
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 776
Author: Gonzalez
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Urgency: No
Consultant: Gabrielle Meindl

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Fiscal: Yes

SUBJECT: Safe drinking water and water quality

DIGEST: This bill would make various statutory changes to the implementation of the Safe and Affordable Drinking Water Act, including consolidating the enforcement authority available to the State Water Board to enforce the terms, conditions, and requirements of its financial assistance programs.

ANALYSIS:

Existing law:

- 1) Establishes the California Safe Drinking Water Act (SDWA) and requires the State Water Resources Control Board (State Water Board) to administer provisions relating to the regulation of drinking water to protect public health. (Health & Safety Code (HSC) § 116270, et seq.)
- 2) 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)
- 3) Provides that the California Safe Drinking Water Act does not apply to small state water systems, except as specified. (Government Code § 11352)
- 4) Requires any person operating a public water system to obtain and provide at that person's expense an analysis of the water to the State Water Board, in the form, covering those matters, and at intervals as the State Water Board by regulation may prescribe. (HSC § 116385)
- 5) Establishes the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long terms. (HSC § 116766)
- 6) Authorizes the State Water Board to provide for the deposit into the fund of certain moneys and continuously appropriates the moneys in the fund to the

State Water Board for grants, loans, contracts, or services to assist eligible recipients. (HSC § 116766)

- 7) Generally authorizes the State Water Board to enforce the financial assistance programs.

This bill:

- 1) Consolidates the enforcement authority available to the State Water Board to enforce the terms, conditions, and requirements of its financial assistance programs, as specified.
- 2) Authorizes the State Water Board, as part of that consolidation, to recover any costs incurred in the enforcement of an agreement, to recover any amount of financial assistance provided to a recipient not expended for the authorized purposes, and to impose civil penalties in specified amounts on any person who violates any term of a financial assistance agreement.
- 3) Requires information related to funds disbursed or costs claimed for reimbursement pursuant to a financial assistance agreement to be furnished and attested to under penalty of perjury, and would provide that a person who knowingly makes a false statement, material misrepresentation, or false certification in any submittal to the State Water Board relating to a financial assistance agreement, shall, upon conviction, be punished by a specified criminal fine or imprisonment, or by both that fine and imprisonment.
- 4) Authorizes the State Water Board to require “state small” water systems (water systems with between five and fourteen service connections and which does not regularly serve more than 25 people for 60 days or more per year) to provide technical reports and other information to the Board upon request, consistent with the authority that the Water Board has to require this information from larger public water systems.
- 5) Authorizes the State Water Board to adopt regulations pursuant to the form and intervals at which a public water system provides water analysis to the State Water Board as emergency regulations under the Administrative Procedure Act and would require the State Water Board to hold a hearing before adopting those emergency regulations.
- 6) Authorizes the State Water Board to award moneys from the fund of \$10,000 or less without a written contract and would exempt contracts entered into

pursuant to the Safe and Affordable Drinking Water Fund provisions from specified existing law.

- 7) Authorizes a public water system or technical assistance provider that is not otherwise an eligible recipient of moneys from the fund to be eligible for funding upon appropriation by the Legislature from the fund.

Background

- 1) *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.
- 2) *Overview of the 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 about 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 their customers. Currently, nearly 300 systems cannot consistently meet public health standards. There are also an unknown number of water systems that are smaller than the 15 or more service connections/households, and untold number of domestic wells that likely tap into contaminated groundwater sources.

The State Water Board's authorities to address safe drinking water problems, include:

- a) Propositions 1 and 68 capital funding for drinking water and wastewater treatment for disadvantaged communities, and the ability to use those dollars for technical assistance.
- b) The creation of the Office of Sustainable Water Solutions to focus on disadvantaged communities and their needs.
- c) The authority to order consolidation of small systems with larger systems in situations where a public water system serving a disadvantaged community consistently fails to provide safe drinking water, and tools to help promote voluntary consolidation.

- d) The authority for the State Water Board to limit the creation of new public water systems, where a project could otherwise be served by an existing water system, under certain conditions.
- e) The authority to hire Administrators to manage public water systems that lack the managerial, financial or technical skills to manage their water systems.
- f) The ability to help provide drinking water assistance to smaller communities and domestic well owners in certain cases, particularly owing to the drought and/or contamination.

Nevertheless, many local water systems in the state, particularly those serving small disadvantaged communities, consistently fail to provide safe drinking water to their customers. More than 1 million Californians still do not have access to safe drinking water. The most significant remaining challenge to addressing this crisis has been the lack of a stable funding source for long-term operations and maintenance for drinking water systems.

- 3) *The Safe and Affordable Drinking Water Act.* In 2019, the Legislature passed, and the Governor signed SB 200 (Monning), the Safe and Affordable Drinking Water Act, as a critical next step toward helping public water systems throughout the state provide an adequate and affordable supply of safe drinking water. SB 200 provided the State Water Board with \$130 million annually to assist public water systems in delivering safe and affordable drinking water, including funding to assist with long-term operations and maintenance for failing water systems. The State Water Board will use these funds to develop unique solutions for failing water systems or groups of failing water systems, including, where appropriate, mandatory consolidations and the appointment of Administrators to operate and manage failing water systems.

As the State Water Board is working to implement SB 200, the Board has identified a number of statutory changes that are needed to enable it to more effectively and efficiently implement the Act, and achieve the goals of the Human Right to Water.

- 4) *Fraud Prevention in State Water Board Grant and Loan Programs.* SB 776, sponsored by the State Water Board, would strengthen the Board's authority to prevent and take enforcement action against people who seek to defraud the state for all funding programs administered by the State Water Board, including the Safe and Affordable Drinking Water Fund. The State Water Board's administrative enforcement remedies to address fraud and misuse of funds are limited. This proposal would authorize the Board to recover misused funds, recover staff costs associated with investigation and prosecution of fraud

or misuse of funds, and prohibit entities or individuals found to have misused funds from being able to obtain future grants or loans from the State Water Board.

- 5) *Advance Payments.* SB 776 would also provide the State Water Board with the authority to make advance payments to entities that are authorized to receive Safe and Affordable Drinking Water Funds. The State Water Board generally makes payments to grantees on a reimbursement basis, where the grantee submits an invoice for costs incurred and the State Water Board reviews the invoice and makes payment for eligible costs. This process, however, can create a significant financial burden for some entities, particularly small disadvantaged communities that do not have the cash-flow to pay vendors upfront and wait for reimbursement from the state. In some cases, the State Water Board has had to pay costs associated with bridge financing where recipients do not have adequate cash flows to cover the time it takes to get reimbursed. SB 776 proposes to add limited authority to advance payments from the new Safe and Affordable Drinking Water Fund.
- 6) *Public Water Systems and Technical Assistance Providers Eligible for Funding from the Safe and Affordable Drinking Water Fund.* SB 200 omitted public water systems and technical assistance providers from the list of entities eligible for funding from the Safe and Affordable Drinking Water Fund. SB 776 corrects that omission. Providing funding assistance to public water systems, particularly for operations and maintenance, is a central part of SB 200's strategy to provide safe drinking water for all Californians. The omission of public water systems from the list of eligible entities appears to be an unintentional omission. Similarly, although SB 200 specifies that the Safe and Affordable Drinking Water Funds can be used for "...services to assist eligible recipients", it does not include "technical assistance providers" in the list of entities that are eligible recipients of funding. The State Water Board anticipates that there will be many cases where it can help water systems more effectively and sustainably deliver safe drinking water by providing water systems some technical assistance – such as engineering services, legal services, accounting or grant management services – without having to fully appoint an Administrator to take over the system.
- 7) *Exemption from Certain State Contracting Requirements.* As mentioned above, the 2019-20 Budget Act appropriated \$130 million to the State Water Board to begin implementation of the Safe and Affordable Drinking Water program. In order to facilitate the Board's implementation of the program, the Budget Act provided the Board with a limited exemption from the state contracting provisions.

SB 200, however, did not include such an exemption, and as a result, the State Water Board will be required to comply with all state contracting requirements. This could slow the Board's ability to implement the Safe and Affordable Drinking Water Program and will delay the delivery of safe drinking water for hundreds of thousands of Californians. SB 776 would provide the State Water Board with exemptions from certain state contracting requirements to facilitate the timely implementation of the Safe and Affordable Drinking Water program.

Comments

- 1) *Purpose of Bill.* According to the author, "Approximately 1 million Californians in over 300 communities across the state do not have access to safe drinking water. Most of the failed water systems that are providing unsafe water to their residents are serving low-income, communities of color. The State Water Board is currently working hard to help bring safe water to these communities, including through the implementation of the Safe and Affordable Drinking Water Fund program, established by SB 200 (Monning, Statutes of 2019). Through its implementation of SB 200, however, the Board has identified a number of clarifying statutory changes that are needed to enable the Board to more effectively and efficiently implement the Safe Drinking Water Act, and achieve the goals of the Human Right to Water policy.

"SB 776 will implement statutory changes that will improve accountability for drinking water funds, and apply much needed administrative and program efficiencies. These fixes are critically urgent in order to help the disadvantaged communities that need safe drinking water now, including those residents that are still sheltering at home during the COVID-19 pandemic. Amongst other things, SB 776 will update the state's enforcement mechanisms to prevent taxpayer funds from being misused; clarify SB 200 language to ensure public water systems and technical assistance providers are eligible for funding; provide authority to the Board to make advance payments; allow the Board to be expeditious in providing a community assistance through funding technical assistance providers; and expanding the Board's ability to seek monitoring reports, water analysis reports, and technical reports to better determine which systems are in need."

- 2) *Creates efficiencies and greater fund accountability.* SB 776 proposes a number of statutory changes to the Safe and Affordable Drinking Water program primarily concerned with: improving fund accountability and providing administrative efficiencies by strengthening the Board's ability to

prevent fraud in its grant and loan programs; authorizing the State Water Board to make advance payments to certain grant recipients; and exempting the Safe and Affordable Drinking Water program from certain state contracting requirements. These changes are meant to enhance the State Water Board's ability to effectively and efficiently implement the Safe and Affordable Drinking Water Act.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

Related/Prior Legislation

SB 200 (Chapter 120, Statutes of 2019) establishes the Safe and Affordable Drinking Water Fund (SADWF) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long term. Beginning in fiscal year 2020-21 and until June 30, 2030, it annually transfers to the Safe and Affordable Drinking Water Fund five percent of the proceeds of the Greenhouse Gas Reduction Fund (GGRF) up to \$130 million. It further requires the State Water Resources Control Board (SWRCB) to adopt a fund implementation plan and requires expenditures of the fund to be consistent with the plan.

SB 414 (Caballero, 2019) would have created the Small System Water Authority Act of 2019 and states legislative findings and declarations relating to authorizing the creation of small system water authorities that will have powers to absorb, improve, and competently operate noncompliant public water systems. This bill was held in the Assembly.

SB 669 (Caballero, 2019) would have created the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant with safe drinking water standards. The bill creates the Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in Senate Appropriations Committee.

AB 134 (Bloom, Chapter 203, Statutes of 2019) would have required funding from a Safe Drinking Water Fund or SADWF to be displayed in the Governor's annual budget and requires at least every five years the Legislative Analyst Office's to provide an assessment of the effectiveness of expenditures from the Fund.

AB 217 (Eduardo Garcia, 2019) would have created the Safe Drinking Water for All Act to establish a SADWF to provide a source of funding to secure access to safe drinking water for all Californians, while also ensuring long-term sustainability of drinking water systems. The bill imposes several fees on agricultural activities and create a trust fund using investments from the state General Fund that, together, would provide the source of revenue to the Fund. This bill was held in the Assembly.

SOURCE: California State Water Resources Control Board

SUPPORT:

None received

OPPOSITION:

None received

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