

AMENDED IN SENATE JUNE 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 115

**Introduced by Assembly Member Perea
(Coauthor: Assembly Member Alejo)**

January 14, 2013

An act to amend Sections 116760.50, 116760.70, 116760.79, 116760.90, and 116761.20 of the Health and Safety Code, relating to drinking water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 115, as amended, Perea. Safe Drinking Water State Revolving Fund.

Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting and enforcing regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, which is continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law requires the department to establish criteria for projects to be eligible for the grant and loan program, including that a legal entity exist that has the authority to enter into contracts and incur debt on behalf of the

community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department.

This bill would authorize the department to fund projects, by grant, loan, or a combination of the two, where multiple water systems apply for funding as a single applicant for the purpose of consolidating water systems or extending services to households relying on private wells, as specified. The bill would authorize funding of a project to benefit a disadvantaged community that is not the applying agency. The bill, for purposes of considering eligibility for construction funding, would require a legal entity to exist that is not necessarily the applicant, but that has the authority to enter into contracts and incur debt on behalf of at least one of the communities to be served and has the right to operate at least one of the public water systems under a lease or memorandum of understanding with a term of at least 20 years. By authorizing the use of a continuously appropriated fund for new purposes, this bill would make an appropriation.

This bill would, if legislation is enacted in 2013 that transfers the statutory and regulatory authority for the California Safe Drinking Water Act from the Department of Public Health, delay the implementation of the provisions of the act for one year after the effective date of the transfer of authority.

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

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

- 1 SECTION 1. Section 116760.50 of the Health and Safety Code
- 2 is amended to read:
- 3 116760.50. The department shall establish criteria that shall
- 4 be met for projects to be eligible for consideration for funding
- 5 under this chapter. The criteria shall include all of the following:
- 6 (a) All preliminary design work for a defined project that will
- 7 enable the applicant or another public water system to supply water
- 8 that meets safe drinking water standards, including a cost estimate
- 9 for the project, shall be completed.
- 10 (b) For purposes of the department considering eligibility for
- 11 construction funding, a legal entity shall exist that has the authority
- 12 to enter into contracts and incur debt on behalf of at least one of
- 13 the communities to be served and owns the public water system

1 or has the right to operate at least one of the public water systems
2 under a lease or memorandum of understanding with a term of at
3 least 20 years, unless otherwise authorized by the department. The
4 applicant need not be the legal entity. If the proposed project is
5 funded by a loan under this chapter, the department may require
6 the applicant or other legal entity to secure a lease for the full term
7 of the loan if the loan exceeds 20 years.

8 (c) The applicant shall hold all necessary water rights.

9 (d) The applicant shall have completed any review required
10 pursuant to the California Environmental Quality Act (Division
11 13 (commencing with Section 21000) of the Public Resources
12 Code) and the guidelines adopted pursuant thereto, and have
13 included plans for compliance with that act in its preliminary plans
14 for the project.

15 (e) The applicant has assembled sufficient financial data to
16 establish its ability to complete the proposed project and to
17 establish the amount of debt financing it can undertake.

18 SEC. 2. Section 116760.70 of the Health and Safety Code is
19 amended to read:

20 116760.70. (a) The department, after public notice and hearing,
21 shall, from time to time, establish a priority list of proposed projects
22 to be considered for funding under this chapter. In doing so, the
23 department shall determine if improvement or rehabilitation of the
24 public water system is necessary to provide pure, wholesome, and
25 potable water in adequate quantity and at sufficient pressure for
26 health, cleanliness, and other domestic purposes. The department
27 shall establish criteria for placing public water systems on the
28 priority list for funding that shall include criteria for priority list
29 categories. Priority shall be given to projects that meet all of the
30 following requirements:

31 (1) Address the most serious risk to human health.

32 (2) Are necessary to ensure compliance with requirements of
33 Chapter 4 (commencing with Section 116270) including
34 requirements for filtration.

35 (3) Assist systems most in need on a per household basis
36 according to affordability criteria.

37 (b) The department may, in establishing a new priority list,
38 merge those proposed projects from the existing priority list into
39 the new priority list.

1 (c) In establishing the priority list, the department shall consider
2 the system's implementation of an ongoing source water protection
3 program or wellhead protection program.

4 (d) In establishing the priority list categories and the priority
5 for funding projects, the department shall carry out the intent of
6 the Legislature pursuant to subdivisions (e) to (h), inclusive, of
7 Section 116760.10 and do all of the following:

8 (1) Give priority to upgrade an existing system to meet drinking
9 water standards. This includes an upgrade to an existing system
10 to meet drinking water standards in a disadvantaged community
11 that is distinct from the applicant agency.

12 (2) After giving priority pursuant to paragraph (1), consider
13 whether the applicant has sought other funds when providing
14 funding for a project to upgrade an existing system and to
15 accommodate a reasonable amount of growth.

16 (e) Consideration of an applicant's eligibility for funding shall
17 initially be based on the priority list in effect at the time the
18 application is received and the project's ability to proceed. If a
19 new priority list is established during the time the application is
20 under consideration, but before the applicant receives a letter of
21 commitment, the department may consider the applicant's
22 eligibility for funding based on either the old or new priority list.

23 (f) The department may change the ranking of a specific project
24 on the priority lists at any time following the publication of the
25 list if information, that was not available at the time of the
26 publication of the list, is provided that justifies the change in the
27 ranking of the project.

28 (g) The department shall provide one or more public hearings
29 on the Intended Use Plan, the priority list, and the criteria for
30 placing public water systems on the priority list. The department
31 shall provide notice of the Intended Use Plan, criteria, and priority
32 list not less than 30 days before the public hearing. The Intended
33 Use Plan, criteria, and priority list shall not be subject to the
34 requirements of Chapter 3.5 (commencing with Section 11340) of
35 Part 1 of Division 3 of Title 2 of the Government Code. The
36 department shall conduct duly noticed public hearings and
37 workshops around the state to encourage the involvement and
38 active input of public and affected parties, including, but not limited
39 to, water utilities, local government, public interest, environmental,
40 and consumer groups, public health groups, land conservation

1 interests, health care providers, groups representing vulnerable
2 populations, groups representing business and agricultural interests,
3 and members of the general public, in the development and periodic
4 updating of the Intended Use Plan and the priority list.

5 (h) The requirements of this section do not constitute an
6 adjudicatory proceeding as defined in Section 11405.20 of the
7 Government Code and Section 11410.10 of the Government Code
8 is not applicable.

9 SEC. 3. Section 116760.79 of the Health and Safety Code is
10 amended to read:

11 116760.79. (a) Applications for funding under this chapter
12 shall be made in the form and with the supporting material
13 prescribed by the department.

14 (b) The department shall establish a process by which multiple
15 water systems may apply for funding as a single applicant for the
16 purpose of consolidating water systems or extending services to
17 households relying on private wells. Funding shall be available to
18 these applicants if the following criteria are met:

19 (1) At least one of the systems of private wells serves a
20 disadvantaged community or a severely disadvantaged community
21 that is in violation of Chapter 4 (commencing with Section
22 116270).

23 (2) Fifty percent of the project funds support, facilitate, or allow
24 for planning and preliminary engineering studies, project design,
25 or construction to consolidate with, or extend services to, existing
26 water system facilities or private wells that are in violation of
27 Chapter 4 (commencing with Section 116270).

28 (3) The purpose of the consolidation or service extension
29 includes providing safe and potable drinking water to a community,
30 bringing one or more of the applying water systems into
31 compliance with this chapter.

32 SEC. 4. Section 116760.90 of the Health and Safety Code is
33 amended to read:

34 116760.90. (a) The department shall not approve an application
35 for funding unless the department determines that the proposed
36 study or project is necessary to enable the applicant to meet safe
37 drinking water standards, and is consistent with an adopted
38 countywide plan, if any. The department may refuse to fund a
39 study or project if it determines that the purposes of this chapter
40 may more economically and efficiently be met by means other

1 than the proposed study or project. The department shall not
2 approve an application for funding a project with a primary purpose
3 to supply or attract future growth. The department may limit
4 funding to costs necessary to enable suppliers to meet primary
5 drinking water standards, as defined in Chapter 4 (commencing
6 with Section 116270).

7 (b) With respect to applications for funding of project design
8 and construction, the department shall also determine all of the
9 following:

10 (1) Upon completion of the project, the applicant and other
11 beneficiaries of the project will be able to supply water that meets
12 safe drinking water standards.

13 (2) The project is cost effective.

14 (3) If the entire project is not to be funded under this chapter,
15 the department shall specify which costs are eligible for funding.

16 (c) In considering an application for funding a project that meets
17 all other requirements of this chapter and regulations, the
18 department shall not be prejudiced by the applicant initiating the
19 project prior to the department approving the application for
20 funding. Preliminary project costs that are otherwise eligible for
21 funding pursuant to the provisions of this chapter shall not be
22 ineligible because the costs were incurred by the applicant prior
23 to the department approving the application for funding.
24 Construction costs that are otherwise eligible for funding pursuant
25 to the provisions of this chapter shall not be ineligible because the
26 costs were incurred after the approval of the application by the
27 department but prior to the department entering into a contract
28 with the applicant pursuant to Section 116761.50.

29 SEC. 5. Section 116761.20 of the Health and Safety Code is
30 amended to read:

31 116761.20. (a) Planning and preliminary engineering studies,
32 project design, consolidation with or extension of services to an
33 existing water system, and construction costs may be funded under
34 this chapter by loans, or, in the case of public agencies or private
35 not-for-profit water companies, by grants or a combination of
36 grants and loans. Multiple water systems that apply under a single
37 application, as provided in subdivision (b) of Section 116760.79,
38 may be funded by grants, loans, or a combination thereof.

39 (b) The department shall determine what portion of the full
40 costs the public agency or private not-for-profit water company is

1 capable of repaying and authorize funding in the form of a loan
2 for that amount. The department shall authorize a grant only to the
3 extent the department finds the public agency or not-for-profit
4 water company is unable to repay the full costs of a loan.

5 (c) At the request of the department, the Public Utilities
6 Commission shall submit comments concerning the ability of
7 suppliers, subject to its jurisdiction, to finance the project from
8 other sources and to repay the loan.

9 *SEC. 6. If legislation enacted in 2013 transfers the statutory*
10 *and regulatory authority for the implementation of the California*
11 *Safe Drinking Water Act from the State Department of Public*
12 *Health, this act shall not become operative until one year after the*
13 *effective date of the transfer of authority.*