

AMENDED IN ASSEMBLY JUNE 6, 2016

AMENDED IN SENATE MARCH 30, 2016

AMENDED IN SENATE MARCH 17, 2016

SENATE BILL

No. 814

Introduced by Senator Hill

January 4, 2016

An act 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~~. *prohibited, if during a period when certain conditions exist, as prescribed.* This bill would require each urban retail water supplier to establish a method to identify and ~~restrict~~ *discourage* excessive water use. This bill would authorize as a method to identify and ~~restrict~~ *discourage* 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~~ *discourage* excessive water use the establishment of an excessive water use ordinance, rule, or tariff condition that includes a definition of *or procedure to identify and address* 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~~. *infraction or administrative civil penalty and would authorize the penalty for a violation to be based on conditions identified by the urban retail water supplier.* 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 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. Chapter 3.3 (commencing with Section 365) is
- 2 added to Division 1 of the Water Code, to read:

1 CHAPTER 3.3. EXCESSIVE RESIDENTIAL WATER USE DURING
2 DROUGHT
3

4 365. (a) The Legislature finds and declares that this chapter
5 furthers important state policies of encouraging water conservation
6 and protecting water resources in the interest of the people and for
7 the public welfare.

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

10 366. (a) Excessive water use during a state of emergency based
11 ~~on drought conditions~~ *periods described in Section 367* by a
12 residential customer in a single-family residence or by a customer
13 in a multiunit housing complex in which each unit is individually
14 metered or submetered by the *urban retail* water supplier is
15 prohibited.

16 (b) Each urban retail water supplier shall establish a method to
17 identify and ~~restrict~~ *discourage* excessive water use, through one
18 of the following options:

19 (1) Establishing a rate ~~structure~~ *structure, subject to applicable*
20 *constitutional and statutory limitations*, that includes block tiers,
21 water budgets, ~~penalties for prohibited uses~~, or rate surcharges
22 over and above base rates for excessive water use by a residential
23 water customer.

24 (2) (A) Establishing an excessive water use ordinance, rule, or
25 tariff condition, or amending an existing ordinance, rule, or tariff
26 condition, that includes a definition of *or a procedure to identify*
27 *and address* excessive water use by *metered* single-family
28 residential customers and customers in multiunit housing
29 complexes in which each unit is individually metered or
30 submetered and may include a process to issue written warnings
31 to a customer and perform a site audit of customer water usage
32 prior to deeming the customer in violation. Excessive water use
33 shall be measured in terms of either gallons or hundreds of cubic
34 feet of water used during the urban retail water supplier’s regular
35 billing cycle. In establishing the definition of excessive use, the
36 *urban retail* water supplier may consider factors that include, but
37 are not limited to, all of the following:

38 (i) Average daily use.

39 (ii) Full-time occupancy of households.

40 (iii) Amount of landscaped land on a property.

1 (iv) Rate of evapotranspiration.

2 (v) Seasonal weather changes.

3 (B) A violation of an excessive use ordinance, rule, or tariff
 4 condition established pursuant to subparagraph (A) ~~is shall result~~
 5 ~~in an infraction punishable by or administrative civil penalty. The~~
 6 ~~penalty for a violation may be based on conditions identified by~~
 7 ~~the urban retail water supplier and may include, but is not limited~~
 8 ~~to, a fine of up to five hundred dollars (\$500) per for each hundred~~
 9 ~~cubic feet of water, or per 748 gallons, used above the excessive~~
 10 ~~water use threshold established by the urban retail water supplier~~
 11 ~~in a billing cycle. Any fine imposed pursuant to this subparagraph~~
 12 ~~shall be added to the customer's water bill and is due and payable~~
 13 ~~with that water bill. Each urban retail water supplier shall have a~~
 14 ~~process for nonpayment of the fine, which shall be consistent with~~
 15 ~~due process and reasonably similar to the water supplier's existing~~
 16 ~~process for nonpayment of a water bill.~~

17 ~~(C) A violation of an excessive water use ordinance, rule, or~~
 18 ~~tariff condition where a demonstrable water leak at the residence~~
 19 ~~occurred and a repair to eliminate that leak is underway shall be~~
 20 ~~considered as a basis for granting an appeal and shall be considered~~
 21 ~~for waiver of the charges consistent with the urban retail water~~
 22 ~~supplier's excessive water use ordinance and existing policies for~~
 23 ~~leak adjustments. Other reasonable justifications for excessive~~
 24 ~~water use shall be considered by the urban retail water supplier~~
 25 ~~consistent with clause (i) of subparagraph (D).~~

26 ~~(D)~~

27 (C) (i) ~~An~~ Consistent with due process, an urban retail water
 28 supplier shall establish a process and conditions for the appeal of
 29 a fine imposed pursuant to subparagraph (B) whereby the customer
 30 may contest the imposition of the fine for excessive water use.

31 (ii) As part of the appeal process, the customer shall be provided
 32 with an opportunity to provide evidence of a bona fide reason for
 33 the excessive water use, including evidence of a water leak in
 34 accordance with subparagraph (C); leak, a medical reason, or any
 35 other reasonable justification for the water use, as determined by
 36 the urban retail water supplier.

37 (c) (1) The provisions of subdivision (b) do not apply to an
 38 urban retail water supplier that is not fully metered in accordance
 39 with Section 527. An urban retail water supply shall comply with
 40 the provisions of subdivision (b) when all of the water supplier's

1 residential water service connections are being billed based on
2 metered water usage.

3 (2) An urban retail water supplier that is not fully metered shall
4 prohibit water use practices by an ordinance, resolution, rule, or
5 tariff condition that imposes penalties for prohibited uses of water
6 supplied by the water supplier. The urban retail water supplier
7 may include a process to issue written warnings prior to imposing
8 penalties as well as increased penalty amounts for successive
9 violations.

10 367. (a) This chapter applies only ~~during~~ as follows:

11 (1) During a period for which the Governor has issued a
12 proclamation of a state of emergency under the California
13 Emergency Services Act (Chapter 7 (commencing with Section
14 8550) of Division 1 of Title 2 of the Government Code) based on
15 ~~drought conditions~~, statewide drought conditions to an urban retail
16 water supplier that has moved to a stage of action in response to
17 a local water supply shortage condition under the water supplier's
18 contingency plan pursuant to paragraph (1) of subdivision (a) of
19 Section 10632 that requires mandatory water use reductions.

20 (2) To an urban retail water supplier during a period in which
21 the water supplier has moved to a stage of action in response to
22 a local water supply shortage condition under the water supplier's
23 contingency plan pursuant to paragraph (1) of subdivision (a) of
24 Section 10632 that requires mandatory water use reductions.

25 (3) To an urban retail water supplier affected during a period
26 for which the Governor has issued a proclamation of a state of
27 emergency under the California Emergency Services Act (Chapter
28 7 (commencing with Section 8550) of Division 1 of Title 2 of the
29 Government Code) based on local drought conditions.

30 (b) The provisions of this chapter are in addition to, and do not
31 supersede or limit, any other measures or remedies implemented
32 by an urban retail water supplier.

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