

ASSEMBLY BILL

No. 1194

Introduced by Assembly Member Block

February 18, 2011

An act to amend Sections 116275, 116280, 116565, and 116650 of, and to repeal Section 116282 of, the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1194, as introduced, Block. Drinking water.

The Calderon-Sher Safe Drinking Water Act of 1996 requires the State Department of Public Health to, among other things, adopt regulations relating to primary and secondary drinking water standards for contaminants in drinking water. The act authorizes the department to enter into primacy delegation agreements with local health officers for enforcement of these provisions. The act defines various terms, including human consumption, which means the use of water for drinking, bathing or showering, hand washing, or oral hygiene.

This bill would include cooking, including, but not limited to, preparing food and washing dishes, in the definition of human consumption.

The act provides that its provisions are not applicable to a public water system that meets specified conditions, including that the system sells water to users through a submetered service system if the water supply is obtained from a public water system to which the act applies.

This bill would exempt public water systems that sell water to users through a submetered distribution system if the water supply is obtained from a public water system to which the act applies only if each user

of the submetered distribution system is not charged a rate that is higher than the rate the user would be charged by the public water system.

The act exempts from water quality requirements noncommunity water systems that meet specified criteria, including that the system does not provide water for human consumption, other than handwashing, unless bottled water from an approved source is provided. The act requires these exempted noncommunity water systems to be tested annually for specified bacteria.

This bill would repeal this exemption. By adding entities to regulate, this bill would increase the duties of local health officers that have received primacy delegation, and would impose a state-mandated local program.

The act allows the department to issue a citation if the department finds that a public water system is in violation of the act or any regulation, permit, standard, or order issued or adopted thereunder and specifies procedures for service and form of the citation. The act classifies citations according to the nature of the violation or the failure to comply and assesses penalties based on that classification.

This bill would allow the department to issue a citation if it finds that a public water system is in violation of the act or any regulation, permit, standard, citation, or order issued or adopted thereunder. The bill would make specified changes to the process for service and the form of the citation. The bill would also set the penalty that may be set by the department at an amount not to exceed \$1,000 per day for each day that a violation occurred and for each day that a violation continues to occur, and would eliminate the classification process. The bill would allow a separate penalty for each violation.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 116275 of the Health and Safety Code
2 is amended to read:
3 116275. As used in this chapter:
4 (a) “Contaminant” means any physical, chemical, biological,
5 or radiological substance or matter in water.
6 (b) “Department” means the State Department of *Public Health*
7 *Services*.
8 (c) “Primary drinking water standards” means:
9 (1) Maximum levels of contaminants that, in the judgment of
10 the department, may have an adverse effect on the health of
11 persons.
12 (2) Specific treatment techniques adopted by the department in
13 lieu of maximum contaminant levels pursuant to subdivision (j)
14 of Section 116365.
15 (3) The monitoring and reporting requirements as specified in
16 regulations adopted by the department that pertain to maximum
17 contaminant levels.
18 (d) “Secondary drinking water standards” means standards that
19 specify maximum contaminant levels that, in the judgment of the
20 department, are necessary to protect the public welfare. Secondary
21 drinking water standards may apply to any contaminant in drinking
22 water that may adversely affect the odor or appearance of the water
23 and may cause a substantial number of persons served by the public
24 water system to discontinue its use, or that may otherwise adversely
25 affect the public welfare. Regulations establishing secondary
26 drinking water standards may vary according to geographic and
27 other circumstances and may apply to any contaminant in drinking
28 water that adversely affects the taste, odor, or appearance of the
29 water when the standards are necessary to ensure a supply of pure,
30 wholesome, and potable water.
31 (e) “Human consumption” means the use of water for drinking,
32 bathing or showering, hand washing, ~~or~~ oral hygiene, *or cooking,*
33 *including, but not limited to, preparing food and washing dishes.*
34 (f) “Maximum contaminant level” means the maximum
35 permissible level of a contaminant in water.
36 (g) “Person” means an individual, corporation, company,
37 association, partnership, limited liability company, municipality,
38 public utility, or other public body or institution.

- 1 (h) “Public water system” means a system for the provision of
2 water for human consumption through pipes or other constructed
3 conveyances that has 15 or more service connections or regularly
4 serves at least 25 individuals daily at least 60 days out of the year.
5 A public water system includes the following:
- 6 (1) Any collection, treatment, storage, and distribution facilities
7 under control of the operator of the system ~~which~~ *that* are used
8 primarily in connection with the system.
 - 9 (2) Any collection or pretreatment storage facilities not under
10 the control of the operator that are used primarily in connection
11 with the system.
 - 12 (3) Any water system that treats water on behalf of one or more
13 public water systems for the purpose of rendering it safe for human
14 consumption.
- 15 (i) “Community water system” means a public water system
16 that serves at least 15 service connections used by yearlong
17 residents or regularly serves at least 25 yearlong residents of the
18 area served by the system.
- 19 (j) “Noncommunity water system” means a public water system
20 that is not a community water system.
- 21 (k) “Nontransient noncommunity water system” means a public
22 water system that is not a community water system and that
23 regularly serves at least 25 of the same persons over six months
24 per year.
- 25 (l) “Local health officer” means a local health officer appointed
26 pursuant to Section 101000 or a local comprehensive health agency
27 designated by the board of supervisors pursuant to Section 101275
28 to carry out the drinking water program.
- 29 (m) “Significant rise in the bacterial count of water” means a
30 rise in the bacterial count of water that the department determines,
31 by regulation, represents an immediate danger to the health of
32 water users.
- 33 (n) “State small water system” means a system for the provision
34 of piped water to the public for human consumption that serves at
35 least five, but not more than 14, service connections and does not
36 regularly serve drinking water to more than an average of 25
37 individuals daily for more than 60 days out of the year.
- 38 (o) “Transient noncommunity water system” means a
39 noncommunity water system that does not regularly serve at least
40 25 of the same persons over six months per year.

1 (p) “User” means—~~any~~ a person using water for domestic
2 purposes. User does not include—~~any~~ a person processing, selling,
3 or serving water or operating a public water system.

4 (q) “Waterworks standards” means regulations adopted by the
5 department that take cognizance of the latest available “Standards
6 of Minimum Requirements for Safe Practice in the Production and
7 Delivery of Water for Domestic Use” adopted by the California
8 section of the American Water Works Association.

9 (r) “Local primacy agency” means—~~any~~ a local health officer
10 that has applied for and received primacy delegation from the
11 department pursuant to Section 116330.

12 (s) “Service connection” means the point of connection between
13 the customer’s piping or constructed conveyance, and the water
14 system’s meter, service pipe, or constructed conveyance. A
15 connection to a system that delivers water by a constructed
16 conveyance other than a pipe shall not be considered a connection
17 in determining if the system is a public water system if any of the
18 following apply:

19 (1) The water is used exclusively for purposes other than
20 residential uses, consisting of drinking, bathing, and cooking or
21 other similar uses.

22 (2) The department determines that alternative water to achieve
23 the equivalent level of public health protection provided by the
24 applicable primary drinking water regulation is provided for
25 residential or similar uses for drinking and cooking.

26 (3) The department determines that the water provided for
27 residential or similar uses for drinking, cooking, and bathing is
28 centrally treated or treated at the point of entry by the provider, a
29 passthrough entity, or the user to achieve the equivalent level of
30 protection provided by the applicable primary drinking water
31 regulations.

32 (t) “Resident” means a person who physically occupies, whether
33 by ownership, rental, lease, or other means, the same dwelling for
34 at least 60 days of the year.

35 (u) “Water treatment operator” means a person who has met
36 the requirements for a specific water treatment operator grade
37 pursuant to Section 106875.

38 (v) “Water treatment operator-in-training” means a person who
39 has applied for and passed the written examination given by the
40 department but does not yet meet the experience requirements for

1 a specific water treatment operator grade pursuant to Section
2 106875.

3 (w) “Water distribution operator” means a person who has met
4 the requirements for a specific water distribution operator grade
5 pursuant to Section 106875.

6 (x) “Water treatment plant” means a group or assemblage of
7 structures, equipment, and processes that treats, blends, or
8 conditions the water supply of a public water system for the
9 purpose of meeting primary drinking water standards.

10 (y) “Water distribution system” means any combination of pipes,
11 tanks, pumps, and other physical features that deliver water from
12 the source or water treatment plant to the consumer.

13 (z) “Public health goal” means a goal established by the Office
14 of Environmental Health Hazard Assessment pursuant to
15 subdivision (c) of Section 116365.

16 (aa) “Small community water system” means a community
17 water system that serves no more than 3,300 service connections
18 or a yearlong population of no more than 10,000 persons.

19 (ab) “Disadvantaged community” means the entire service of
20 area of a community water system, or a community therein, in
21 which the median household income is less than 80 percent of the
22 statewide average.

23 SEC. 2. Section 116280 of the Health and Safety Code is
24 amended to read:

25 116280. This chapter does not apply to a public water system
26 that meets all of the following conditions:

27 (a) Consists only of distribution and storage facilities and does
28 not have any collection and treatment facilities.

29 (b) Obtains all of its water from, but is not owned or operated
30 by, a public water system to which this chapter applies.

31 (c) Does not sell water to any person or user, except for the
32 sale of water to users pursuant to Section 2705.5 of the Public
33 Utilities Code through a submetered-service *distribution* system
34 if the water supply is obtained from a public water system to which
35 this chapter applies *and if each user of the submeter distribution*
36 *system is not charged a rate that is higher than the rate the user*
37 *would be charged by the public water system.*

38 By enacting this subdivision, it is not the intent of the Legislature
39 to change existing law as to responsibility or liability for
40 distribution systems beyond the mastermeter.

1 SEC. 3. Section 116282 of the Health and Safety Code is
2 repealed.

3 ~~116282. Except as provided in this section, and except for the~~
4 ~~fee requirements of Section 116565, the department shall exempt~~
5 ~~from the water quality requirements of this chapter, any~~
6 ~~noncommunity water system serving a transient population that~~
7 ~~provides restrooms for employees or the public provided that the~~
8 ~~water system demonstrates to the department that it meets all of~~
9 ~~the following criteria:~~

10 ~~(a) The water system is in compliance with either of the~~
11 ~~following:~~

12 ~~(1) No water is served by the water system for any public~~
13 ~~human consumption other than for handwashing.~~

14 ~~(2) If water is served for public human consumption other than~~
15 ~~for handwashing, bottled water from a source approved by the~~
16 ~~department is provided for the consumption other than~~
17 ~~handwashing.~~

18 ~~(b) The water for handwashing is bacteriologically safe. This~~
19 ~~shall be ensured by sampling the water for coliform bacteria at~~
20 ~~least once each calendar year. The samples shall be analyzed and~~
21 ~~the results reported to the department in accordance with Section~~
22 ~~64423.1 of Title 22 of the California Code of Regulations.~~

23 ~~(c) The noncommunity water system is not a business regulated~~
24 ~~as a food facility under Section 113785.~~

25 SEC. 4. Section 116565 of the Health and Safety Code is
26 amended to read:

27 116565. (a) Each public water system serving 1,000 or more
28 service connections and any public water system that treats water
29 on behalf of one or more public water systems for the purpose of
30 rendering it safe for human consumption, shall reimburse the
31 department for *the* actual cost incurred by the department for
32 conducting those activities mandated by this chapter relating to
33 the issuance of domestic water supply permits, inspections,
34 monitoring, surveillance, and water quality evaluation that relate
35 to that specific public water system. The amount of reimbursement
36 shall be sufficient to pay, but in no event shall exceed, the
37 department's actual cost in conducting these activities.

38 (b) Each public water system serving less than 1,000 service
39 connections shall pay an annual drinking water operating fee to
40 the department as set forth in this subdivision for costs incurred

1 by the department for conducting those activities mandated by this
2 chapter relating to inspections, monitoring, surveillance, and water
3 quality evaluation relating to public water systems. The total
4 amount of fees shall be sufficient to pay, but in no event shall
5 exceed, the department's actual cost in conducting these activities.
6 Notwithstanding adjustment of actual fees collected pursuant to
7 Section 100425 as authorized pursuant to subdivision (d) of Section
8 106590, the amount that shall be paid annually by a public water
9 system pursuant to this section shall be as follows:

10 (1) Community water systems, six dollars (\$6) per service
11 connection, but not less than two hundred fifty dollars (\$250) per
12 water system, which may be increased by the department, as
13 provided for in subdivision (f), to ten dollars (\$10) per service
14 connection, but not less than two hundred fifty dollars (\$250) per
15 water system.

16 (2) Nontransient noncommunity water systems pursuant to
17 subdivision (k) of Section 116275, two dollars (\$2) per person
18 served, but not less than four hundred fifty-six dollars (\$456) per
19 water system, which may be increased by the department, as
20 provided for in subdivision (f), to three dollars (\$3) per person
21 served, but not less than four hundred fifty-six dollars (\$456) per
22 water system.

23 (3) Transient noncommunity water systems pursuant to
24 subdivision (k) of Section 116275, eight hundred dollars (\$800)
25 per water system, which may be increased by the department, as
26 provided for in subdivision (f), to one thousand three hundred
27 thirty-five dollars (\$1,335) per water system.

28 (4) Noncommunity water systems ~~exempted~~ *in possession of a*
29 *current exemption* pursuant to *former* Section 116282 on January
30 1, 2012, one hundred two dollars (\$102) per water system.

31 (c) For purposes of determining the fees provided for in
32 subdivision (a), the department shall maintain a record of its actual
33 costs for pursuing the activities specified in subdivision (a) relative
34 to each system required to pay the fees. The fee charged each
35 system shall reflect the department's actual cost, or in the case of
36 a local primacy agency the local primacy agency's actual cost, of
37 conducting the specified activities.

38 (d) The department shall submit an invoice for cost
39 reimbursement for the activities specified in subdivision (a) to the
40 public water systems no more than twice a year.

1 (1) The department shall submit one estimated cost invoice to
2 public water systems serving 1,000 or more service connections
3 and any public water system that treats water on behalf of one or
4 more public water systems for the purpose of rendering it safe for
5 human consumption. This invoice shall include the actual hours
6 expended during the first six months of the fiscal year. The hourly
7 cost rate used to determine the amount of the estimated cost invoice
8 shall be the rate for the previous fiscal year.

9 (2) The department shall submit a final invoice to the public
10 water system prior to October 1 following the fiscal year that the
11 costs were incurred. The invoice shall indicate the total hours
12 expended during the fiscal year, the reasons for the expenditure,
13 the hourly cost rate of the department for the fiscal year, the
14 estimated cost invoice, and payments received. The amount of the
15 final invoice shall be determined using the total hours expended
16 during the fiscal year and the actual hourly cost rate of the
17 department for the fiscal year. The payment of the estimated
18 invoice, exclusive of late penalty, if any, shall be credited toward
19 the final invoice amount.

20 (3) Payment of the invoice issued pursuant to paragraphs (1)
21 and (2) shall be made within 90 days of the date of the invoice.
22 Failure to pay the amount of the invoice within 90 days shall result
23 in a 10-percent late penalty that shall be paid in addition to the
24 invoiced amount.

25 (e) Any public water system under the jurisdiction of a local
26 primacy agency shall pay the fees specified in this section to the
27 local primacy agency in lieu of the department. This section shall
28 not preclude a local health officer from imposing additional fees
29 pursuant to Section 101325.

30 (f) The department may increase the fees established in
31 subdivision (b) as follows:

32 (1) By February 1 of the fiscal year prior to the fiscal year for
33 which fees are proposed to be increased, the department shall
34 publish a list of fees for the following fiscal year and a report
35 showing the calculation of the amount of the fees.

36 (2) The department shall make the report and the list of fees
37 available to the public by submitting them to the Legislature and
38 posting them on the department's Internet Web site.

39 (3) The department shall establish the amount of fee increases
40 subject to the approval and appropriation by the Legislature.

1 SEC. 5. Section 116650 of the Health and Safety Code is
2 amended to read:

3 116650. (a) If the department determines that a public water
4 system is in violation of this chapter or any regulation, permit,
5 standard, *citation*, or order issued or adopted thereunder, the
6 department may issue a citation to the public water system. The
7 citation shall be served upon the public water system personally
8 or by ~~registered~~ *certified* mail. *Service shall be deemed effective*
9 *as of the date of personal service or the date of receipt of the*
10 *certified mail. If a person to whom a citation is directed refuses*
11 *to accept delivery of the certified mail, the date of service shall be*
12 *deemed to be the date of mailing.*

13 (b) Each citation shall be in writing and shall describe ~~with~~
14 ~~particularity~~ the nature of the violation *or violations*, including a
15 reference to the statutory provision, standard, order, *citation*,
16 *permit*, or regulation alleged to have been violated.

17 (c) ~~For continuing violations, the A citation shall fix the earliest~~
18 ~~feasible time may specify a date~~ for elimination or correction of
19 the condition constituting the violation ~~where appropriate~~. If the
20 public water system fails to correct a violation within the time
21 specified in the citation, the department may assess a civil penalty
22 as specified in subdivision (e).

23 (d) ~~For a noncontinuing violation of primary drinking standards,~~
24 ~~the department may assess in the A citation a civil~~ *may include the*
25 *assessment of a penalty* as specified in subdivision (e).

26 (e) ~~Citations issued pursuant to this section shall be classified~~
27 ~~according to the nature of the violation or the failure to comply.~~
28 ~~The department shall specify the classification in the citation and~~
29 ~~may assess civil penalties for each classification as follows:~~

30 (1)

31 (e) ~~For violation of a primary drinking standard, The department~~
32 *may assess a penalty in* an amount not to exceed one thousand
33 dollars (\$1,000) per day for each day that ~~the a~~ violation occurred,
34 *and for each day that a violation continues to occur, including*
35 *each day that the violation continues beyond the date specified for*
36 *correction in the citation or order. A separate penalty may be*
37 *assessed for each violation.*

38 (2) ~~For failure to comply with any citation or order issued for~~
39 ~~violation of a secondary drinking water standard that the director~~
40 ~~determines may have a direct or immediate relationship to the~~

1 welfare of the users, an amount not to exceed one thousand dollars
2 (\$1,000) for each day that the violation continues beyond the date
3 specified for correction in the citation or order.

4 (3) ~~For failure to comply with any citation or order issued for~~
5 ~~noncompliance with any department regulation or order, other than~~
6 ~~a primary or secondary drinking water standard, an amount not to~~
7 ~~exceed two hundred dollars (\$200) per day for each day the~~
8 ~~violation continues beyond the date specified for correction in the~~
9 ~~citation.~~

10 SEC. 6. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.