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SB-552 Public water systems: disadvantaged communities: consolidation or extension of service: administrative and managerial services. (2015-2016)

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Senate Bill No. 552

CHAPTER 773

An act to amend Sections 116681 and 116682 of, and to add Section 116686 to, the Health and Safety Code, relating to water.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 552, Wolk. Public water systems: disadvantaged communities: consolidation or extension of service: administrative and managerial services.

Existing law, the California Safe Drinking Water Act, provides for the operation of public water systems and imposes on the State Water Resources Control Board various responsibilities and duties. The act authorizes the state board to order consolidation with a receiving water system where a public water system, or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water. The act authorizes the state board to order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. Existing law, for these purposes, defines "disadvantaged community" to mean a disadvantaged community that is in an unincorporated area or is served by a mutual water company.

This bill would authorize the state board to order consolidation where a public water system or a state small water system is serving, rather than within, a disadvantaged community, and would limit the authority of the state board to order consolidation or extension of service to provide that authority only with regard to a disadvantaged community. This bill would make a community disadvantaged for these purposes if the community is in a mobilehome park, even if it is not in an unincorporated area or served by a mutual water company.

The act requires the state board, before ordering consolidation or extension of service, to take certain actions, including consulting with specified entities, to hold at least one initial public meeting, as specified, and to obtain written consent from any domestic well owner for consolidation or extension of service. The act provides that any affected resident within the consolidation or extended service area who does not provide written consent is ineligible, until consent is provided, for any future water-related grant funding from the state, except as specified.

This bill would also require the state board, before ordering consolidation or extension of service, to consult with public water systems in the chain of distribution of the potentially receiving water system. The bill would provide that an initial public meeting is not required for a potentially subsumed area that is served only by domestic wells. The bill would apply to the domestic well owner, instead of to an affected resident, within the consolidation or extended service area the written consent requirement for eligibility for water-related grant funding.

The act requires the state board, upon ordering the consolidation or extension of service, to adequately compensate the owners of a privately owned subsumed water system for the fair market value of the system as determined by the Public Utilities Commission for water corporations subject to the commission's jurisdiction or the state board for all other systems. The act prohibits a consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customer receives a corresponding benefit.

This bill would instead authorize the Public Utilities Commission or the state board to determine the fair market value of a subsumed water system, without regard to whether the system is a water corporation subject to the commission's jurisdiction. The bill would prohibit fees or charges imposed on a customer of a subsumed water system from exceeding the cost of consolidating the water system or the cost of extension of service to the area.

The act exempts the consolidation or extension of service pursuant to these provisions from the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, which governs the procedures for the formation and change of organization of cities and special districts.

This bill would instead exempt an action taken by the state board pursuant to these provisions from the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

This bill would authorize the state board, for the purpose of providing affordable, safe drinking water to disadvantaged communities and preventing fraud, waste, and abuse, to contract with an administrator to provide administrative and managerial services to a designated water system and to order the designated public water system to accept those services if sufficient funding is available and if the state board makes a certain finding. The bill would define designated water system as a public water system that serves a disadvantaged community and that the state board finds consistently fails to provide an adequate and affordable supply of safe drinking water. The bill would require the state board to provide a public water system with notice, as specified, and to conduct a public meeting, as specified, before determining that the public water system is a designated public water system. The bill would authorize the administrator of a designated public water system to expend available moneys for capital infrastructure improvements that the designated public water system needs to provide an adequate and affordable supply of safe drinking water, to set and collect user water rates and fees, and to expend available moneys for the operation and maintenance costs of the designated public water system. The bill would require the state board to work with the administrator of the public water system and the communities served by that designated public water system to develop, within the shortest feasible timeframe, adequate technical, managerial, and financial capacity to deliver safe drinking water so that the services of the administrator are no longer necessary. The bill would not apply these administrator provisions to a charter city, charter county, or charter city and county.

This bill would incorporate additional changes to Section 116681 of the Health and Safety Code proposed by AB 1611 and SB 839 that would become operative if this bill and one or both of those bills are enacted and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 116681 of the Health and Safety Code is amended to read:

116681. Except as provided in paragraph (2) of subdivision (j) of Section 116686, the following definitions shall apply to this section and Sections 116682, 116684, and 116686:

(a) "Adequate supply" means sufficient water to meet residents' health and safety needs.

(b) "Affected residence" means a residence within a disadvantaged community that is reliant on a water supply that is either inadequate or unsafe.

(c) "Consistently fails" means a failure to provide an adequate supply of safe drinking water.

(d) "Consolidated water system" means the public water system resulting from the consolidation of a public water system with another public water system, state small water system, or affected residences not served by a public water system.

(e) "Consolidation" means joining two or more public water systems, state small water systems, or affected residences not served by a public water system, into a single public water system.

(f) "Disadvantaged community" means a disadvantaged community, as defined in Section 79505.5 of the Water Code, that is in an unincorporated area, is in a mobilehome park, or is served by a mutual water company.

(g) "Extension of service" means the provision of service through any physical or operational infrastructure arrangement other than consolidation.

(h) "Receiving water system" means the public water system that provides service to a subsumed water system through consolidation or extension of service.

(i) "Safe drinking water" means water that meets all primary and secondary drinking water standards.

(j) "Subsumed water system" means the public water system, state small water system, or affected residences not served by a public water system consolidated into or receiving service from the receiving water system.

SEC. 1.5. Section 116681 of the Health and Safety Code is amended to read:

116681. Except as provided in paragraph (2) of subdivision (j) of Section 116686, the following definitions shall apply to this section and Sections 116682, 116684, and 116686:

(a) "Adequate supply" means sufficient water to meet residents' health and safety needs.

(b) "Affected residence" means a residence within a disadvantaged community that is reliant on a water supply that is either inadequate or unsafe.

(c) "Consistently fails" means a failure to provide an adequate supply of safe drinking water.

(d) "Consolidated water system" means the public water system resulting from the consolidation of a public water system with another public water system, state small water system, or affected residences not served by a public water system.

(e) "Consolidation" means joining two or more public water systems, state small water systems, or affected residences not served by a public water system, into a single public water system.

(f) "Disadvantaged community" means a disadvantaged community, as defined in Section 79505.5 of the Water Code, that is in an unincorporated area, is in a mobilehome park, or is served by a mutual water company or a small public water system.

(g) "Extension of service" means the provision of service through any physical or operational infrastructure arrangement other than consolidation.

(h) "Receiving water system" means the public water system that provides service to a subsumed water system through consolidation or extension of service.

(i) "Safe drinking water" means water that meets all primary and secondary drinking water standards.

(j) "Small public water system" has the same meaning as provided in subdivision (b) of Section 116395.

(k) "Subsumed water system" means the public water system, state small water system, or affected residences not served by a public water system consolidated into or receiving service from the receiving water system.

SEC. 2. Section 116682 of the Health and Safety Code is amended to read:

116682. (a) 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, the state board may order consolidation with a receiving water system as provided in this section and Section 116684. The consolidation may be physical or operational. The state board may also order the extension of service to an area within a disadvantaged community that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation. The state board may set timelines and performance measures to facilitate completion of consolidation.

(b) Before ordering consolidation or extension of service as provided in this section, the state board shall do all of the following:

(1) Encourage voluntary consolidation or extension of service.

(2) Consider other enforcement remedies specified in this article.

(3) Consult with, and fully consider input from, the relevant local agency formation commission regarding the provision of water service in the affected area, the recommendations for improving service in a municipal service review, and any other relevant information.

(4) Consult with, and fully consider input from, the Public Utilities Commission when the consolidation would involve a water corporation subject to the commission's jurisdiction.

(5) Consult with, and fully consider input from, the local government with land use planning authority over the affected area, particularly regarding any information in the general plan required by Section 65302.10 of the Government Code.

(6) Consult with, and fully consider input from, all public water systems in the chain of distribution of the potentially receiving water systems.

(7) (A) Notify the potentially receiving water system and the potentially subsumed water system, if any, and establish a reasonable deadline of no less than six months, unless a shorter period is justified, for the potentially receiving water system and the potentially subsumed water system, if any, to negotiate consolidation or another means of providing an adequate supply of safe drinking water.

(B) During this period, the state board shall provide technical assistance and work with the potentially receiving water system and the potentially subsumed water system to develop a financing package that benefits both the receiving water system and the subsumed water system.

(C) Upon a showing of good cause, the deadline may be extended by the state board at the request of the potentially receiving water system, potentially subsumed water system, or the local agency formation commission with jurisdiction over the potentially subsumed water system.

(8) Obtain written consent from any domestic well owner for consolidation or extension of service. Any domestic well owner within the consolidation or extended service area who does not provide written consent shall be ineligible, until the consent is provided, for any future water-related grant funding from the state other than funding to mitigate a well failure, disaster, or other emergency.

(9) (A) Hold at least one public meeting at the initiation of this process in a place as close as feasible to the affected areas. The state board shall make reasonable efforts to provide a 30-day notice of the meeting to the ratepayers, renters, and property owners to receive water service through service extension or in the area of the subsumed water system and all affected local government agencies and drinking water service providers. The meeting shall provide representatives of the potentially subsumed water system, affected ratepayers, renters, property owners, and the potentially receiving water system an opportunity to present testimony. The meeting shall provide an opportunity for public comment.

(B) An initial public meeting shall not be required for a potentially subsumed area that is served only by domestic wells.

(c) Upon expiration of the deadline set by the state board pursuant to paragraph (7) of subdivision (b), the state board shall do the following:

(1) Consult with the potentially receiving water system and the potentially subsumed water system, if any.

(2) (A) Conduct a public hearing, in a location as close as feasible to the affected communities.

(B) The state board shall make reasonable efforts to provide a 30-day notice of the hearing to the ratepayers, renters, and property owners to receive water service through service extension or in the area of the subsumed water system and to all affected local government agencies and drinking water service providers.

(C) The hearing shall provide representatives of the potentially subsumed water system, affected ratepayers, renters, property owners, and the potentially receiving water system an opportunity to present testimony.

(D) The hearing shall provide an opportunity for public comment.

(d) Before ordering consolidation or extension of service, the state board shall find all of the following:

(1) The potentially subsumed water system has consistently failed to provide an adequate supply of safe drinking water.

(2) All reasonable efforts to negotiate consolidation or extension of service were made.

(3) Consolidation of the receiving water system and subsumed water system or extension of service is appropriate and technically and economically feasible.

(4) There is no pending local agency formation commission process that is likely to resolve the problem in a reasonable amount of time.

(5) Concerns regarding water rights and water contracts of the subsumed and receiving water systems have been adequately addressed.

(6) Consolidation or extension of service is the most effective and cost-effective means to provide an adequate supply of safe drinking water.

(7) The capacity of the proposed interconnection needed to accomplish the consolidation is limited to serving the current customers of the subsumed water system.

(e) Upon ordering consolidation or extension of service, the state board shall do all of the following:

(1) As necessary and appropriate, make funds available, upon appropriation by the Legislature, to the receiving water system for the costs of completing the consolidation or extension of service, including, but not limited to, replacing any capacity lost as a result of the consolidation or extension of service, providing additional capacity needed as a result of the consolidation or extension of service, and legal fees. Funding pursuant to this paragraph is available for the general purpose of providing financial assistance for the infrastructure needed for the consolidation or extension of service and does not need to be specific to each individual consolidation project. The state board shall provide appropriate financial assistance for the infrastructure needed for the consolidation or extension of service. The state board's existing financial assistance guidelines and policies shall be the basis for the financial assistance.

(2) Ensure payment of standard local agency formation commission fees caused by state board-ordered consolidation or extension of service.

(3) Adequately compensate the owners of a privately owned subsumed water system for the fair market value of the system, as determined by the Public Utilities Commission or the state board.

(4) Coordinate with the appropriate local agency formation commission and other relevant local agencies to facilitate the change of organization or reorganization.

(f) (1) For the purposes of this section, the consolidated water system shall not increase charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service unless the customers receive a corresponding benefit.

(2) For purposes of this section, fees or charges imposed on a customer of a subsumed water system shall not exceed the cost of consolidating the water system with a receiving system or the extension of service to the area.

(g) Division 3 (commencing with Section 56000) of Title 5 of the Government Code shall not apply to an action taken by the state board pursuant to this section.

SEC. 3. Section 116686 is added to the Health and Safety Code, to read:

116686. (a) (1) To provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, the state board may do both of the following, if sufficient funding is available and if the state board finds that consolidation with another system or extension of service from another system is either not appropriate or not technically and economically feasible:

(A) (i) Contract with an administrator to provide administrative and managerial services to a designated public water system to assist the designated public water system with the provision of an adequate and affordable supply of safe drinking water.

(ii) To fulfill the requirements of this section, the state board may contract with more than one administrator, but only one administrator may be assigned to provide services to a given designated public water system.

(iii) An administrator may provide administrative and managerial services to more than one designated public water system.

(B) Order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the state board.

(2) In performing its duties pursuant to paragraph (1), the state board may use criteria from the policy handbook adopted pursuant to Section 116760.43.

(b) Before the state board determines that a public water system is a designated public water system, the state board shall do both of the following:

(1) Provide the public water system with notice and an opportunity to show either of the following:

(A) That the public water system has not consistently failed to provide an adequate and affordable supply of safe drinking water.

(B) That the public water system has taken steps to timely address its failure to provide an adequate and affordable supply of safe drinking water.

(2) (A) Conduct a public meeting in a location as close as feasible to the affected community.

(B) The state board shall make reasonable efforts to provide a 30-day notice of the meeting to affected ratepayers, renters, and property owners.

(C) Representatives of the public water system, affected ratepayers, renters, and property owners shall be provided an opportunity to present testimony at the meeting.

(D) The meeting shall provide an opportunity for public comment.

(c) The state board shall make financial assistance available to an administrator for a designated public water system, as appropriate and to the extent that funding is available.

(d) An administrator may do any of the following:

(1) Expend available moneys for capital infrastructure improvements that the designated public water system needs to provide an adequate and affordable supply of safe drinking water.

(2) Set and collect user water rates and fees, subject to approval by the state board. The provisions of this section are subject to all applicable constitutional requirements, including Article XIII D of the California Constitution.

(3) Expend available moneys for operation and maintenance costs of the designated public water system.

(e) The state board shall work with the administrator of a designated public water system and the communities served by that designated public water system to develop, within the shortest feasible timeframe, adequate technical, managerial, and financial capacity to deliver safe drinking water so that the services of the administrator are no longer necessary.

(f) A designated public water system shall not be responsible for any costs associated with an administrator.

(g) Administrative and managerial contracts pursuant to this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and may be awarded on a noncompetitive bid basis as necessary to implement the purposes of this section.

(h) For purposes of this section, a local government, as defined in Article XIII C of the California Constitution, that sets water rates in accordance with Article XIII D of the California Constitution shall be deemed to be providing affordable water.

(i) This section does not apply to a charter city, charter county, or charter city and county.

(j) For purposes of this section, the following terms have the following meanings:

(1) "Administrator" means a person whom the state board has determined is competent to perform the administrative and managerial services of a public water system, as described in subdivision (d). In determining competency, the state board may consider demonstrated experience in managing and operating a public water system.

(2) "Designated public water system" means a public water system that serves a disadvantaged community, as defined in Section 79505.5 of the Water Code, and that the state board finds consistently fails to provide an adequate and affordable supply of safe drinking water.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 116681 of the Health and Safety Code proposed by this bill, Assembly Bill 1611, and Senate Bill 839. It shall only become operative if (1) this bill and Assembly Bill 1611 or Senate Bill 839, or both of those bills, are enacted and become effective on or before January 1, 2017, (2) Assembly Bill 1611, Senate Bill 839, or both, as enacted, amend Section 116681 of the Health and Safety Code, and (3) this bill is enacted last of these bills that amend Section 116681 of the Health and Safety Code, in which case Section 116681 of the Health and Safety Code, as amended by Assembly Bill 1611 or Senate Bill 839, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.