

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE JUNE 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 115**

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

January 14, 2013

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An act to ~~amend Sections 116760.50, 116760.70, 116760.79, 116760.90, and 116761.20 of~~ *add Section 116760.55 to* 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: a legal entity, as defined, to apply for grant funding on behalf of one or more public water systems serving disadvantaged or severely disadvantaged communities if specified requirements are met, including having a signed agreement with each public water system for which it is applying for funding. 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 116760.55 is added to the Health and*
- 2 *Safety Code, to read:*

1 116760.55. (a) For purposes of the department considering  
2 eligibility for grant funding for a planning project, a legal entity  
3 may apply on behalf of one or more public water systems serving  
4 disadvantaged or severely disadvantaged communities if all of the  
5 following requirements are met:

6 (1) The legal entity has a signed agreement with each public  
7 water system for which it is applying for funding for a planning  
8 and feasibility study project that indicates that the public water  
9 system agrees to the joint application and that the legal entity is  
10 acting on behalf of, and in place of, the public water system.

11 (2) The application is for 100 percent grant funding for a  
12 planning and feasibility project.

13 (3) The planning and feasibility study project includes a study  
14 of the feasibility of consolidation, which may include expansion  
15 of service to communities not currently served by a public water  
16 system.

17 (4) The applicant has demonstrated that the legal entity has the  
18 ability to complete the proposed planning project.

19 (5) At least one of the project participating public water systems  
20 has a primary drinking water standard violation and is on the  
21 project priority list.

22 (b) For purposes of this section, “legal entity” means an entity  
23 that is duly formed and operating under the laws of this state.

24 ~~SECTION 1. Section 116760.50 of the Health and Safety Code~~  
25 ~~is amended to read:~~

26 ~~116760.50. The department shall establish criteria that shall~~  
27 ~~be met for projects to be eligible for consideration for funding~~  
28 ~~under this chapter. The criteria shall include all of the following:~~

29 ~~(a) All preliminary design work for a defined project that will~~  
30 ~~enable the applicant or another public water system to supply water~~  
31 ~~that meets safe drinking water standards, including a cost estimate~~  
32 ~~for the project, shall be completed.~~

33 ~~(b) For purposes of the department considering eligibility for~~  
34 ~~construction funding, a legal entity shall exist that has the authority~~  
35 ~~to enter into contracts and incur debt on behalf of at least one of~~  
36 ~~the communities to be served and owns the public water system~~  
37 ~~or has the right to operate at least one of the public water systems~~  
38 ~~under a lease or memorandum of understanding with a term of at~~  
39 ~~least 20 years, unless otherwise authorized by the department. The~~  
40 ~~applicant need not be the legal entity. If the proposed project is~~

1 funded by a loan under this chapter, the department may require  
2 the applicant or other legal entity to secure a lease for the full term  
3 of the loan if the loan exceeds 20 years.

4 (e) ~~The applicant shall hold all necessary water rights.~~

5 (d) ~~The applicant shall have completed any review required~~  
6 ~~pursuant to the California Environmental Quality Act (Division~~  
7 ~~13 (commencing with Section 21000) of the Public Resources~~  
8 ~~Code) and the guidelines adopted pursuant thereto, and have~~  
9 ~~included plans for compliance with that act in its preliminary plans~~  
10 ~~for the project.~~

11 (e) ~~The applicant has assembled sufficient financial data to~~  
12 ~~establish its ability to complete the proposed project and to~~  
13 ~~establish the amount of debt financing it can undertake.~~

14 SEC. 2. ~~Section 116760.70 of the Health and Safety Code is~~  
15 ~~amended to read:~~

16 116760.70. (a) ~~The department, after public notice and hearing,~~  
17 ~~shall, from time to time, establish a priority list of proposed projects~~  
18 ~~to be considered for funding under this chapter. In doing so, the~~  
19 ~~department shall determine if improvement or rehabilitation of the~~  
20 ~~public water system is necessary to provide pure, wholesome, and~~  
21 ~~potable water in adequate quantity and at sufficient pressure for~~  
22 ~~health, cleanliness, and other domestic purposes. The department~~  
23 ~~shall establish criteria for placing public water systems on the~~  
24 ~~priority list for funding that shall include criteria for priority list~~  
25 ~~categories. Priority shall be given to projects that meet all of the~~  
26 ~~following requirements:~~

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

28 (2) ~~Are necessary to ensure compliance with requirements of~~  
29 ~~Chapter 4 (commencing with Section 116270) including~~  
30 ~~requirements for filtration.~~

31 (3) ~~Assist systems most in need on a per household basis~~  
32 ~~according to affordability criteria.~~

33 (b) ~~The department may, in establishing a new priority list,~~  
34 ~~merge those proposed projects from the existing priority list into~~  
35 ~~the new priority list.~~

36 (c) ~~In establishing the priority list, the department shall consider~~  
37 ~~the system's implementation of an ongoing source water protection~~  
38 ~~program or wellhead protection program.~~

39 (d) ~~In establishing the priority list categories and the priority~~  
40 ~~for funding projects, the department shall carry out the intent of~~

1 the Legislature pursuant to subdivisions (e) to (h), inclusive, of  
2 Section 116760.10 and do all of the following:

3 (1) Give priority to upgrade an existing system to meet drinking  
4 water standards. This includes an upgrade to an existing system  
5 to meet drinking water standards in a disadvantaged community  
6 that is distinct from the applicant agency.

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

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

18 (f) The department may change the ranking of a specific project  
19 on the priority lists at any time following the publication of the  
20 list if information, that was not available at the time of the  
21 publication of the list, is provided that justifies the change in the  
22 ranking of the project.

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

1     ~~(h) The requirements of this section do not constitute an~~  
2     ~~adjudicatory proceeding as defined in Section 11405.20 of the~~  
3     ~~Government Code and Section 11410.10 of the Government Code~~  
4     ~~is not applicable.~~

5     ~~SEC. 3. Section 116760.79 of the Health and Safety Code is~~  
6     ~~amended to read:~~

7     ~~116760.79. (a) Applications for funding under this chapter~~  
8     ~~shall be made in the form and with the supporting material~~  
9     ~~prescribed by the department.~~

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

15    ~~(1) At least one of the systems of private wells serves a~~  
16    ~~disadvantaged community or a severely disadvantaged community~~  
17    ~~that is in violation of Chapter 4 (commencing with Section~~  
18    ~~116270).~~

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

24    ~~(3) The purpose of the consolidation or service extension~~  
25    ~~includes providing safe and potable drinking water to a community,~~  
26    ~~bringing one or more of the applying water systems into~~  
27    ~~compliance with this chapter.~~

28    ~~SEC. 4. Section 116760.90 of the Health and Safety Code is~~  
29    ~~amended to read:~~

30    ~~116760.90. (a) The department shall not approve an application~~  
31    ~~for funding unless the department determines that the proposed~~  
32    ~~study or project is necessary to enable the applicant to meet safe~~  
33    ~~drinking water standards, and is consistent with an adopted~~  
34    ~~countywide plan, if any. The department may refuse to fund a~~  
35    ~~study or project if it determines that the purposes of this chapter~~  
36    ~~may more economically and efficiently be met by means other~~  
37    ~~than the proposed study or project. The department shall not~~  
38    ~~approve an application for funding a project with a primary purpose~~  
39    ~~to supply or attract future growth. The department may limit~~  
40    ~~funding to costs necessary to enable suppliers to meet primary~~

1 drinking water standards, as defined in Chapter 4 (commencing  
2 with Section 116270).

3 (b) ~~With respect to applications for funding of project design~~  
4 ~~and construction, the department shall also determine all of the~~  
5 ~~following:~~

6 (1) ~~Upon completion of the project, the applicant and other~~  
7 ~~beneficiaries of the project will be able to supply water that meets~~  
8 ~~safe drinking water standards.~~

9 (2) ~~The project is cost effective.~~

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

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

25 SEC. 5. ~~Section 116761.20 of the Health and Safety Code is~~  
26 ~~amended to read:~~

27 116761.20. (a) ~~Planning and preliminary engineering studies,~~  
28 ~~project design, consolidation with or extension of services to an~~  
29 ~~existing water system, and construction costs may be funded under~~  
30 ~~this chapter by loans, or, in the case of public agencies or private~~  
31 ~~not-for-profit water companies, by grants or a combination of~~  
32 ~~grants and loans. Multiple water systems that apply under a single~~  
33 ~~application, as provided in subdivision (b) of Section 116760.79,~~  
34 ~~may be funded by grants, loans, or a combination thereof.~~

35 (b) ~~The department shall determine what portion of the full~~  
36 ~~costs the public agency or private not-for-profit water company is~~  
37 ~~capable of repaying and authorize funding in the form of a loan~~  
38 ~~for that amount. The department shall authorize a grant only to the~~  
39 ~~extent the department finds the public agency or not-for-profit~~  
40 ~~water company is unable to repay the full costs of a loan.~~

1     ~~(e) At the request of the department, the Public Utilities~~  
2     ~~Commission shall submit comments concerning the ability of~~  
3     ~~suppliers, subject to its jurisdiction, to finance the project from~~  
4     ~~other sources and to repay the loan.~~

5     ~~SEC. 6.~~

6     *SEC. 2.* If legislation enacted in 2013 transfers the statutory  
7     and regulatory authority for the implementation of the California  
8     Safe Drinking Water Act from the State Department of Public  
9     Health, this act shall not become operative until one year after the  
10    effective date of the transfer of authority.