

AMENDED IN SENATE JUNE 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 118

**Introduced by Committee on Environmental Safety and Toxic
Materials (Alejo (Chair), Bloom, Lowenthal, Stone, and Ting)
(Coauthors: Assembly Members Perea and Wieckowski)**

January 14, 2013

An act to amend Sections ~~116760.43, 116760.50, 116761.20, 116761.21, and 116761.23, 116761.50, 116761.65, and 116761.70~~ of the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 118, as amended, Committee on Environmental Safety and Toxic Materials. 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. The department's duties include, but are 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 authorizes the department to establish specified separate accounts or subaccounts~~

~~within the fund. Under existing law, a grant is authorized only to the extent the department finds the public agency or not-for-profit water company is unable to repay the full costs of a loan.~~

This bill would limit loans and grants from the fund for planning and preliminary engineering studies, project design, and construction costs to those incurred by community and not-for-profit noncommunity public water systems and would specify that a small community water system or nontransient noncommunity water system that is owned by a public agency or a private not-for-profit water company and is serving a severely disadvantaged community, is deemed to have no ability to repay a loan.

~~Existing law requires applicants for loans or grants to provide specified information to the department. Existing law authorizes the department to enter into contracts with applicants for grants or loans, and requires and authorizes these contracts to contain specified information.~~

Under existing law, the maximum amount of a construction grant award to a public water system for a single project is \$3 million or, for a public water system that serves a disadvantaged community, \$10 million, as specified.

~~This bill would authorize the department to adopt interim regulations for purposes of implementing provisions relating to the Safe Drinking Water State Revolving Fund. The bill would require an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years, as specified. The bill would authorize an applicant, subject to specified conditions, to receive up to the full cost of a project in the form of a loan. The bill would require that contracts entered into between the department and an applicant include certain additional information, including the time for the completion of the project, and authorize the contracts to include certain additional information, including an agreement by the supplier to complete, as part of the project, a rate study.~~

~~This bill would make other related changes.~~

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

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

1 SECTION 1. ~~Section 116760.43 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~116760.43. (a) The department may adopt emergency~~
4 ~~regulations pursuant to Chapter 3.5 (commencing with Section~~
5 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code~~
6 ~~necessary or convenient to implement this chapter and to meet~~
7 ~~requirements pursuant to the federal act.~~

8 ~~(b) The adoption of any emergency regulations that are filed~~
9 ~~with the Office of Administrative Law within 18 months of the~~
10 ~~effective date of this act shall be deemed to be an emergency and~~
11 ~~necessary for the immediate preservation of the public peace, health~~
12 ~~and safety, or general welfare.~~

13 ~~(c) In addition to the authority granted pursuant to subdivision~~
14 ~~(a), the department may adopt interim regulations to implement~~
15 ~~this chapter and to meet the requirements of the federal act and its~~
16 ~~implementing regulations or guidelines. The interim regulations~~
17 ~~shall not be subject to the rulemaking provisions of Chapter 3.5~~
18 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
19 ~~2 of the Government Code, and:~~

20 ~~(1) Shall be subject to a public review and comment period of~~
21 ~~not less than 30 days.~~

22 ~~(2) Shall take effect when filed with the Secretary of State, and~~
23 ~~shall be published in the California Code of Regulations.~~

24 ~~(3) Shall remain in effect for three years, unless sooner repealed~~
25 ~~or amended by additional regulations adopted pursuant to this~~
26 ~~subdivision.~~

27 ~~(4) May amend or repeal emergency regulations adopted~~
28 ~~pursuant to subdivision (a).~~

29 ~~(5) Shall supersede any conflicting emergency regulations~~
30 ~~adopted pursuant to subdivision (a).~~

31 ~~(d) Applicable regulations in effect at the time a complete~~
32 ~~application for funding a project pursuant to this chapter is received~~
33 ~~by the department shall apply to the project funding, unless the~~
34 ~~department determines a regulation adopted later, but prior to the~~
35 ~~date a funding agreement is issued for a project, would be more~~
36 ~~beneficial to the project applicant, in which case the later adopted~~
37 ~~regulation may be applied.~~

38 SEC. 2. ~~Section 116760.50 of the Health and Safety Code is~~
39 ~~amended to read:~~

1 116760.50.— The department shall establish criteria that shall
2 be met for projects to be eligible for consideration for funding
3 under this chapter. The criteria shall include all of the following:

4 (a) Except as provided in subdivision (d), all preliminary design
5 work for a defined project that will enable the applicant to supply
6 water that meets safe drinking water standards, including a cost
7 estimate for the project, shall be completed.

8 (b) A legal entity shall exist that has the authority to enter into
9 contracts and incur debt on behalf of the community to be served
10 and owns the public water system or has the right to operate the
11 public water system under a lease with a term of at least 20 years,
12 unless otherwise authorized by the department. If the proposed
13 project is funded by a loan under this chapter, the department may
14 require the applicant to secure a lease for the full term of the loan
15 if the loan exceeds 20 years.

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

17 (d) (1) The applicant shall have completed, prior to receiving
18 a funding agreement, environmental review and documentation
19 of the defined project, including, but not limited to, any review
20 required pursuant to the California Environmental Quality Act
21 (Division 13 (commencing with Section 21000) of the Public
22 Resources Code) and the guidelines adopted pursuant thereto. Any
23 measures required for compliance with applicable environmental
24 laws and regulations shall be included in the final plans for the
25 defined project.

26 (2) Notwithstanding paragraph (1), a defined project may be
27 subject to further or supplemental review consistent with the
28 requirements of any applicable environmental laws or regulations.

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

32 (f) The applicant shall demonstrate that it has the technical,
33 managerial, and financial capacity to operate and maintain its water
34 system, including the project, in accordance with the federal act,
35 state law, and applicable regulations for at least 20 years, or shall
36 submit an acceptable plan for achieving this capacity by the time
37 the project is scheduled to be completed.

38 SEC. 3.

39 SECTION 1. Section 116761.20 of the Health and Safety Code
40 is amended to read:

1 116761.20. (a) Planning and preliminary engineering studies,
2 project design, and construction costs incurred by community and
3 not-for-profit noncommunity public water systems may be funded
4 under this chapter by loans, and, if these systems are owned by
5 public agencies or private not-for-profit water companies, by grants
6 or a combination of grants and loans.

7 (b) (1) The department shall determine what portion of the full
8 costs the public agency or private not-for-profit water company is
9 capable of repaying and authorize funding in the form of a loan
10 for that amount. The department shall authorize a grant only to the
11 extent the department finds the public agency or not-for-profit
12 water company is unable to repay the full costs of a loan.

13 (2) Notwithstanding any other provision of this chapter, a small
14 community water system or nontransient noncommunity water
15 system that is owned by a public agency or a private not-for-profit
16 water company and serving a severely disadvantaged community,
17 is deemed to have no ability to repay a loan.

18 (c) At the request of the department, the Public Utilities
19 Commission shall submit comments concerning the ability of
20 suppliers, subject to its jurisdiction, to finance the project from
21 other sources and to repay the loan.

22 ~~SEC. 4. Section 116761.21 of the Health and Safety Code is~~
23 ~~amended to read:~~

24 ~~116761.21. Not more than 30 percent and not less than 15~~
25 ~~percent, provided that there are projects eligible for funding as~~
26 ~~prescribed in Section 116760.70, of the total amount of the~~
27 ~~capitalization grant may be expended for grants. This amount shall~~
28 ~~be limited to disadvantaged communities specified in Section~~
29 ~~1452(d) of the federal act (42 U.S.C. Sec. 300j-12).~~

30 ~~SEC. 5.~~

31 ~~SEC. 2. Section 116761.23 of the Health and Safety Code is~~
32 ~~amended to read:~~

33 116761.23. (a) The maximum amount of a planning grant
34 permitted under this chapter for each participating public water
35 system's share of the costs of the planning, engineering studies,
36 environmental documentation, and design of a single project shall
37 be no more than five hundred thousand dollars (\$500,000).

38 (b) Unless the department approves an increase pursuant to this
39 subdivision, the maximum amount of a construction grant award
40 authorized under this chapter to each participating public water

1 system for its share of the cost of the construction of a single
 2 project shall be no more than three million dollars (\$3,000,000).
 3 The department may approve an increase in the maximum amount
 4 for a construction grant award authorized under this chapter so
 5 that the maximum amount of the construction grant award does
 6 not exceed ten million dollars (\$10,000,000) only if the department
 7 makes all of the following findings:

8 (1) A public water system that serves a disadvantaged
 9 community has a defined project need that exceeds the maximum
 10 grant amount of three million dollars (\$3,000,000).

11 (2) The defined project has been bypassed in at least one funding
 12 cycle due to a lack of funds.

13 (3) The defined project is eligible for funding pursuant to the
 14 program regulations.

15 (4) The defined project represents the highest public health risk
 16 among unfunded projects, as determined by the department
 17 according to its standard criteria.

18 (c) Total funding under this article for planning, engineering
 19 studies, environmental documentation, project design, and
 20 construction costs of a single project, whether in the form of a loan
 21 or a grant, or both, shall be determined by an assessment of
 22 affordability using criteria established by the department.

23 (d) Subject to all other limitations of this chapter, a small
 24 community water system or nontransient noncommunity water
 25 system, owned by a public agency or private not-for-profit water
 26 company, serving severely disadvantaged communities shall be
 27 eligible to receive up to 100 percent of eligible project costs in the
 28 form of a grant, to the extent the system cannot afford a loan as
 29 determined by the department pursuant to Section 116761.20.

30 (e) Subject to the availability of funds and the applicant’s ability
 31 to repay, an applicant may receive up to the full cost of the project
 32 in the form of a loan bearing interest at the rate established pursuant
 33 to subdivision (a) of Section 116761.65.

34 ~~SEC. 6. Section 116761.50 of the Health and Safety Code is~~
 35 ~~amended to read:~~

36 ~~116761.50. (a) The department may enter into contracts with~~
 37 ~~applicants for grants or loans for the purposes set forth in this~~
 38 ~~chapter. Any contract entered into pursuant to this section shall~~
 39 ~~include only terms and conditions consistent with this chapter and~~
 40 ~~the regulations established under this chapter.~~

- 1 ~~(b) The contract shall include all of the following terms and~~
2 ~~conditions that are applicable:~~
- 3 ~~(1) An estimate of the reasonable cost of the project or study.~~
4 ~~(2) An agreement by the department to loan or grant, or loan~~
5 ~~and grant, the applicant an amount that equals the portion of the~~
6 ~~costs found by the department to be eligible for a state loan or~~
7 ~~grant. The agreement may provide for disbursement of funds during~~
8 ~~the progress of the study or construction, or following completion~~
9 ~~of the study or construction, as agreed by the parties.~~
- 10 ~~(3) An agreement by the applicant to proceed expeditiously with~~
11 ~~the project or study.~~
- 12 ~~(4) An agreement by the applicant to commence operations of~~
13 ~~the project upon completion of the project, and to properly operate~~
14 ~~and maintain the project in accordance with the applicable~~
15 ~~provisions of law.~~
- 16 ~~(5) In the case of a loan, an agreement by the applicant to repay~~
17 ~~the state, over a period not to exceed the useful life of the project~~
18 ~~or 20 years, whichever is shorter, except as provided in the federal~~
19 ~~act, or in the case of a study, over a period not to exceed five years;~~
20 ~~that includes all of the following:~~
- 21 ~~(A) The amount of the loan.~~
22 ~~(B) The administrative fee specified in subdivision (a) of Section~~
23 ~~116761.70.~~
- 24 ~~(C) Interest on the principal, which is the amount of the loan~~
25 ~~including, if applicable, an administrative fee.~~
- 26 ~~(6) In the case of a grant, an agreement by the public agency~~
27 ~~or private not-for-profit water company to operate and maintain~~
28 ~~the water system for a period of 20 years, unless otherwise~~
29 ~~authorized by the department.~~
- 30 ~~(7) The time for the completion of the project. Subject to any~~
31 ~~requirements of the federal act and its implementing regulations~~
32 ~~and guidelines, in the case of a project for planning and a~~
33 ~~preliminary design, pursuant to Section 116760.80, the department~~
34 ~~may determine on a case-by-case basis an appropriate amount of~~
35 ~~time for completion of the project, not to exceed 36 months.~~
- 36 ~~(e) The contract may include any of the following terms and~~
37 ~~conditions:~~
- 38 ~~(1) An agreement by the supplier to adopt a fee structure that~~
39 ~~provides for the proper maintenance and operations of the project~~
40 ~~and includes a sinking fund for repair and replacement of the~~

1 facilities in cases where appropriate. The fee structure shall also
2 provide an acceptable dedicated source of revenue for the
3 repayment of the amount of the loan, and the payment of
4 administrative fees and interest.

5 (2) If the entire project is not funded pursuant to this chapter,
6 the department may include a provision requiring the applicant to
7 share the cost of the project or obtain funding from other sources.

8 (3) An agreement by the supplier to complete, as part of the
9 project, a rate study pursuant to guidelines established by the
10 department.

11 (4) An agreement by the supplier to implement, not later than
12 the conclusion of the project, the approved plan for achieving
13 technical, managerial, and financial capacity as specified in
14 subdivision (f) of Section 116760.50.

15 (5) If the supplier is a small community water system or
16 nontransient nonecommunity water system, owned by a public
17 agency or private not-for-profit water company, receiving grant
18 funding, an agreement by the supplier to comply with guidelines
19 adopted by the department for any procurement of engineering,
20 environmental compliance, or architectural services.

21 (d) The department may require applicants to provide security
22 for loan contracts.

23 SEC. 7. Section 116761.65 of the Health and Safety Code is
24 amended to read:

25 116761.65. (a) The department shall annually establish the
26 interest rate for loans made pursuant to this chapter at 50 percent
27 of the average interest rate, computed by the true interest cost
28 method, paid by the state on general obligation bonds issued in
29 the prior calendar year. All loans made pursuant to this chapter
30 shall carry the interest rate established for the calendar year in
31 which the funds are committed to the loan, as of the date of the
32 issuance of the funding commitment. The interest rate set for each
33 loan shall be applied throughout the repayment period of the loan.
34 Interest on the loan shall not be deferred.

35 (b) Notwithstanding subdivision (a), if the loan applicant is a
36 public water system that is a disadvantaged community or provides
37 matching funds, the interest rate on the loan shall be zero percent.

38 SEC. 8. Section 116761.70 of the Health and Safety Code is
39 amended to read:

1 ~~116761.70. (a) Not more than 4 percent of the capitalization~~
2 ~~grant may be used by the department for administering this chapter.~~
3 ~~The department may establish a reasonable schedule of~~
4 ~~administrative fees for loans, which shall be paid by the funding~~
5 ~~recipient to reimburse the state for the costs of the state~~
6 ~~administration of this chapter. The department annually shall~~
7 ~~establish in the Intended Use Plan the amount of any administrative~~
8 ~~fee.~~

9 ~~(b) Charges incurred by the Attorney General in protection of~~
10 ~~the state's interest in the use of repayment of grant and loan funds~~
11 ~~under this chapter shall be paid. These charges shall not be paid~~
12 ~~from funds allocated for administrative purposes, but shall be~~
13 ~~treated as a program expense not to exceed one-half of 1 percent~~
14 ~~of the total amount deposited in the fund.~~

O