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**SB-1254 Drinking water: administrator: managerial and other services.** (2021-2022)

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**Senate Bill No. 1254**

**CHAPTER 681**

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

[ Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1254, Hertzberg. Drinking water: administrator: managerial and other 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 contract with, or provide a grant to, an administrator to provide administrative, technical, operational, legal, or managerial services, or any combination of those services, to a designated water system to assist with the provision of an adequate supply of affordable, safe drinking water. Existing law prescribes the processes and procedures pursuant to which the state board may identify a designated water system in need of services, order a designated water system to accept services from an administrator, and work with the administrator of a designated water system to develop adequate technical, managerial, and financial capacity to deliver an adequate supply of affordable, safe drinking water so that administrator services are no longer necessary.

This bill would, among other things, revise the definition of "designated water system" and limit the liability of an administrator when the state board appoints an administrator to a designated water system, as prescribed.

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 well" means a domestic well that serves a disadvantaged community and 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.
- (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 provided 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 a qualified urban use.

(m) "Operation period" means the period during which an administrator provides services to a designated water system, as provided in paragraph (2) of subdivision (r) of Section 116686.

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

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

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

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

(r) "Subsumed water system" means a 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 116686 of the Health and Safety Code is amended to read:

**116686.** (a) (1) To provide an adequate supply of affordable, safe drinking water to disadvantaged communities, voluntary participants, and public water systems that have demonstrated difficulty in maintaining technical, managerial, and financial capacity and to prevent fraud, waste, and abuse, the state board may do any of the following, if sufficient funding is available:

(A) (i) Contract with, or provide a grant to, an administrator to provide administrative, technical, operational, legal, or managerial services, or any combination of those services, to a designated water system to assist the designated water system with the provision of an adequate supply of affordable, safe drinking water, which services may include steps necessary to enable consolidation.

(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 water system.

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

(B) Order a designated water system to accept administrative, technical, operational, legal, or managerial services, including full management and control of all aspects of the designated water system, from an administrator selected by the state board.

(C) Order a designated water system to accept administrative, technical, operational, legal, or managerial services from an administrator appointed by the state board for full oversight of construction or development projects related to a consolidation or extension of service, including, but not limited to, accepting loans and grants issued by the state board and entering into contracts on behalf of the designated water system.

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

(b) Unless the state board has already held a public meeting pursuant to subdivision (b) of Section 116682, the state board shall do all of the following to determine that a public water system or state small water system is a designated water system:

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

(A) That the public water system or state small water system has neither consistently failed to provide an adequate supply of affordable, safe drinking water nor is it an at-risk water system.

(B) That the public water system or state small water system has taken steps to timely address its failure to provide an adequate supply of affordable, safe drinking water and that it is not an at-risk water system.

(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 public meeting to affected ratepayers, renters, and property owners.

(C) The state board shall provide representatives of the public water system or state small water system, affected ratepayers, renters, and property owners with an opportunity to present oral and written comments at the public meeting.

(D) The state board shall provide at the meeting an opportunity for public comment.

(3) Provide the public with an opportunity to submit comments by mail or electronically during the 30-day notice period and for at least one week after the public meeting described in paragraph (2).

(4) If the public water system is operated by a local educational agency, obtain the local educational agency's agreement, in writing, to the appointment of an administrator.

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

(d) The authority granted to an administrator by the state board pursuant to subdivision (a) may include, but shall not be limited to, the authority to do all of the following:

(1) Expend available moneys for capital infrastructure improvements that the designated water system needs to provide an adequate supply of affordable, safe drinking water or to execute a consolidation ordered pursuant to Section 116682.

(2) Set and collect user water rates and fees, subject to approval by the state board. The state board shall consider affordability when approving water rates and fees. 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 water system.

(4) Expend available moneys necessary to achieve consolidation, including conducting feasibility or planning studies, or addressing outstanding technical or legal issues.

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

(f) A designated water system shall not be responsible for any costs associated with an administrator that are higher than the costs necessary to maintain the designated water system and provide an adequate supply of affordable, safe drinking water.

(g) Before ordering a designated water system to accept administrative, technical, operational, legal, or managerial services from an administrator pursuant to subdivision (a), the state board shall develop standards, terms, and procedures in a handbook adopted consistent with the process provided for in subdivision (a) of Section 116760.43 for all of the following:

(1) Ensuring compliance with subdivision (f).

(2) Providing opportunity for public comment on the selection of an administrator and the services to be provided.

(3) Providing public access to budgets, ownership and financial information, and other documents and records related to the provision of water service to the designated water system or affected residences and to the management of the designated water system by the administrator.

(4) Providing regular public meetings, notifications, opportunities for public comment, and other forms of engagement with customers of the designated water system for significant decisions or actions made on behalf of the designated water system, including, but not limited to, establishing operating budgets, altering water rates, adopting system policies, entering into long-term contracts or financing commitments, and developing system projects or plans.

(5) Formal requests to the state board to reverse or modify a decision of an administrator or to request substitution of an administrator.

(6) Ensuring an administrator acts in the best interests of the community served.

(7) Development and approval of a post-administrator drinking water service plan to ensure compliance with subdivision (e). Development of the plan shall include, but is not limited to, an evaluation of long-term public governance or community ownership options.

(h) An administrator appointed pursuant to this section for a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, if good faith, reasonable effort, and ordinary care were used by the administrator to assume possession of, or to operate, the designated water system.

(i) An administrator appointed pursuant to this section for a designated water system shall not be liable for claims by past or existing ratepayers, or those who consumed water provided through the designated water system, for any injury or damages that occurred before the commencement of the operation period.

(j) This section does not limit or supersede any other law authorizing claims against the state board or providing a defense to liability, and shall not be construed to create any new or expanded basis for liability.

(k) Nothing in this section shall be construed to do any of the following:

(1) Relieve a water district, water wholesaler, or any other entity from complying with any provision of federal or state law, including those pertaining to drinking water quality.

(2) Impair any cause of action by the Attorney General, a district attorney, a city attorney, or other public prosecutor, or impair any other action or proceeding brought by, or on behalf of, a regulatory agency.

(3) Impair any claim alleging the taking of property without compensation within the meaning of either the Fifth Amendment to the United States Constitution or Section 19 of Article I of the California Constitution.

(4) Relieve any person or entity from liability for action or inaction in bad faith, or without reasonable effort or ordinary care.

(l) Nothing in this section shall absolve, indemnify, or protect a prior operator, designated water system, or individual from liability based on an act or failure to act prior to the operation period.

(m) 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.

(n) 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.

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

(p) (1) For purposes of this section, an administrator is authorized to act on behalf of an affected residence to the same extent, and in the same manner, as a designated water system with the consent of the affected residence.

(2) For purposes of this section, where an administrator is authorized to act on behalf of a designated public water system, it may also act on behalf of a voluntary participant.

(q) The Legislature finds and declares that the funding provided to a state small water system, affected residence, public water system, voluntary participant, or administrator for purposes of this section serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

(r) 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, technical, operational, legal, or managerial services required for purposes of this section, pursuant to criteria set forth in the handbook adopted pursuant to subdivision (g). Notwithstanding any other law, a privately owned public utility may serve as an administrator for purposes of this section.

(2) "Designated water system" means any of the following:

(A) A public water system or state small water system that has been ordered to consolidate pursuant to Section 116682.

(B) A public water system or state small water system that serves a disadvantaged community and that the state board finds consistently fails to provide an adequate supply of affordable, safe drinking water.

(C) An at-risk water system.

(3) "Voluntary participant" means the owner of a domestic well or state small water system who has agreed to accept financial assistance pursuant to Chapter 4.6 (commencing with Section 116765) for the provision of an adequate and affordable supply of safe drinking water.