AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL No. 261

Introduced by Senators Dutton and Ducheny
(Coauthors: Senators ~~Correa and Hollingsworth~~ *Correa, Hollingsworth, and Padilla*)

February 24, 2009

An act to amend Section 10631 of, and to add Chapter 5 (commencing with Section 10660) to Part 2.6 of Division 6 of, the Water Code, relating to water use.

LEGISLATIVE COUNSEL'S DIGEST

SB 261, as amended, Dutton. Water use.

(1) Existing law requires the Department of Water Resources to convene an independent technical panel to provide information to the department and the Legislature on new demand management measures, technologies, and approaches. "Demand management measures" means those water conservation measures, programs, and incentives that prevent the waste of water and promote the reasonable and efficient use and reuse of available supplies. Existing law requires urban water suppliers to prepare and adopt urban water management plans with specified components.

This bill would require an urban water supplier to develop and implement a water use efficiency and efficient water resources management plan to reduce residential potable water use in a specified manner or achieve extraordinary water use efficiency, as defined. The urban water supplier or the regional water management group, as

applicable, would be required to report its progress towards achieving a prescribed water use efficiency and efficient water resources management target in specified documents.

The bill would enact the Comprehensive Urban Water Efficiency Act of 2009. ~~The bill would authorize a regional water management group, on behalf of its member urban water suppliers and with the consent of those members, to submit specified water use efficiency information that is required to be included in an urban water management plan. The State Water Resources Control Board and the department, under specified circumstances, would be required to award preference points to a regional water management group in connection with the administration of certain competitive grant programs.~~ The board and the department, not later than April 1, 2010, would be required to convene a task force to develop best management practices for commercial, industrial, and institutional water uses for the purpose of achieving a specified reduction in water use by 2020.

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

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

SECTION 1. Section 10631 of the Water Code is amended to read:

10631. A plan shall be adopted in accordance with this chapter and shall do all of the following:

(a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available.

(b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan:

(1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part

2.75 (commencing with Section 10750), or any other specific authorization for groundwater management.

(2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For those basins for which a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.

(3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records.

(c) (1) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following:

(A) An average water year.

(B) A single dry water year.

(C) Multiple dry water years.

(2) For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable.

(d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis.

(e) (1) Quantify, to the extent records are available, past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses:

(A) Single-family residential.

(B) Multifamily.

(C) Commercial.

(D) Industrial.

(E) Institutional and governmental.

(F) Landscape.

(G) Sales to other agencies.

(H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof.

(I) Agricultural.

(2) The water use projections shall be in the same five-year increments described in subdivision (a).

(f) Provide a description of the supplier's water demand management measures. This description shall include all of the following:

(1) A description of each water demand management measure that is currently being implemented, or scheduled for implementation, including the steps necessary to implement any proposed measures, including, but not limited to, all of the following:

(A) Water survey programs for single-family residential and multifamily residential customers.

(B) Residential plumbing retrofit.

(C) System water audits, leak detection, and repair.

(D) Metering with commodity rates for all new connections and retrofit of existing connections.

(E) Large landscape conservation programs and incentives.

(F) High-efficiency washing machine rebate programs.

(G) Public information programs.

(H) School education programs.

(I) Conservation programs for commercial, industrial, and institutional accounts.

(J) Wholesale agency programs.

(K) Conservation pricing.

(L) Water conservation coordinator.

(M) Water waste prohibition.

(N) Residential ultra-low-flush toilet replacement programs.

(2) A schedule of implementation for all water demand management measures proposed or described in the plan.

(3) A description of the methods, if any, that the supplier will use to evaluate the effectiveness of water demand management measures implemented or described under the plan.

(4) An estimate, if available, of existing conservation savings on water use within the supplier's service area, and the effect of the savings on the supplier's ability to further reduce demand.

(g) An evaluation of each water demand management measure listed in paragraph (1) of subdivision (f) that is not currently being implemented or scheduled for implementation. In the course of the evaluation, first consideration shall be given to water demand management measures, or combination of measures, that offer lower incremental costs than expanded or additional water supplies. This evaluation shall do all of the following:

(1) Take into account economic and noneconomic factors, including environmental, social, health, customer impact, and technological factors.

(2) Include a cost-benefit analysis, identifying total benefits and total costs.

(3) Include a description of funding available to implement any planned water supply project that would provide water at a higher unit cost.

(4) Include a description of the water supplier's legal authority to implement the measure and efforts to work with other relevant agencies to ensure the implementation of the measure and to share the cost of implementation.

(h) Include a description of all water supply projects and water supply programs that may be undertaken by the urban water supplier to meet the total projected water use as established pursuant to subdivision (a) of Section 10635. The urban water supplier shall include a detailed description of expected future projects and programs, other than the demand management programs identified pursuant to paragraph (1) of subdivision (f), that the urban water supplier may implement to increase the amount of the water supply available to the urban water supplier in average, single dry, and multiple dry water years. The description shall identify specific projects and include a description of the increase

in water supply that is expected to be available from each project. The description shall include an estimate with regard to the implementation timeline for each project or program.

(i) Describe the opportunities for development of desalinated water, including, but not limited to, ocean water, brackish water, and groundwater, as a long-term supply.

(j) Urban water suppliers that are members of the California Urban Water Conservation Council and submit annual reports to that council in accordance with the "Memorandum of Understanding Regarding Urban Water Conservation in California," dated September 1991, may submit the annual reports identifying water demand management measures currently being implemented, or scheduled for implementation, to satisfy the requirements of subdivisions (f), (g), and (*l*).

(k) Urban water suppliers that rely upon a wholesale agency for a source of water shall provide the wholesale agency with water use projections from that agency for that source of water in five-year increments to 20 years or as far as data is available. The wholesale agency shall provide information to the urban water supplier for inclusion in the urban water supplier's plan that identifies and quantifies, to the extent practicable, the existing and planned sources of water as required by subdivision (b), available from the wholesale agency to the urban water supplier over the same five-year increments, and during various water-year types in accordance with subdivision (c). An urban water supplier may rely upon water supply information provided by the wholesale agency in fulfilling the plan informational requirements of subdivisions (b) and (c).

(*l*) (1) Each urban water supplier or, upon resolution of its governing board submitted to the department, each regional water management group acting on behalf of the urban water suppliers within the group's boundaries, shall develop and implement a water use efficiency and efficient water resources management plan unless that urban water supplier engages in extraordinary water use efficiency as defined in subdivision (d) of Section 10663.

(2) A water use efficiency and efficient water resources management plan shall accomplish one or ~~more~~ *both* of the following:

~~(A) Reduce residential per capita potable water use by 20 percent by 2020 as compared to water use in 2000.~~

~~(B)~~

(A) Reduce total residential potable water use by 2020 by a total of 20 percent as compared to the 2020 projection in the agency's 2005 urban water management plan, which reduction shall include water conservation measures already included in the 2005 urban water management plan.

~~(C)~~

(B) Achieve, by 2020, extraordinary water use efficiency as defined in subdivision (d) of Section 10663.

(3) The plan shall include interim milestones for each even-numbered year for progress towards achieving the 2020 water use efficiency and efficient water resources management target as required by paragraph (2).

(4) Every two years, each reporting agency shall report its progress toward reaching the 2020 water use efficiency and efficient water resources management target. The reporting agency shall include in the report, and in its urban water management plan or its report to the California Urban Water Conservation Council, the following information:

(A) The data included in the department's form 38 entitled "Public Water System Statistics."

(B) The total population within the urban water supplier's service area, as determined by the United States Census Bureau.

(C) The total quantities of stormwater, recycled water, treated groundwater, desalinated seawater, water previously used within the watershed, and other alternative sources of water that are delivered to customers or stored either in surface reservoirs or underground for future use.

(D) Assuming not more than 70 gallons per capita per day of indoor water use, the estimated quantity of water used for outdoor landscape irrigation expressed as a percentage of reference evapotranspiration for the urban water supplier's service area based on historic CIMIS data as outlined in the state's model water efficient landscape ordinance.

(5) Each reporting agency may evaluate progress in implementing the plan by using the metrics it considers to be most appropriate for its circumstances. In calculating progress towards the 2020 water use efficiency and efficient water resources management target, an urban water supplier may offset its use of potable water by the quantities of water used as part of efficient

water resources management as defined in subdivision (c) of Section 10663.

(6) The 2020 water use efficiency and efficient water resources management target shall replace previous qualification standards related to meeting water conservation requirements.

(7) If an urban water supplier fails to meet an interim milestone identified in its plan, it shall report its failure to the department on the following March 1. The urban water supplier, within 90 days thereafter, shall submit a plan to the department to meet the next interim milestone. If the urban water supplier fails to meet that interim milestone, it shall be subject to a penalty of 20 percent of available points in any competitive grant or loan program awarded or administered by the department, the board, or the California Bay-Delta Authority until the urban water supplier satisfies an interim milestone in a timely manner, provided that the urban water supplier shall have a minimum of two years from the date on which it submits the plan to the department to meet the next interim milestone.

SEC. 2. Chapter 5 (commencing with Section 10660) is added to Part 2.6 of Division 6 of the Water Code, to read:

Chapter 5. Urban Water Efficiency

10660. This chapter shall be known and may be cited as the Comprehensive Urban Water Efficiency Act of 2009.

10661. In enacting this chapter, the Legislature intends to accomplish all of the following purposes:

(a) To increase urban and residential water use efficiency and efficient water resources management in California in order to improve water supply reliability in light of periodic drought and population growth.

(b) To encourage the efficient use of local sources of water, such as stormwater, recycled water, desalinated water, or treated water that can either be substituted for potable water or blended as part of municipal and industrial water supplies, and to increase multiple uses of water within the same watershed.

(c) To increase water use efficiency and efficient water resources management in California to contribute to sustainable job growth and a vibrant economy for the 21st century.

10662. The Legislature hereby finds and declares all of the following:

(a) California's growing population, periodic and serious drought conditions, and the need to protect California's fish and wildlife resources require that Californians adopt reasonable water efficiency measures that improve water supply reliability.

(b) Efficient water use includes the development of alternative local sources of water supplies, such as stormwater, recycled water, desalinated water, and treated water, that reduce the demand for imported water. Efficient water use also encourages multiple uses of water within a single watershed or region.

(c) Efficient water management in California requires that urban water suppliers attempt to match water quality to the requirements of each beneficial use.

(d) The Governor's call for a 20-percent reduction in statewide, urban per capita water use is an important component of a comprehensive package of water management strategies necessary to ensure sufficient water supplies for California's residential and commercial uses.

(e) The implementation of this goal should allow for flexible implementation that provides for the option of regional or local implementation.

(f) Existing, well-established water management planning processes, including integrated regional water management plans, should be utilized to provide for the most effective, cooperative, efficient, and expedient progress toward the 20-percent statewide goal.

(g) General statutory direction to state, regional, and local implementing agencies should allow for implementation that reflects the need to take into account unique local factors, including housing density and lot sizes, climatic conditions, the mix of commercial, industrial, and institutional uses, and year-to-year weather changes.

(h) To date, statewide water conservation data ~~is~~ *are* inadequate for the purpose of assessing past and ongoing conservation efforts. Standardized data collection and analysis will provide the best means for tracking progress toward the statewide water conservation goal and ensuring accountability among local and regional agencies.

(i) Goals pertaining to commercial and industrial water uses should recognize the very different commercial and industrial uses among regions and local agencies and should not unreasonably combine the factors of commercial uses and population. Progress toward commercial and industrial water conservation can best be achieved through the development of best management practices and local and regional engagement with local commercial and industrial operations.

(j) Any per capita water use goals should be utilized in a fair, appropriate, and productive manner at the statewide and regional level and should be applied in a manner that accounts for the unique factors associated with individual agency conditions.

(k) Water use efficiency and efficient water resources management efforts should be undertaken for the purpose of enhancing watershed sustainability.

(*l*) Statutory revisions and administrative actions that provide direction for the implementation of the urban water use conservation goal should be crafted in a manner that will not affect or imperil existing water rights.

10663. (a) Unless the context requires otherwise, the definitions set forth in this section govern the construction of this chapter.

(b) "CII" means the use of water in commercial, industrial, and institutional settings.

(c) "Efficient water resources management" means the use of alternative sources of water that make the most efficient use of potable or imported water, such as the capture of stormwater or rainwater, the use of recycled water, the desalination of brackish groundwater, the conjunctive use of surface water and groundwater in a manner that is consistent with the safe yield of the groundwater basin, the reuse of water multiple times in a watershed, provided that the total credits for that water do not exceed the quantity of water reused, or the matching of water quality with the needs of a specific water use.

(d) "Extraordinary water use efficiency" means ~~either of the following:~~ *residential water use that meets both of the following criteria:*

(1) The use of less than 70 gallons per person per day for indoor residential uses, or other standard for indoor residential uses that

may be adopted by the California Urban Water Conservation Council.

(2) The use of less than 70 percent of reference evapotranspiration as determined by historic CIMIS data as outlined in the state's model water efficient landscape ordinance for outdoor residential uses.

(e) "Potable water" means raw water that, upon treatment required to meet minimum safe drinking water standards, may be delivered to retail customers for municipal and industrial uses.

(f) "Regional water management group" has the same meaning as set forth in Section 10539.

(g) "Reporting agency" means either an urban water supplier or a regional water management group acting on behalf of the urban water suppliers within its boundaries, as authorized by resolution of its governing board submitted to the department.

(h) "Water use efficiency" means the efficient use of water as that term is defined in Section 10613.

~~10664. (a) A regional water management group may, with the consent of member urban water suppliers, submit the data required by Section 10631 on behalf of member urban water suppliers, according to the schedule that applies to individual urban water suppliers. The data may be aggregated for the entire area served by the regional water management group but shall also provide data for each urban water supplier that is a member of the group.~~

~~(b) Notwithstanding any other provision of law, the board or the department, as applicable, shall award regional water management groups preference points equal to 20 percent of the total available points in an integrated regional water management planning competitive grant program administered by the board or the department. The preference points awarded under this section shall only be awarded to projects that are identified in the integrated regional water management plan adopted by the regional water management group.~~

10665. (a) The board and the department, not later than April 1, 2010, shall convene a task force consisting of experts to develop for the CII sector best management practices that are intended to result in a statewide target of at least a ~~10-percent~~ *20-percent* reduction in potable water use in the CII sector by 2020 as compared to statewide water use by that sector in ~~2000~~ *2005*.

(b) The task force shall be composed of representatives of the board, the department, urban water suppliers located in all of the regions used as part of the California Water Plan task force, trade groups representing the CII sector, and environmental groups. Members of the task force shall be selected by the director, after consultation with the chairperson of the board. Operations of the task force may be funded by the participants, or by the California Urban Water Conservation Council. The task force shall submit a report to the board and the department no later than April 1, 2011. The director, after consultation with the chairperson of the board, may designate a chairperson of the task force. Any recommendation of the task force shall be endorsed by all members of the task force.

(c) The task force report shall include a discussion of at least the following subjects:

(1) Metrics that are appropriate for use in evaluating the use of water in the CII sector.

(2) An evaluation of the appropriate quantities of water needed for cooling in manufacturing processes.

(3) An evaluation of the appropriate quantities of water needed as an ingredient in manufactured goods or for use in manufacturing processes.

(4) The cost-effectiveness of water use efficiency and efficient water resources management measures in the CII sector.

(5) An evaluation of the potential use of stormwater, recycled water, treated water, desalinated water, or other alternative sources of water in the CII sector, together with appropriate credits for that use.

(6) An evaluation of the manner in which regional projects could provide significant supplies of stormwater, recycled water, treated water, desalinated water, or other alternative sources of water to the CII sector.

(7) An evaluation of the need for offsite public infrastructure to provide sufficient supplies of stormwater, recycled water, treated water, desalinated water, or other alternative sources of water to the CII sector.

(8) The economic viability of any proposals developed by the task force and whether these proposals would create sustainable green collar jobs.

(9) An evaluation of institutional and economic barriers to increased water use efficiency and efficient water resources management in the CII sector.

(10) An evaluation of whether it is feasible to reduce water use statewide in the CII sector by at least ~~10~~ *20* percent by 2020 and, if the reduction is feasible, whether that reduction would be in the public interest.

(11) The identification of appropriate best management practices that should be implemented in order to achieve a feasible reduction in water use statewide in the CII sector that is consistent with the public interest.

(d) The task force report shall also evaluate the feasibility and cost-effectiveness of encouraging commercial, industrial, and institutional facilities to implement best management practices that can readily be transferred from residential settings to commercial or institutional settings, including the use of high-efficiency toilets, low-flow showerheads, smart irrigation controllers, and climate-appropriate landscaping.

~~10666. It is the intent of the Legislature that this chapter be implemented to protect the water rights of agencies subject to this chapter and that this chapter not be used to reallocate water from those persons holding water rights as of the effective date of this chapter. To implement this intent all of the following shall apply:~~

~~(a) Any improvements in water use efficiency and efficient water resources management achieved by implementing this chapter shall be considered to be water conservation subject to the protections of Section 1011.~~

~~(b) Data relating to water use efficiency and efficient water resources management and reports prepared pursuant to this chapter shall not be admissible as evidence that any person has failed to comply with Section 2 of Article X of the California Constitution or Section 100. The data and reports shall not be used as part of any action by the department or the board pursuant to Section 275.~~

~~(c) An urban water supplier's failure to meet any interim milestone of the 2020 water use efficiency and efficient water resources management target established in subdivision (*l*) of Section 10631 or to meet the 2020 water use efficiency and efficient water resources management target established in subdivision (*l*) of Section 10631 shall not be admissible as evidence that any person has failed to comply with Section 2 of Article X~~

~~of the California Constitution or Section 100. The failure shall not be used as part of any action by the department or the board pursuant to Section 275.~~

10667. This chapter shall be liberally construed to achieve its purpose, specifically achieving the water efficiency and efficient water resource management goal set forth in subdivision (*l*) of Section 10631 in a manner that provides the greatest possible flexibility and discretion to local agencies and that protects water rights to the fullest extent possible.

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