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AB-2900 Proposed new public water system: preliminary technical report. (2017-2018)

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Assembly Bill No. 2900

CHAPTER 195

An act to amend Section 116527 of the Health and Safety Code, relating to drinking water.

[Approved by Governor August 24, 2018. Filed with Secretary of State August 24, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2900, Committee on Environmental Safety and Toxic Materials. Proposed new public water system: preliminary technical report.

Existing law, the California Safe Drinking Water Act, imposes on the State Water Resources Control Board various responsibilities and duties relating to providing a dependable, safe supply of drinking water. The act prohibits a person from operating a public water system unless he or she first submits an application to the state board and receives a permit, as specified. The act requires a proposed new public water system to first submit a preliminary technical report to the state board at least 6 months before initiating construction of any water-related improvement that includes, among other things, the name of each public water system for which any service area boundary is within 3 miles of the proposed new public water system's service area and discussions of the feasibility of each of the adjacent public water systems supplying domestic water to the proposed new public water system's service area. The act makes it a misdemeanor for a person to knowingly make a false statement or representation in a report submitted, maintained, or used for purposes of compliance with the act.

This bill would authorize the state board to approve the preliminary technical report and allow construction to proceed before the end of the 6-month period. The bill would require the preliminary technical report additionally to include the type of each public water system with a service boundary within 3 miles and would instead require discussions of each adjacent community water system's feasibility of supplying domestic water to the proposed new service area. Because a false statement in the report could be a crime under the provision described above, this bill would impose a state-mandated local program by expanding the scope of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 116527 of the Health and Safety Code is amended to read:

116527. (a) As used in this section, "water-related improvement" includes, but is not limited to, a water pipe, a water pump, or drinking water infrastructure.

(b) (1) Before a person submits an application for a permit for a proposed new public water system, the person shall first submit a preliminary technical report to the state board at least six months before initiating construction of any water-related improvement.

(2) In order to assist in expediting the permitting process, a person that is considering submitting an application for a permit for a proposed new public water system is encouraged, but is not required, to submit the preliminary technical report no later than seven days after submission of an application to the city or county for a building permit for any water-related improvement.

(3) For a proposed new public water system that would be regulated by a local primacy agency, the applicant shall also submit a copy of the preliminary technical report to the state board.

(4) The state board may approve the preliminary technical report and allow construction to proceed before the end of the six-month period. For a proposed new public water system that would be regulated by a local primacy agency, the state board and local primacy agency may approve the preliminary technical report and allow construction to proceed before the end of the six-month period.

(c) The preliminary technical report shall include all of the following:

(1) The name and type of each public water system for which any service area boundary is within three miles, as measured through existing public rights-of-way, of any boundary of the applicant's proposed public water system's service area.

(2) A discussion of the feasibility of each of the adjacent community water systems identified pursuant to paragraph (1) annexing, connecting, or otherwise supplying domestic water to the applicant's proposed new public water system's service area. The applicant shall consult with each adjacent community water system in preparing the report and shall include in the report any information provided by each adjacent community water system regarding the feasibility of annexing, connecting, or otherwise supplying domestic water to that service area.

(3) A discussion of all actions taken by the applicant to secure a supply of domestic water from an existing community water system for the proposed new public water system's service area.

(4) All sources of domestic water supply for the proposed new public water system.

(5) The estimated cost to construct, operate, and maintain the proposed new public water system, including long-term operation and maintenance costs and a potential rate structure.

(6) A comparison of the costs associated with the construction, operation and maintenance, and long-term sustainability of the proposed new public water system to the costs associated with providing water to the proposed new public water system's service area through annexation by, consolidation with, or connection to an existing community water system.

(7) A discussion of all actions taken by the applicant to pursue a contract for managerial or operational oversight from an existing community water system.

(8) An analysis of whether a proposed new public water system's total projected water supplies available during normal, single dry, or multiple dry water years during a 20-year projection will meet the projected water demand for the service area.

(9) Any information provided by the local agency formation commission. The applicant shall consult with the local agency formation commission if any adjacent public water system identified pursuant to paragraph (1) is a local agency as defined by Section 56054 of the Government Code.

(d) (1) If documents prepared to comply with Division 13 (commencing with Section 21000) of the Public Resources Code or any other application for public agency approval concerning providing drinking water to the proposed new public water system's service area include the information required by subdivision (c), including documentation of the consultation with each adjacent community water system and the local agency formation commission, the applicant may submit those documents to the state board in lieu of the preliminary technical report and the documents shall be considered the functional equivalent of the preliminary technical report.

(2) If documents prepared to comply with Division 13 (commencing with Section 21000) of the Public Resources Code or any other application for public agency approval concerning providing drinking water to the proposed new public water system's service area include some, but not all, of the information required by subdivision (c), including documentation of the consultation with an adjacent community water system and the local agency formation commission, the applicant shall submit those documents and the preliminary technical report to the state board and together those documents and the preliminary technical report shall be considered the functional equivalent of the preliminary technical report requirements of this section. A

preliminary technical report submitted pursuant to this paragraph shall only be required to include information that is not otherwise addressed by the other submitted documents.

(e) Upon review of a preliminary technical report submitted pursuant to this section, the state board may do all of the following actions:

(1) If an existing public water system has not already sought annexation of the service area of a proposed new public water system from the local agency formation commission or the applicant has not already sought an extension of services agreement from an existing public water system, direct the applicant to undertake additional discussion and negotiation with the local agency formation commission and any existing public water system meeting the requirements of paragraph (1) of subdivision (c) that the state board determines has the technical, managerial, and financial capacity to provide an adequate and reliable supply of domestic water to the service area of the proposed new public water system. The state board shall not direct the applicant to undertake additional discussion and negotiation if documentation submitted to the state board demonstrates that additional discussion and negotiation is unlikely to be successful, including, but not limited to, documentation that the local agency formation commission has previously denied the application for an extension of service or annexation, or that the existing public water system has declined to apply to the local agency formation commission for approval of an extension of services to, or annexation of, the service area of the proposed new public water system.

(2) Direct the applicant to report on the results of discussion and negotiations conducted pursuant to paragraph (1) to the state board.

(3) Establish a time schedule for the applicant's performance of directives issued pursuant to this subdivision.

(f) (1) An applicant shall comply with the state board's directives as assigned in and consistent with subdivision (e) before submitting an application for a permit for a proposed new public water system under this chapter.

(2) An application for a permit for a proposed new public water system under this chapter shall not be deemed complete unless the applicant has complied with the requirements of this section.

(g) The state board's review of a preliminary technical report pursuant to this section shall not be deemed a project or approval of a permit application submitted under this chapter.

(h) The requirements of this section do not apply to either of the following:

(1) An application for a permit for a new public water system that was deemed complete prior to January 1, 2017, pursuant to the statutory permit application requirements effective at the date of the permit submission.

(2) An extension of, or annexation to, an existing public water system.

(i) (1) The requirements of this section do not apply to a service area where an applicant certifies in writing to the state board that the applicant will not rely on the establishment of a new public water system for its water supply. The state board shall acknowledge receipt of the applicant's certification in a timely manner.

(2) An applicant who certifies that the service area will not rely on the establishment of a new public water system and later seeks a permit for a new public water system shall comply with the provisions of this section and shall assume all risk of delay or rejection related to the permit application.

(j) (1) The provisions of this subdivision apply to a proposed new public water system that achieves either or both of the following:

(A) Consolidates two or more existing public water systems, existing state small water systems, or other existing water systems, which results in the creation of a new public water system.

(B) Provides water service in lieu of individual domestic wells.

(2) At least six months before the construction of any water-related improvements, an applicant for a new public water system that meets the criteria in paragraph (1) shall provide a written notice to the state board that does both of the following:

(A) Clearly describes the proposed new public water system and how it meets the criteria in paragraph (1).

(B) Requests an exemption from the requirements of this section.

(3) The state board shall promptly acknowledge receipt of a written notice described in paragraph (2). The state board shall have 30 days from the acknowledgment of receipt of the written notice to issue a written notice to the applicant that compliance with the requirements of this section is necessary and that an application for a permit of a new public water system under this chapter is not complete until the applicant has complied with the requirements of this section. A determination by the state

board that compliance with the requirements of this section is necessary shall be final and is not subject to review by the state board. A determination by the state board pursuant to this subdivision is not considered a project subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(4) If the state board receives a written notice from a project applicant that satisfies the requirements of paragraph (2), the project described in the notice is deemed exempt from the requirements of this section on the 35th day following the date of the state board's acknowledgment of receipt of the written notice, unless the state board has issued a notice to comply pursuant to paragraph (3).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.