

AMENDED IN ASSEMBLY JUNE 8, 2016

SENATE BILL

No. 1263

Introduced by Senators Wieckowski and Pavley

February 18, 2016

An act to amend Section 116540 of, and to add Section 116527 to, the Health and Safety Code, *and to add Section 106.4 to the Water Code*, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1263, as amended, Wieckowski. Public water system: permits.

(1) Existing law, the California Safe Drinking Water Act, imposes on the State Water Resources Control Board various responsibilities and duties relating to providing a dependable, safe supply of drinking water. The act prohibits a person from operating a public water system unless he or she first submits an application, including a technical report, to the state board and receives a permit, as specified. The act requires the state board, upon determination that the application is complete, to make a specified investigation, and allows the state board to impose permit conditions, requirements for system improvements, and time schedules as the state board deems necessary to ensure an affordable, reliable, and adequate supply of water at all times that is pure, wholesome, and potable. ~~The act prohibits a public water system that was not in existence on January 1, 1998, from being granted a permit unless the system demonstrates that the water supplier possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, and potable drinking water, and requires that this prohibition apply to any change of ownership of a public water system. The act provides that a person who knowingly makes a false statement or representation in a report submitted, maintained, or used~~

for purposes of compliance with the act may be punished as a misdemeanor.

~~This bill would, commencing January 1, 2017, prohibit an application for a permit for a new public water system from being deemed complete unless the applicant has submitted *would require an application for a permit for a proposed new public water system to first submit a preliminary technical report to the state board, as specified, and would allow the state board to impose technical, financial, or managerial requirements on the permit. The bill would prohibit a public water system not in existence on January 1, 1998, from being granted a permit unless the public water system demonstrates that the water supplier also possesses adequate water rights to ensure the delivery of pure, wholesome, and potable drinking water, and would specify that the prohibition applies to any change in ownership of the public water system, including the consolidation of a public water system. board at least 6 months before initiating construction of any water-related improvement, as defined. Because a misstatement in the report could be a crime under the provision described above, this bill would impose a state-mandated local program by expanding the scope of a crime. The bill would allow the state board to direct the applicant to undertake additional discussion and negotiation with certain existing public water systems the board determines have the technical, managerial, and financial capacity to provide an adequate and reliable supply of domestic water to the service area of the proposed new public water system, as specified, and would require an applicant to comply before submitting an application for a permit to operate a system and would prohibit the application from being deemed complete unless the applicant has complied. The bill would authorize the board to deny the permit if the state board determines that the service area of the public water system can be served by one or more currently permitted public water systems. systems or that the proposed new public water system may lack the technical, managerial, or financial capacity to sustainably provide affordable, safe drinking water in the reasonably foreseeable future, as prescribed.*~~

(2) Existing law allows the state board to delegate primary responsibility for the administration and enforcement of the act within a county to a local health officer if certain criteria are met. Existing law requires that the local primacy agency be empowered with all of the authority granted to the state board over the specified public water systems.

This bill would prohibit a local primacy agency from issuing a permit to operate a public water system without the concurrence of the state board. *The bill would require, for a proposed public water system that would be regulated by a local primacy agency, the applicant to also submit a copy of the preliminary technical report to the state board.*

(3) Existing law declares the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Existing law requires a city or county that determines a project, as defined, is subject to the California Environmental Quality Act to identify certain water systems that may supply water for the project and to request those public water systems to prepare and approve a specified water supply assessment. Under existing law, if no public water system is identified, the city or county is required to prepare and approve the water supply assessment. Existing law provides that if, as a result of its assessment, the public water system or city or county concludes that its water supplies are, or will be, insufficient, the public water system or city or county is required to provide its plans for acquiring additional water supplies, as prescribed.

This bill would prohibit a city, including a charter city, or a county from issuing a building permit for the construction of a new residential development where a source of the water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility. By imposing new duties on a city or county in connection with the issuance of a building permit, the bill would impose a state-mandated local program.

(4) 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 specified reasons.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) *There are over 7,500 public water systems in California.*
2 *The vast majority of these systems provide a reliable supply of safe*
3 *drinking water. However, there are hundreds of smaller public*
4 *water systems that consistently fail to provide a reliable supply of*
5 *safe drinking water to their customers. Many failing public water*
6 *systems were created without the necessary technical, managerial,*
7 *or financial capacity to be sustainable in the long term in view of*
8 *water supply uncertainties. These uncertainties can be created by*
9 *effects on water quality and quantity, global climate change,*
10 *migration of groundwater contamination, the establishment of new*
11 *drinking water standards, and other factors that are known to*
12 *significantly erode a system's capacity.*

13 (b) *Failing public water systems disproportionately affect*
14 *disadvantaged communities who are least able to afford to address*
15 *the conditions that led to the failure.*

16 (c) *The proliferation of new, unsustainable public water systems*
17 *also may undermine the state's human right to water policy.*

18 (d) *Therefore, it is the policy of the state to discourage the*
19 *establishment of new, unsustainable public water systems when*
20 *there is a feasible alternative.*

21 **SECTION 4.**

22 **SEC. 2.** Section 116527 is added to the Health and Safety Code,
23 to read:

24 ~~116527. (a) Commencing January 1, 2017, an application for~~
25 ~~a permit for a new public water system under this chapter shall~~
26 ~~not be deemed complete unless the applicant has complied with~~
27 ~~the requirements of this section.~~

28 ~~(b) The applicant shall submit a preliminary technical report to~~
29 ~~the state board six months before submission of an application for~~
30 ~~a building permit for any improvement in the service area of a~~
31 ~~proposed new public water system or six months before initiating~~
32 ~~construction of any facility or component of a new public water~~
33 ~~system, whichever is earliest. This report shall include all of the~~
34 ~~following:~~

35 ~~116527. (a) As used in this section, "water-related~~
36 ~~improvement" includes, but is not limited to, a water pipe, a water~~
37 ~~pump, or drinking water infrastructure.~~

38 ~~(b) (1) Before a person submits an application for a permit for~~
39 ~~a proposed new public water system, the person shall first submit~~

1 *a preliminary technical report to the state board at least six months*
2 *before initiating construction of any water-related improvement.*

3 (2) *In order to assist in expediting the permitting process, a*
4 *person that is considering submitting an application for a permit*
5 *for a proposed new public water system is encouraged, but is not*
6 *required, within seven days of an application for a building permit*
7 *for any water-related improvement to submit the preliminary*
8 *technical report to the city or county.*

9 (3) *For a proposed public water system that would be regulated*
10 *by a local primacy agency, the applicant shall also submit a copy*
11 *of the preliminary technical report to the state board.*

12 (c) *The preliminary technical report shall include all of the*
13 *following:*

14 (1) *The name of each public water system for which any service*
15 *area boundary is within three ~~miles~~ miles, as measured through*
16 *existing public right of ways, of any boundary of the applicant's*
17 *proposed public water system's service area.*

18 (2) *A discussion of the feasibility of each of the adjacent public*
19 *water systems identified pursuant to paragraph (1) annexing,*
20 *connecting, or otherwise supplying domestic water to the ~~service~~*
21 *area of the applicant's new proposed public water ~~system~~ system's*
22 *service area. The applicant shall consult with an adjacent public*
23 *water system in preparing the report and shall include in the report*
24 *any information provided by an adjacent public water system*
25 *regarding the feasibility of annexing, connecting, or otherwise*
26 *supplying domestic water to that service area.*

27 (3) *A discussion of all actions taken by the applicant to secure*
28 *a supply of domestic water from an existing public water system*
29 *for the proposed new public water system's service area.*

30 ~~(3)~~

31 (4) *All ~~proposed~~ sources of domestic water supply for the*
32 *proposed new public water system.*

33 ~~(4)~~

34 (5) *The estimated cost to construct, operate, and maintain the*
35 *proposed new public water system, including long-term operation*
36 *and maintenance costs and a ~~proposed~~ potential rate structure.*

37 ~~(5)~~

38 (6) *A comparison of the ~~cost~~ costs associated with the*
39 *construction, operation and maintenance, and long-term*
40 *sustainability of the proposed new public water system to the costs*

1 associated with the ~~annexation, consolidation,~~ *providing water to*
2 *the proposed new public water system's service area through*
3 *annexation by, consolidation with,* or connection to an existing
4 public water system.

5 ~~(6) A discussion of all actions taken by the applicant to secure~~
6 ~~a supply of domestic water from an existing public water system~~
7 ~~for the service area of the proposed new public water system.~~

8 (7) A discussion of all actions taken by the applicant to pursue
9 a contract for managerial or operational oversight from an existing
10 public water system.

11 (8) *An analysis of whether a new proposed public water system's*
12 *total projected water supplies available during normal, single dry,*
13 *or multiple dry water years during a 20-year projection will meet*
14 *the project water demand for the service area.*

15 (d) (1) *If documents prepared to comply with Division 13*
16 *(commencing with Section 21000) of the Public Resources Code*
17 *or any other application for public agency approval concerning*
18 *providing drinking water to the new proposed public water*
19 *system's service area include the information required by*
20 *subdivision (c), the applicant may submit those documents to the*
21 *state board in lieu of the preliminary technical report and the*
22 *documents shall be considered the functional equivalent of the*
23 *preliminary technical report.*

24 (2) *If documents prepared to comply with Division 13*
25 *(commencing with Section 21000) of the Public Resources Code*
26 *or any other application for public agency approval concerning*
27 *providing drinking water to the new proposed public water*
28 *system's service area include some, but not all, of the information*
29 *required by subdivision (c), the applicant shall submit those*
30 *documents and the preliminary technical report to the state board*
31 *and together those documents and the preliminary technical report*
32 *shall be considered the functional equivalent of the preliminary*
33 *technical report requirements of this section. A preliminary*
34 *technical report submitted pursuant to this paragraph shall only*
35 *be required to include information that is not otherwise addressed*
36 *by the other submitted documents.*

37 ~~(e)~~

38 (e) Upon review of a preliminary technical report submitted
39 pursuant to this section, the state board may do all of the following
40 actions:

1 (1) ~~Direct~~ *If the applicant has not already sought annexation*
2 *or an extension of services agreement from the local agency*
3 *formation commission, direct the applicant to undertake additional*
4 *discussion and negotiation with any existing public water system*
5 *meeting the requirements of paragraph (1) of subdivision (c) that*
6 *the state board determines has the technical, managerial, and*
7 *financial capacity to provide an adequate and reliable supply of*
8 *domestic water to the service area of the proposed new public*
9 *water system. The state board shall not direct the applicant to*
10 *undertake additional discussion and negotiation if documentation*
11 *submitted to the state board demonstrates that additional*
12 *discussion and negotiation is unlikely to be successful, including,*
13 *but not limited to, documentation that a local agency formation*
14 *commission has already denied the application for an extension*
15 *or annexation.*

16 (2) Direct the applicant to report on the results of discussion
17 and negotiations conducted pursuant to paragraph (1) to the state
18 board.

19 (3) Establish a time schedule for the applicant’s performance
20 of directives issued pursuant to this subdivision.

21 ~~(d)~~

22 (f) (1) An applicant shall comply with the state board’s
23 directives *as assigned in and consistent with subdivision (e)* before
24 submitting an application for a permit under this chapter.

25 (2) *An application for a permit for a new public water system*
26 *under this chapter shall not be deemed complete unless the*
27 *applicant has complied with the requirements of this section.*

28 ~~(e)~~

29 (g) The state board’s review of a preliminary technical report
30 pursuant to this section shall not be deemed approval of a project
31 or approval of ~~any~~ a permit application submitted under this
32 chapter.

33 (h) *The requirements of this section do not apply to an*
34 *application for a permit for a new public water system that was*
35 *deemed complete prior to January 1, 2017, pursuant to the*
36 *statutory permit application requirements effective at the date of*
37 *the permit submittal.*

38 (i) (1) *The requirements of this section do not apply to a service*
39 *area where an applicant certifies in writing to the state board that*
40 *the applicant will not rely on the establishment of a new public*

1 water system for its water supply. The state board shall
2 acknowledge receipt of the applicant's certification in a timely
3 manner.

4 (2) An applicant who certifies that the service area will not rely
5 on the establishment of a new public water system and later seeks
6 a permit for a new public water system shall comply with the
7 provisions of this section and shall assume all risk of delay or
8 rejection related to the permit application.

9 (j) (1) The provisions of this subdivision apply to a proposed
10 new public water system that achieves either or both of the
11 following:

12 (A) Consolidates two or more existing public water systems,
13 existing state small water systems, or other existing water systems,
14 which results in the creation of a new public water system.

15 (B) Provides water service in lieu of individual domestic wells.

16 (2) At least six months before the construction of any
17 water-related improvements, an applicant for a new public water
18 system that meets the criteria in paragraph (1) shall provide a
19 written notice to the state board that does both of the following:

20 (A) Clearly describes the proposed new public water system
21 and how it meets the criteria in paragraph (1).

22 (B) Requests an exemption from the requirements of this section.

23 (3) The state board shall promptly acknowledge receipt of a
24 written notice described in paragraph (2). The state board shall
25 have 30 days from the acknowledgment of receipt of the written
26 notice to issue a written notice to the applicant that compliance
27 with the requirements of this section is necessary and that an
28 application for a permit of a new public water system under this
29 chapter is not complete until the applicant has complied with the
30 requirements of this section. A determination by the state board
31 that compliance with the requirements of this section is necessary
32 shall be final and is not subject to review. A determination by the
33 state board pursuant to this subdivision is not considered a project
34 subject to Division 13 (commencing with Section 21000) of the
35 Public Resources Code.

36 (4) If the state board receives a written notice from a project
37 applicant that satisfies the requirements of paragraph (2), the
38 project described in the notice is deemed exempt from the
39 requirements of this section on the 35th day following the date of
40 the state board's acknowledgment of receipt of the written notice,

1 *unless the state board has issued a notice to comply pursuant to*
2 *paragraph (3).*

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 116540 of the Health and Safety Code is
5 amended to read:

6 116540. (a) Following completion of the investigation and
7 satisfaction of the requirements of paragraphs (1) and (2), the state
8 board shall issue or deny the permit. The state board may impose
9 permit conditions, requirements for system improvements,
10 technical, financial, or managerial requirements, and time schedules
11 as it deems necessary to ensure a reliable and adequate supply of
12 water at all times that is pure, wholesome, potable, and does not
13 endanger the health of consumers.

14 (1) A public water system that was not in existence on January
15 1, 1998, shall not be granted a permit unless the public water
16 system demonstrates to the state board that the water supplier
17 possesses adequate ~~water rights, as well as~~ financial, managerial,
18 and technical capability to ensure the delivery of pure, wholesome,
19 and potable drinking water. This section shall also apply to any
20 change of ownership of a public water ~~system, including the~~
21 ~~consolidation of a public water~~ system.

22 (2) A permit under this chapter shall not be issued to an
23 association organized under Title 3 (commencing with Section
24 18000) of the Corporations Code. This section shall not apply to
25 unincorporated associations that, as of December 31, 1990, are
26 holders of a permit issued under this chapter.

27 (b) Notwithstanding Section 116330, a local primacy agency
28 shall not issue a permit under this ~~chapter~~ *article* without the
29 concurrence of the state board.

30 ~~(e) If the state board determines that the service area of the~~
31 ~~public water system addressed by an application under this article~~
32 ~~can be served by one or more currently permitted public water~~
33 ~~systems, the state board may deny the permit.~~

34 (c) *In considering whether to approve a proposed new public*
35 *water system, the state board shall consider the sustainability of*
36 *the proposed new public water system and its water supply in the*
37 *reasonably foreseeable future, in view of global climate change,*
38 *potential migration of groundwater contamination and other*
39 *potential treatment needs, and other factors that can significantly*
40 *erode a system's capacity.*

1 (d) The state board may deny the permit if it determines either
 2 of the following:

3 (1) That it is feasible for the service area of the proposed new
 4 public water system addressed by an application under this chapter
 5 to be served by one or more currently permitted public water
 6 systems.

7 (2) That the proposed new public water system may lack the
 8 technical, managerial, or financial capacity to sustainably provide
 9 affordable, safe drinking water in the reasonably foreseeable future
 10 based on its assessment of the preliminary technical report
 11 submitted pursuant to Section 116527, the permit application,
 12 relevant substantial evidence, or the factors considered pursuant
 13 to subdivision (c).

14 (e) An applicant may appeal decisions and actions of the deputy
 15 director taken pursuant to this section to the state board.

16 SEC. 4. Section 106.4 is added to the Water Code, to read:

17 106.4. (a) For the purposes of this section:

18 (1) “Bottled water” has the same meaning as defined in Section
 19 111070 of the Health and Safety Code.

20 (2) “Residential development” has the same meaning as defined
 21 in Section 65008 of the Government Code.

22 (3) “Retail water facility” has the same meaning as defined in
 23 Section 111070 of the Health and Safety Code.

24 (4) “Water-vending machine” has the same meaning as defined
 25 in Section 111070 of the Health and Safety Code.

26 (5) “Water hauler” has the same meaning as defined in Section
 27 111070 of the Health and Safety Code.

28 (b) A city, including a charter city, or a county shall not issue
 29 a building permit for the construction of a new residential
 30 development where a source of water supply is water transported
 31 by a water hauler, bottled water, a water-vending machine, or a
 32 retail water facility.

33 (c) The Legislature finds and declares that this section addresses
 34 a matter of statewide concern and not a municipal affair, as that
 35 term is used in Section 5 of Article XI of the California
 36 Constitution.

37 SEC. 5. No reimbursement is required by this act pursuant to
 38 Section 6 of Article XIII B of the California Constitution because
 39 a local agency or school district has the authority to levy service
 40 charges, fees, or assessments sufficient to pay for the program or

1 *level of service mandated by this act or because 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*
5 *infraction, within the meaning of Section 17556 of the Government*
6 *Code, or changes the definition of a crime within the meaning of*
7 *Section 6 of Article XIII B of the California Constitution.*

O