without such funding.

Related/Prior Legislation

SB 776 (Gonzalez, Chapter 187, Statutes of 2021). Extended several provisions of

SB 200 to apply to state small water systems, including authorizing the State Water Board to adopt emergency regulations to quickly address drinking water emergencies, clarifying that certain existing enforcement authorities apply to state small water systems, and allowing the State Water Board to make limited advance payments and funding for projects without a written agreement.

SB 403 (Gonzalez, Chapter 242, Statutes of 2021). Expanded the authority of the State Water Board to order the consolidation of at-risk domestic wells and at-risk water systems.

SB 200 (Monning, Chapter 120, Statutes of 2019) established 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. The bill required the State Water Board to annually develop a Fund Expenditure Plan and develop a map of aquifers that are used or likely to be used as a source of drinking water for state small water systems or domestic wells and that are at high risk of containing contaminants that exceed safe drinking water standards.

SB 88 (Budget Committee, Chapter 27 Statutes of 2015). Authorized the State Water Board to require water systems that are serving disadvantaged communities with unreliable and unsafe drinking water to consolidate with or receive service from public water systems with safe, reliable, and adequate drinking water.

SOURCE: Author

SUPPORT:

California Municipal Utilities Association

OPPOSITION:

None received

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