

AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 814

Introduced by Senator Hill

January 4, 2016

An act to amend Section 6254.16 of the Government Code, and to add Chapter 3.3 (commencing with Section 365) to Division 1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 814, as amended, Hill. Drought: excessive water use: urban retail water suppliers.

The California Constitution ~~requires the reasonable and beneficial use of water.~~ *declares the policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use of the waters in the interest of the people and for the public welfare.* Existing law requires the Department of Water Resources and the State Water Resources Control Board to take all appropriate proceedings or actions to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state. Existing law authorizes any public entity, as defined, that supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity to, by ordinance or resolution, adopt and enforce a water conservation program to reduce the quantity of water used for the purpose of conserving the water supplies of the public entity. Existing law provides that a violation of a requirement of a water conservation program is a misdemeanor punishable by imprisonment

in ~~the~~ a county jail for not more than 30 days, or by a fine not exceeding \$1,000, or both.

~~This bill would declare that excessive water use, as defined by each urban retail water supplier, is a waste or unreasonable use of water. This bill would prohibit excessive water use by a residential customer and use during a state of emergency based on drought conditions by a residential customer, as specified, is prohibited. This bill would require each urban retail water supplier to establish a method to identify and restrict excessive water use. This bill would authorize as a method to identify and restrict excessive water use the establishment of a rate structure that includes block tiers, water budgets, penalties for prohibited uses, or rate surcharges over and above base rates for excessive water use by residential customers. This bill would authorize as a method to identify and restrict excessive water use the establishment of an excessive water use ordinance, rule, or tariff condition that includes a definition of excessive water use, as prescribed, and would make a violation of this prohibition excessive water use ordinance, rule, or tariff condition an infraction punishable by a fine of at least \$500 per 100 cubic feet of water or per 748 gallons used above the excessive water use definition threshold established by the urban retail water supplier in a billing cycle. By creating a new infraction, this bill would impose a state-mandated local program.~~

This bill would provide that these provisions apply only during a period for which the Governor has issued a proclamation of a state of emergency based on drought conditions.

The California Public Records Act requires that public records, as defined, be open to inspection at all times during the hours of a state or local agency and that every person has a right to inspect any public record, with specified exceptions. Existing law prohibits the act from being construed to require the disclosure of certain information concerning utility customers of local agencies, ~~with specified exceptions:~~ *except that disclosure of the name, utility usage data, and the home address of the utility customer who is the subject of the request and who the local agency has determined has used utility services in a manner inconsistent with applicable local utility usage policies is required to be made available.*

~~This bill would require certain information about residential customers that violate the prohibition on excessive water use to be made available under the act upon request.~~ *revise this exception to require, upon request, the disclosure of the name and utility usage data of a utility customer*

who a local agency determines has used utility services in a manner inconsistent with applicable local utility usage policies, with the home address of the customer being disclosed only with the customer's consent. By increasing the duties of local officials, the bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings if that enactment contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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 no reimbursement is required by this act for a specified reason.

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 6254.16 of the Government Code is
- 2 amended to read:
- 3 6254.16. Nothing in this chapter shall be construed to require
- 4 the disclosure of the name, credit history, utility usage data, home
- 5 address, or telephone number of utility customers of local agencies,
- 6 except that disclosure of name, utility usage data, and the home
- 7 address of utility customers of local agencies shall be made
- 8 available upon request as follows:
- 9 (a) To an agent or authorized family member of the person to
- 10 whom the information pertains.
- 11 (b) To an officer or employee of another governmental agency
- 12 when necessary for the performance of its official duties.
- 13 (c) Upon court order or the request of a law enforcement agency
- 14 relative to an ongoing investigation.
- 15 (d) Upon determination by the local agency that ~~the a~~ utility
- 16 customer ~~who is the subject of the request~~ has used utility services
- 17 in a manner inconsistent with applicable local utility usage policies.

1 *policies, if the home address of the customer is not disclosed*
 2 *without the customer's consent.*

3 (e) Upon determination by the local agency that the utility
 4 customer who is the subject of the request is an elected or appointed
 5 official with authority to determine the utility usage policies of the
 6 local agency, provided that the home address of an appointed
 7 official shall not be disclosed without his or her consent.

8 (f) Upon determination by the local agency that the public
 9 interest in disclosure of the information clearly outweighs the
 10 public interest in nondisclosure.

11 ~~(g) Regarding residential customers that violate the prohibition~~
 12 ~~on excessive water use described in Section 367 of the Water Code.~~

13 SEC. 2. Chapter 3.3 (commencing with Section 365) is added
 14 to Division 1 of the Water Code, to read:

15
 16 CHAPTER 3.3. EXCESSIVE RESIDENTIAL WATER USE DURING
 17 DROUGHT
 18

19 365. (a) The Legislature finds and declares that this chapter
 20 ~~is in furtherance of Section 2 of Article X of the California~~
 21 ~~Constitution as intended to prevent the unreasonable use or the~~
 22 ~~waste of water and to protect~~ *further* ~~water resources~~ *important state policies of*
 23 *encouraging water conservation and protecting* water resources
 24 in the interest of the people and for the public welfare.

25 (b) For the purposes of this chapter, “urban retail water supplier”
 26 has the same meaning as provided in Section 10608.12.

27 366. ~~(a) (1) Each urban retail water supplier shall establish a~~
 28 ~~definition of excessive water use by a customer of the urban retail~~
 29 ~~water supplier that considers, but is not necessarily limited to~~
 30 ~~addressing, all of the following factors:~~

31 ~~(A) Average daily use.~~

32 ~~(B) Full-time occupancy of households.~~

33 ~~(C) Amount of landscaped land on a property.~~

34 ~~(D) Rate of evapotranspiration.~~

35 ~~(2) An urban retail water supplier may also consider seasonal~~
 36 ~~weather changes when establishing a definition of excessive water~~
 37 ~~use by a customer of the urban retail water supplier.~~

38 ~~(b) An urban retail water supplier shall define and measure~~
 39 ~~excessive water use in terms of hundreds of cubic feet of water~~
 40 ~~used during the water supplier's regular billing cycle.~~

1 ~~(e) An urban retail water supplier shall adopt the definition of~~
2 ~~excessive water use and make any other changes necessary to~~
3 ~~implement this chapter by adopting a new rule or ordinance or by~~
4 ~~amending an existing rule or ordinance relating to drought or water~~
5 ~~conservation.~~

6 ~~367. (a) Excessive water use is a waste or unreasonable use~~
7 ~~of water.~~

8 ~~(b) Excessive water use by a residential customer is prohibited.~~

9 ~~(c) A violation of subdivision (b) is an infraction punishable by~~
10 ~~a fine of at least five hundred dollars (\$500) per hundred cubic~~
11 ~~feet of water used above the excessive water use definition in a~~
12 ~~billing cycle. Any fine imposed pursuant to this subdivision shall~~
13 ~~be added to the customer's water bill and is due and payable with~~
14 ~~that water bill. Each urban retail water supplier shall have a process~~
15 ~~for nonpayment of the fine, which shall be consistent with the~~
16 ~~water supplier's existing process for nonpayment of a water bill.~~
17 ~~That process may include, but is not necessarily limited to, the~~
18 ~~imposition of nonpayment penalties, interruption of water service,~~
19 ~~and placing of a lien on the customer's real property.~~

20 ~~(d) A violation of subdivision (b) where a demonstrable water~~
21 ~~leak at the residence occurred and a fix to that leak is underway~~
22 ~~shall not be punishable pursuant to subdivision (c). Other~~
23 ~~reasonable justifications for excessive water use shall be considered~~
24 ~~consistent with subdivision (e).~~

25 ~~(e) (1) An urban retail water supplier shall establish a process~~
26 ~~for the appeal of a violation of subdivision (b) whereby the~~
27 ~~customer may contest the imposition of any fine or penalty for~~
28 ~~excessive water use.~~

29 ~~(2) As part of the appeal process, the customer shall be provided~~
30 ~~with an opportunity to provide evidence of a bona fide reason for~~
31 ~~the excessive water use, including evidence of a water leak meeting~~
32 ~~the requirements of subdivision (d), a medical reason, or any other~~
33 ~~reasonable justification for the water use.~~

34 ~~366. (a) Excessive water use during a state of emergency based~~
35 ~~on drought conditions by a residential customer in a single-family~~
36 ~~residence or by a customer in a multiunit housing complex in which~~
37 ~~each unit is individually metered or submetered by the water~~
38 ~~supplier is prohibited.~~

1 **(b)** *Each urban retail water supplier shall establish a method*
2 *to identify and restrict excessive water use, through one of the*
3 *following options:*

4 **(1)** *Establishing a rate structure that includes block tiers, water*
5 *budgets, penalties for prohibited uses, or rate surcharges over and*
6 *above base rates for excessive water use by a residential water*
7 *customer.*

8 **(2) (A)** *Establishing an excessive water use ordinance, rule, or*
9 *tariff condition, or amending an existing ordinance, rule, or tariff*
10 *condition, that includes a definition of excessive water use by*
11 *single-family residential customers and customers in multiunit*
12 *housing complexes in which each unit is individually metered or*
13 *submetered and may include a process to issue written warnings*
14 *to a customer and perform a site audit of customer water usage*
15 *prior to deeming the customer in violation. Excessive water use*
16 *shall be measured in terms of either gallons or hundreds of cubic*
17 *feet of water used during the urban retail water supplier's regular*
18 *billing cycle. In establishing the definition of excessive use, the*
19 *water supplier may consider factors that include, but are not*
20 *limited to, all of the following:*

21 **(i)** *Average daily use.*

22 **(ii)** *Full-time occupancy of households.*

23 **(iii)** *Amount of landscaped land on a property.*

24 **(iv)** *Rate of evapotranspiration.*

25 **(v)** *Seasonal weather changes.*

26 **(B)** *A violation of an excessive use ordinance, rule, or tariff*
27 *condition established pursuant to subparagraph (A) is an infraction*
28 *punishable by a fine of up to five hundred dollars (\$500) per*
29 *hundred cubic feet of water, or per 748 gallons, used above the*
30 *excessive water use threshold established by the urban retail water*
31 *supplier in a billing cycle. Any fine imposed pursuant to this*
32 *subparagraph shall be added to the customer's water bill and is*
33 *due and payable with that water bill. Each urban retail water*
34 *supplier shall have a process for nonpayment of the fine, which*
35 *shall be consistent with the water supplier's existing process for*
36 *nonpayment of a water bill.*

37 **(C)** *A violation of an excessive water use ordinance, rule, or*
38 *tariff condition where a demonstrable water leak at the residence*
39 *occurred and a repair to eliminate that leak is underway shall be*
40 *considered as a basis for granting an appeal and shall be*

1 *considered for waiver of the charges consistent with the urban*
2 *retail water supplier's excessive water use ordinance and existing*
3 *policies for leak adjustments. Other reasonable justifications for*
4 *excessive water use shall be considered by the urban retail water*
5 *supplier consistent with clause (i) of subparagraph (D).*

6 (D) (i) *An urban retail water supplier shall establish a process*
7 *for the appeal of a fine imposed pursuant to subparagraph (B)*
8 *whereby the customer may contest the imposition of the fine for*
9 *excessive water use.*

10 (ii) *As part of the appeal process, the customer shall be provided*
11 *with an opportunity to provide evidence of a bona fide reason for*
12 *the excessive water use, including evidence of a water leak in*
13 *accordance with subparagraph (C), a medical reason, or any other*
14 *reasonable justification for the water use, as determined by the*
15 *urban retail water supplier.*

16 ~~368.~~

17 367. This chapter applies only during a period for which the
18 Governor has issued a proclamation of a state of emergency under
19 the California Emergency Services Act (Chapter 7 (commencing
20 with Section 8550) of Division 1 of Title 2 of the Government
21 Code) based on drought conditions.

22 SEC. 3. The Legislature finds and declares that Section 1 of
23 this act, which amends Section 6254.16 of the Government Code,
24 furthers, within the meaning of paragraph (7) of subdivision (b)
25 of Section 3 of Article I of the California Constitution, the purposes
26 of that constitutional section as it relates to the right of public
27 access to the meetings of local public bodies or the writings of
28 local public officials and local agencies. Pursuant to paragraph (7)
29 of subdivision (b) of Section 3 of Article I of the California
30 Constitution, the Legislature makes the following findings:

31 The Legislature finds that it is in the public's interest to be made
32 aware of excessive water use during a drought in order to help
33 ~~prevent the unreasonable use or waste of water~~ *promote water*
34 *conservation* and to protect water resources in the interest of the
35 people and for the public welfare.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the costs that may be incurred by a local agency or school district
39 under this act would result from a legislative mandate that is within
40 the scope of paragraph (7) of subdivision (b) of Section 3 of Article

1 I of the California Constitution or because the costs that may be
2 incurred by a local agency or school district will be incurred
3 because this act creates a new crime or infraction, eliminates a
4 crime or infraction, or changes the penalty for a crime or infraction,
5 within the meaning of Section 17556 of the Government Code, or
6 changes the definition of a crime within the meaning of Section 6
7 of Article XIII B of the California Constitution.

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