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AB-805 Sewer service: disadvantaged communities. (2023-2024)

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Assembly Bill No. 805

CHAPTER 505

An act to amend Sections 13288 and 13442 of, and to add Section 13289.5 to, the Water Code, relating to water quality, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 805, Arambula. Sewer service: disadvantaged communities.

Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality in accordance with the Porter-Cologne Water Quality Control Act and the federal Clean Water Act. Existing law authorizes a regional board to order the provision of sewer service by a receiving sewer system, as defined, to a disadvantaged community served by an inadequate onsite sewage treatment system, as defined.

This bill would authorize the state board, until January 1, 2029, and after it makes a specified finding or findings by resolution, to require a designated sewer system to contract with an administrator designated or approved by the state board for administrative, technical, operational, legal, or managerial services to assist a designated sewer system with the delivery of adequate sewer service, as defined. The bill would also authorize the state board to order a designated sewer system to accept those services, including full management and control of all aspects of the designated sewer system, from an administrator. The bill would define "designated sewer system" for these purposes as a sewer service provider that serves a disadvantaged community that is either an inadequate sewer service or a sewer system that has a demonstrated failure to maintain technical, managerial, or financial capacity to prevent waste, fraud, and abuse.

The bill would require the state board to take specified actions before determining that a sewer service provider is a designated sewer system, including providing the sewer service provider an opportunity to show that it has taken steps to timely address its failure to be an adequate sewer system or to timely address its failure to maintain technical, managerial, and financial capacity, conducting a public meeting, and providing an opportunity for public comment. The bill would authorize the state board to grant specified authority over the designated sewer system to the administrator, including the authority to expend money for various purposes and to set and collect sewer rates and fees. The bill would require the state board to work with the administrator and the communities served by the designated sewer system to develop, within the shortest practicable time, adequate technical, managerial, and financial capacity to deliver adequate sewer service so that the services of the administrator are no longer necessary.

Existing law creates the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund and continuously appropriates moneys in the account to the state board for specified purposes, including providing grants for cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need, as provided.

This bill would authorize the state board to also use moneys in the account to provide grants to administrators for specified purposes, including, among others, to provide administrative, technical, operational, legal, or managerial services to a sewer service provider, until December 31, 2029, as provided. By expanding the purposes for which moneys in a continuously appropriated account may be spent, the bill would make an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. It is the intent of the Legislature in enacting Section 13289.5 of the Water Code to do all of the following:

(a) Provide a limited and temporary authority to the State Water Resources Control Board to appoint administrators to manage the responsibilities of sewer service providers that are obviously and egregiously failing to provide adequate sewer service while the wastewater needs assessment commissioned by the State Water Resources Control Board is being conducted.

(b) Allow the State Water Resources Control Board to finalize the statewide wastewater needs assessment to inform a future permanent program based on the findings from the wastewater needs assessment.

(c) Require the State Water Resources Control Board to implement Section 13289.5 of the Water Code in a manner that is consistent with the progressive approach to enforcement that is detailed in the provisions of its water quality enforcement policy regarding environmental justice and disadvantaged communities and facilities serving small communities.

SEC. 2. Section 13288 of the Water Code is amended to read:

13288. For purposes of this chapter, the following definitions apply:

(a) "Adequate sewer service" means a sanitary sewer service provided by a sewer service provider that is not an inadequate sewer service, as defined in subdivision (j).

(b) "Administrator" means a person whom the state board has determined is competent and willing to perform the administrative, technical, operational, legal, or managerial services required for purposes of this chapter, pursuant to criteria set forth in the handbook described in subdivision (i) of Section 13289.5. An administrator may be any qualified individual, firm, or another sewer service provider.

(c) "Affected residence" means a residence within a disadvantaged community that may be subject to provision of sewer service pursuant to this chapter.

(d) "Affected resident" means a resident or a property owner of an affected residence.

(e) "Annexation" has the same meaning as set forth in Section 56017 of the Government Code.

(f) "Designated sewer system" means a sewer service provider that serves a disadvantaged community that is either an inadequate sewer service or a sewer system that has a demonstrated failure to maintain technical, managerial, or financial capacity to prevent waste, fraud, and abuse.

(g) "Disadvantaged community" means a disadvantaged community, as defined in Section 79505.5, or a low-income community, as defined in Section 39713 of the Health and Safety Code.

(h) "Extension of service" has the same meaning as set forth in Section 56133 of the Government Code.

(i) "Inadequate onsite sewage treatment system" means an onsite sewage treatment system that has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state.

(j) (1) "Inadequate sewer service" means a sewer service provider that serves a disadvantaged community, has a demonstrated history of failures to meet regulatory standards for proper wastewater collection, treatment, and disposal, and may exhibit deficiencies, such as infrastructure failure, insufficient capacity, or ineffective treatment of wastewater.

(2) A demonstrated history of failures to meet regulatory standards may include, but is not limited to, multiple violations, multiple instances of noncompliance with enforcement actions, or refusal to accept compliance assistance.

(k) (1) "Onsite sewage treatment system" means an onsite sewage treatment system, as defined in Section 13290, that is not operated by a local agency, as defined in Section 56054 of the Government Code, or a utility regulated by the Public Utilities Commission.

(2) "Onsite sewage treatment system" includes, but is not limited to, a septic tank, cesspool, leach field, and seepage pit.

(l) "Provision of sewer service" means the provision of sanitary sewer service, including the collection or treatment of sewage, to a disadvantaged community by any of the following processes:

(1) Annexation where the receiving sewer system is a special district.

(2) Extension of service where the receiving sewer system is a city, county, or special district.

(3) Additional sewer service provided within city, county, or special district boundaries.

(m) "Receiving sewer system" means the sewer system that provides service to a disadvantaged community pursuant to this chapter.

(n) "Sewer service provider" means any local agency that provides sanitary sewer service, which may include wastewater collection, treatment, disposal, or any combination thereof.

(o) "Special district" means a special district as defined in Section 56036 of the Government Code.

SEC. 3. Section 13289.5 is added to the Water Code, immediately following Section 13289, to read:

13289.5. (a) Before implementing the actions authorized by this section, the state board shall, by resolution, make one or both of the following findings:

(1) A sewer service provider is an inadequate sewer service, as defined in Section 13288, and that it is in the best interest of the customers of the sewer service provider and the State of California that an administrator be appointed to assist a sewer service provider with making improvements necessary to develop an adequate sewer system. When these findings are made, the sewer service provider shall be referred to as a designated sewer system.

(2) A sewer service provider has demonstrated a history of continued failures to maintain technical, managerial, or financial capacity to prevent waste, fraud, or abuse. When this finding is made, the sewer service provider shall be referred to as a designated sewer system.

(b) Following adoption of a resolution based on the findings required by subdivision (a) for identifying a sewer service provider as a designated sewer system, the state board may do any of the following:

(1) (A) Require a designated sewer system to contract with an administrator designated or approved by the state board for administrative, technical, operational, legal, or managerial services, or any combination of those services, to assist the designated sewer system with the delivery of adequate sewer service.

(B) To fulfill the requirements of this section, a designated sewer system may contract with administrators. Where administrator services are comprehensive, the sewer service provider may contract with no more than one administrator at a time. Where administrator services are limited in scope, a sewer service provider may contract with more than one limited scope provider at a time, provided that in no instance will the scopes overlap. An administrator that is not designated or approved by the state board shall not be used for purposes of this section.

(C) An administrator may provide services to more than one designated sewer system.

(D) If a designated sewer system is also a water system that has been ordered to consolidate or has been ordered to accept assistance from an administrator, the state board shall consider designating the same administrator for the designated sewer system that was designated to the water system, and requiring that administrator to consult with the management of both the designated water and the designated sewer systems in carrying out their duties.

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

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

(c) The state board shall do all of the following before determining that a sewer service provider is a designated sewer system pursuant to subdivision (a).

(1) Provide the sewer service provider with notice and an opportunity to show that the sewer service provider has taken steps to timely address its failure to be an adequate sewer system or has taken steps to timely address its failure to maintain technical, managerial, and financial capacity.

(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 sewer service provider, 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 an opportunity for public comment at the meeting.

(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) Consider whether designating a sewer system and ordering a designated sewer system to contract with an administrator is feasible, and not in conflict with any federal or state laws, regulations, or permit requirements.

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

(e) The state board shall not identify a designated sewer system or make findings that a sewer service provider has an inadequate sewer service or require a sewer service provider to contract with an administrator pursuant to this section on or after January 1, 2029. All other authorizations and requirements pursuant to this section shall remain in effect until December 31, 2029.

(f) The authority granted to an administrator by the state board pursuant to subdivision (b) may include, but is not limited to, the authority to do all of the following:

(1) Expend available money for capital infrastructure improvements that the designated sewer system needs to provide adequate sewer service.

(2) Set and collect user sewer 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 money for operation and maintenance costs of the designated sewer system, including conducting feasibility or planning studies, or addressing outstanding technical or legal issues.

(g) The state board shall work with the administrator of a designated sewer system and the communities served by that designated sewer system to develop, within the shortest practicable time, adequate technical, managerial, and financial capacity to deliver adequate sewer service so that the services of the administrator are no longer necessary.

(h) A designated sewer system shall not be responsible for any costs associated with an administrator that are higher than the costs necessary to maintain the designated sewer system and deliver adequate sewer service.

(i) Before ordering a designated sewer system to accept administrative, technical, operational, legal, or managerial services from an administrator pursuant to subdivision (b), the state board shall develop standards, terms, and procedures, to be incorporated in the handbook adopted pursuant to subdivision (g) of Section 116686 of the Health and Safety Code, consistent with the process provided in subdivision (a) of Section 116760.43 of the Health and Safety Code, for all of the following:

(1) The process and criteria for the state board to designate a sewer service provider as a designated sewer system, and the evidence required to support findings by the state board in a resolution pursuant to subdivision (a).

(2) Ensuring compliance with subdivision (h).

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

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

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

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

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

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

(9) The process for the state board to determine an administrator is no longer needed and to terminate the administrator's responsibilities.

(j) An administrator appointed pursuant to this section for a designated sewer system shall not be liable for claims by past or current ratepayers, by those affected by the sewer service provided by the designated sewer system, or for enforcement actions taken by the state board in any of the following circumstances:

(1) If good faith, reasonable effort, and ordinary care were used by the administrator to assume possession of, or to operate, the sewer service provider.

(2) For any injury or damages that occurred before the commencement of the operation period.

(3) For injury, violations, or damages after the administrator has assumed control of the designated system until the necessary upgrades to the infrastructure or managerial responsibilities have been completed to become an adequate sewer system.

(k) 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.

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

(1) Relieve a designated sewer system or any other entity from complying with any provision of federal or state law, including those pertaining to 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 against a designated sewer system.

(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.

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

(n) 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.

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

SEC. 4. Section 13442 of the Water Code is amended to read:

13442. (a) Upon application by an eligible entity, as described in subdivision (b), the state board may approve the payment of grant moneys from the account to that entity to assist in cleaning up a waste, abating the effects of a waste on waters of the state, addressing actions required pursuant to Section 13289.5, or addressing an urgent drinking water need without regard to whether the need for drinking water is a result of the discharge of waste.

(b) An entity is eligible to apply for funding pursuant to this section if that entity has authority to undertake the activity described in subdivision (a) for which it seeks moneys and the entity is any of the following:

(1) A public agency.

(2) A tribal government that is on the California Tribal Consultation List maintained by the Native American Heritage Commission and is a disadvantaged community, as defined in Section 79505.5, that agrees to waive tribal sovereign immunity for the explicit purpose of regulation by the state board pursuant to this division.

(3) A not-for-profit organization serving a disadvantaged community, as defined in Section 79505.5.

(4) A community water system, as defined in Section 116275 of the Health and Safety Code, that serves a disadvantaged community, as defined in Section 79505.5.

(5) An administrator, as defined in Section 13288.

(c) An eligible entity shall not become liable to the state board for repayment of moneys paid to the entity under this section and expended in accordance with the state board's approval of payment, but this shall not be a defense to an action brought pursuant to subdivision (c) of Section 13304 for the recovery of moneys paid under this section.

(d) Projects using moneys that are paid to an eligible entity pursuant to this section shall be exempt from state contracting and procurement requirements set forth in the Government Code and the Public Contract Code to the extent necessary to take immediate action to protect public health and safety.

(e) The state board may adopt guidelines for the allocation and administration of these moneys that shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The state board may expend funds for the purposes described in Section 13289.5, but is not authorized to use funds for these purposes for costs incurred after December 31, 2029.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to authorize the State Water Resources Control Board to take appropriate action as soon as possible to ensure that adequate, sanitary sewer service is provided to communities, it is necessary for this act to take effect immediately.