



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites	
------	------------------	----------------	--------------	-----------------	------------------	--------------	--

SB-403 Drinking water: consolidation. (2021-2022)

SHARE THIS:  

Date Published: 09/24/2021 02:00 PM

Senate Bill No. 403

CHAPTER 242

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

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 403, Gonzalez. Drinking water: consolidation.

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, serving a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water or where a disadvantaged community is substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water.

This bill would revise those consolidation provisions, including, among other revisions, authorizing the state board to also order consolidation where a water system serving a disadvantaged community is an at-risk water system, as defined, or where a disadvantaged community is substantially reliant on at-risk domestic wells, as defined.

This bill would require the state board, before ordering consolidation or extension of service, to consult with any groundwater sustainability agency, as defined, that provides groundwater supply to the affected area. The bill would require the state board to conduct outreach to ratepayers and residents served by an at-risk water system, consider any specified petitions submitted by members of a disadvantaged community served by the at-risk water system, and consider any information provided by the potentially subsumed water system in support of its contention that it is not an at-risk water system before ordering the consolidation of the at-risk water system, as prescribed. The bill would authorize the state board to prioritize consolidation of an at-risk water system that has historically been overburdened by pollution and industrial development or faced other environmental justice hurdles. The bill would require a finding that a disadvantaged community, in whole or in part, is substantially reliant on at-risk domestic wells to be based on specified aquifer maps and inspection or testing of the domestic wells, as provided.

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. 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 at all times.

(b) "Affected residence" means a residence within a disadvantaged community that is reliant on a water supply that is either inadequate or unsafe and that is not served by a public water system or state small water system.

(c) "At-risk domestic wells" means domestic wells that serve a disadvantaged community and are at risk of consistently failing to provide an adequate supply of safe drinking water as determined by the state board pursuant to the methodology established in the 2021 Drinking Water Needs Assessment referenced in subdivision (b) of Section 116769, or a substantially similar methodology adopted by the state board in an update to the Drinking Water Needs Assessment.

(d) "At-risk water system" means a water system that meets all the following conditions:

(1) The water system is either a public water system with 3,300 or fewer connections or a state small water system.

(2) The system serves a disadvantaged community.

(3) The system is at risk of consistently failing to provide an adequate supply of safe drinking water, as determined by the state board pursuant to the methodology established in the 2021 Drinking Water Needs Assessment referenced in subdivision (b) of Section 116769, or a substantially similar methodology adopted by the state board in an update to the Drinking Water Needs Assessment.

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

(f) "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.

(g) "Consolidation" means joining two or more public water systems, state small water systems, or affected residences into a single public water system.

(h) "Disadvantaged community" means a disadvantaged community, as defined in Section 79505.5 of the Water Code.

(i) "Domestic well" means a groundwater well used to supply water for the domestic needs of an individual residence or a water system that is not a public water system and that has no more than four service connections.

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

(k) "Groundwater sustainability agency" has the same meaning as defined in Section 10721 of the Water Code.

(l) "Infill site" means a site within the area served by a subsumed water system that, as of the date of consolidation, is adjacent to a parcel that is developed for qualified urban uses.

(m) "Qualified urban use" means any residential, commercial, public institutional, industrial, transit or transportation facility, or retail use, or any combination of those uses.

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

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

(p) "State small water system" has the same meaning as provided in Section 116275.

(q) "Subsumed water system" means the public water system, state small water system, or affected residences served by domestic wells 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) (1) The state board, in circumstances described in subparagraph (A) or (B), 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 consolidation shall occur within six months of the initiation of the extension of service. The state board may set timelines and performance measures to facilitate completion of consolidation.

(A) 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, or is an at-risk water system.

(B) A disadvantaged community, in whole or in part, is substantially reliant on domestic wells that consistently fail to provide an adequate supply of safe drinking water, or are at-risk domestic wells.

(2) No later than July 1, 2020, the state board shall develop and adopt a policy that provides a process by which members of a disadvantaged community may petition the state board to consider ordering consolidation. The state board shall adopt the policy in a policy handbook consistent with the process provided for in subdivision (a) of Section 116760.43.

(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, whether the consolidation or extension of service is cost effective, 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. If a receiving water system is regulated by the Public Utilities Commission, the state board shall inform the commission at least 60 days before the consolidation order, and upon issuance of the order the commission shall open a proceeding to determine cost allocation, ratemaking, and commission public participation requirements for the consolidation process.

(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, the potentially receiving water system and all public water systems in the chain of distribution of the potentially receiving water system. The input from the potentially receiving water system may include, but is not limited to, information related to the classification of the potentially subsumed water system as an at-risk water system or a state small water system or of at-risk domestic wells.

(7) Consult with, and fully consider input from, any groundwater sustainability agency in a basin that provides groundwater supply, in whole or in part, to the affected area.

(8) (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, the local agency formation commission with jurisdiction over the potentially subsumed water system, or the Public Utilities Commission.

(9) Consider the affordability of the anticipated monthly rates for drinking water service to residential customers of the potentially subsumed water system.

(10) (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 30-day notice shall include information about water quality concerns in the area, relevant information about health effects of water contaminants, and information about opportunities for consolidation or extension of service to address water quality issues. The meeting shall provide representatives of the potentially subsumed water system, affected ratepayers, renters, property owners, the potentially receiving water system, and the public an opportunity to present oral and written comments.

(B) The state board shall provide an opportunity to submit comments by mail or electronically during the notice period and for at least one week after the meeting.

(C) The state board shall review comments received during the meeting and received by mail and electronically during the notice period and for one week after the public meeting.

(11) If the potentially subsumed water system to be consolidated into the receiving water system is an at-risk water system, the state board shall do all of the following:

(A) Conduct outreach to ratepayers and residents served by the at-risk water system, including identifiable local community groups. These outreach efforts shall gauge community support for consolidation of the at-risk water system. The state board shall consider the results of this outreach when deciding whether to order consolidation of the at-risk water system.

(B) Consider any petition submitted pursuant to paragraph (2) of subdivision (a) by members of a disadvantaged community served by the at-risk water system.

(C) (i) If the potentially subsumed water system contends during the initial written comment period set forth in subparagraph (B) of paragraph (10) that it is not an at-risk water system, the state board shall consider during a public meeting any information provided by the potentially subsumed water system in support of its contention that it is not an at-risk water system.

(ii) The state board shall make reasonable efforts to provide a 30-day notice of the public meeting described in clause (i) 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.

(c) If a consolidation or other means of providing an adequate supply of safe drinking water has not been negotiated by the potentially receiving water system and the potentially subsumed water system before the expiration of the deadline set by the state board pursuant to paragraph (8) 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) If the consolidation has not concluded within six months following the first public meeting held pursuant to paragraph (10) of subdivision (b), conduct a public meeting in a location as close as feasible to the affected communities. The meeting shall be held after the state board has made the findings described in subdivision (d).

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

(C) 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 oral and written comments.

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

(3) The state board shall make reasonable efforts to ensure that a receiving water system and a subsumed water system are informed on a regular basis of progress regarding actions taken pursuant to this section.

(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 or it is at risk of doing so, as determined by the state board.

(2) 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. In making this finding, the state board shall consider how many owners of dwelling units served by domestic wells in the service area have provided, or are likely to provide, written consent to extension of service. The state board need not find that any specific percentage of the owners of dwelling units served by domestic wells in the service area are likely to consent to the consolidation or extension of service to serve their dwelling unit.

(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 an 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, infill sites within the community served by the subsumed water system, residents of disadvantaged communities in existence as of the date of consolidation and that are located along the service line connecting the subsumed water system and the receiving water system, and vacant lots within the community served by the subsumed

water system that are zoned to allow residential use and have no more than one other vacant lot between that parcel and an infill parcel, including capacity needed for services such as firefighting.

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

(1) As necessary and appropriate, as determined by the state board, compensate the receiving water system for any capacity lost as a result of the consolidation or extension of service either by paying the water system's capacity charge set out in the water system's adopted rate structure or by providing additional capacity needed as a result of the consolidation or extension of service, and by paying legal fees. When the receiving water system is compensated for capacity lost by payment of a capacity charge, the capacity charge shall be paid only to the extent that it does not exceed the reasonable cost of providing the service in accordance with Section 66013 of the Government Code. If capacity beyond what is needed for consolidation is provided by a project funded through the state board, the state board shall retain an option to use that capacity for future consolidations, without paying additional capacity charges, for five years, unless it releases that option in writing. 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 water 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.

(5) If ordering consolidation or extension of service between two water systems, consider any existing domestic wells within the service area that could also be subject to consolidation or extension of service pursuant to this section.

(6) If ordering consolidation or extension of service to a community containing residences served by domestic wells, promptly take all reasonable steps to obtain written consent to the consolidation or extension of service from an owner of each residence served by a domestic well.

(f) If funds are appropriated for this purpose, the state board may make funds available for the purposes of subdivision (e), as necessary and appropriate, to the receiving water system, the subsumed water system, or an administrator providing full oversight of construction or development projects related to a consolidation or extension of service.

(g) (1) For purposes of this section, fees, charges, and terms and conditions that may be imposed on new and existing customers of a receiving water system shall be subject to the following limitations:

(A) 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.

(B) Except as provided in paragraph (2), fees or charges imposed on a customer of a subsumed water system shall not exceed the costs of the service.

(C) Except as provided in paragraph (2), the receiving water system shall not charge any fees to, or place conditions on, customers of the subsumed water system that it does not charge to, or impose on, new customers that are not subject to the consolidation with the receiving water system.

(2) (A) Notwithstanding subparagraph (B) or (C) of paragraph (1), if costs incurred by the receiving water system in completing the consolidation or extension of service are not otherwise recoverable as provided in subparagraph (B) of this paragraph, the receiving water system may charge fees to customers of the subsumed water system to recover those costs.

(B) A receiving water system shall not charge a fee pursuant to subparagraph (A) for costs that are otherwise recoverable from the state, the federal government, programs administered by local agencies, parties responsible for causing contamination that the consolidation or extension of service is designed to address, or other sources, as determined by the state board.

(h) The state board shall not, pursuant to this section, fund public works or upgrades unrelated to the delivery of an adequate supply of affordable, safe drinking water, including, but not limited to, the installation of streetlights, sidewalks, curbs, and gutters. A local agency's decision whether to provide these public works or upgrades shall not delay the consolidation or extension of service.

(i) When a public water system is operated by a local educational agency, the state board may order a receiving water system to consolidate or extend service to a public water system operated by a local educational agency pursuant to this section if both the following additional conditions are met:

(1) The local educational agency serves students from one or more census blocks that are disadvantaged communities.

(2) The state board obtains a written determination from the local educational agency that the state board's analysis in the financing package, developed pursuant to subparagraph (B) of paragraph (8) of subdivision (b), indicates that consolidating or extending service would not result in additional unacceptable costs to the local educational agency and would result in safe drinking water being available to the local educational agency.

(j) An order pursuant to this section shall not require consolidation or extension of service to a residence served solely by a domestic well until an owner of the affected residence provides written consent to the consolidation or extension of service. Any domestic well owner within the consolidation or extended service area that 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.

(k) A finding that a disadvantaged community, in whole or in part, is substantially reliant on at-risk domestic wells shall be based on the maps created pursuant to paragraph (1) of subdivision (a) of Section 116772 and inspection or testing of the domestic wells showing an imminent risk of failing to provide an adequate supply of safe drinking water.

(l) The state board may prioritize consolidation of an at-risk water system that has historically been overburdened by pollution and industrial development or faced other environmental justice hurdles.

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