

AMENDED IN SENATE MARCH 30, 2016

AMENDED IN SENATE MARCH 17, 2016

**SENATE BILL**

**No. 814**

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**Introduced by Senator Hill**

January 4, 2016

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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 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 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 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 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 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, 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 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.~~

~~*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 a utility~~
- 16    ~~customer has used utility services in a manner inconsistent with~~

1 applicable local utility usage policies, if the home address of the  
2 customer is not disclosed 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 ~~SEC. 2.~~

12 *SECTION 1.* Chapter 3.3 (commencing with Section 365) is  
13 added to Division 1 of the Water Code, to read:

14 CHAPTER 3.3. EXCESSIVE RESIDENTIAL WATER USE DURING  
15 DROUGHT  
16

17  
18 365. (a) The Legislature finds and declares that this chapter  
19 furthers important state policies of encouraging water conservation  
20 and protecting water resources in the interest of the people and for  
21 the public welfare.

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

24 366. (a) Excessive water use during a state of emergency based  
25 on drought conditions by a residential customer in a single-family  
26 residence or by a customer in a multiunit housing complex in which  
27 each unit is individually metered or submetered by the water  
28 supplier is prohibited.

29 (b) Each urban retail water supplier shall establish a method to  
30 identify and restrict excessive water use, through one of the  
31 following options:

32 (1) Establishing a rate structure that includes block tiers, water  
33 budgets, penalties for prohibited uses, or rate surcharges over and  
34 above base rates for excessive water use by a residential water  
35 customer.

36 (2) (A) Establishing an excessive water use ordinance, rule, or  
37 tariff condition, or amending an existing ordinance, rule, or tariff  
38 condition, that includes a definition of excessive water use by  
39 single-family residential customers and customers in multiunit  
40 housing complexes in which each unit is individually metered or

1 submetered and may include a process to issue written warnings  
2 to a customer and perform a site audit of customer water usage  
3 prior to deeming the customer in violation. Excessive water use  
4 shall be measured in terms of either gallons or hundreds of cubic  
5 feet of water used during the urban retail water supplier's regular  
6 billing cycle. In establishing the definition of excessive use, the  
7 water supplier may consider factors that include, but are not limited  
8 to, all of the following:

- 9 (i) Average daily use.
- 10 (ii) Full-time occupancy of households.
- 11 (iii) Amount of landscaped land on a property.
- 12 (iv) Rate of evapotranspiration.
- 13 (v) Seasonal weather changes.

14 (B) A violation of an excessive use ordinance, rule, or tariff  
15 condition established pursuant to subparagraph (A) is an infraction  
16 punishable by a fine of up to five hundred dollars (\$500) per  
17 hundred cubic feet of water, or per 748 gallons, used above the  
18 excessive water use threshold established by the urban retail water  
19 supplier in a billing cycle. Any fine imposed pursuant to this  
20 subparagraph shall be added to the customer's water bill and is  
21 due and payable with that water bill. Each urban retail water  
22 supplier shall have a process for nonpayment of the fine, which  
23 shall be consistent with the water supplier's existing process for  
24 nonpayment of a water bill.

25 (C) A violation of an excessive water use ordinance, rule, or  
26 tariff condition where a demonstrable water leak at the residence  
27 occurred and a repair to eliminate that leak is underway shall be  
28 considered as a basis for granting an appeal and shall be considered  
29 for waiver of the charges consistent with the urban retail water  
30 supplier's excessive water use ordinance and existing policies for  
31 leak adjustments. Other reasonable justifications for excessive  
32 water use shall be considered by the urban retail water supplier  
33 consistent with clause (i) of subparagraph (D).

34 (D) (i) An urban retail water supplier shall establish a process  
35 for the appeal of a fine imposed pursuant to subparagraph (B)  
36 whereby the customer may contest the imposition of the fine for  
37 excessive water use.

38 (ii) As part of the appeal process, the customer shall be provided  
39 with an opportunity to provide evidence of a bona fide reason for  
40 the excessive water use, including evidence of a water leak in

1 accordance with subparagraph (C), a medical reason, or any other  
2 reasonable justification for the water use, as determined by the  
3 urban retail water supplier.

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

9 ~~SEC. 3. The Legislature finds and declares that Section 1 of~~  
10 ~~this act, which amends Section 6254.16 of the Government Code,~~  
11 ~~further, within the meaning of paragraph (7) of subdivision (b)~~  
12 ~~of Section 3 of Article I of the California Constitution, the purposes~~  
13 ~~of that constitutional section as it relates to the right of public~~  
14 ~~access to the meetings of local public bodies or the writings of~~  
15 ~~local public officials and local agencies. Pursuant to paragraph (7)~~  
16 ~~of subdivision (b) of Section 3 of Article I of the California~~  
17 ~~Constitution, the Legislature makes the following findings:~~

18 ~~The Legislature finds that it is in the public's interest to be made~~  
19 ~~aware of excessive water use during a drought in order to help~~  
20 ~~promote water conservation and to protect water resources in the~~  
21 ~~interest of the people and for the public welfare.~~

22 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
23 ~~Section 6 of Article XIII B of the California Constitution because~~  
24 ~~the costs that may be incurred by a local agency or school district~~  
25 ~~under this act would result from a legislative mandate that is within~~  
26 ~~the scope of paragraph (7) of subdivision (b) of Section 3 of Article~~  
27 ~~I of the California Constitution or because the costs that may be~~  
28 ~~incurred by a local agency or school district will be incurred~~  
29 ~~because this act creates a new crime or infraction, eliminates a~~  
30 ~~crime or infraction, or changes the penalty for a crime or infraction,~~  
31 ~~within the meaning of Section 17556 of the Government Code, or~~  
32 ~~changes the definition of a crime within the meaning of Section 6~~  
33 ~~of Article XIII B of the California Constitution.~~

34 *SEC. 2. No reimbursement is required by this act pursuant to*  
35 *Section 6 of Article XIII B of the California Constitution because*  
36 *the only costs that may be incurred by a local agency or school*  
37 *district will be incurred because this act creates a new crime or*  
38 *infraction, eliminates a crime or infraction, or changes the penalty*  
39 *for a crime or infraction, within the meaning of Section 17556 of*  
40 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*  
2 *Constitution.*

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