

ASSEMBLY BILL

No. 2238

Introduced by Assembly Member Perea

February 24, 2012

An act to amend Sections 56378 and 56430 of the Government Code, to amend Sections 116326, 116760.30, 116760.70, and 116760.90 of the Health and Safety Code, and to amend Section 75125 of, and to add Section 75129.5 to, the Public Resources Code, relating to public water systems, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2238, as introduced, Perea. Public water systems: drinking water.

Existing law requires the State Department of Public Health to administer programs to fund improvements and expansion of small community water systems using specified priorities. Existing law requires the department to encourage the consolidation of small community water systems that serve disadvantaged communities if consolidation will help the affected agencies and the state meet specified goals. Existing law allows funding of studies regarding the feasibility of consolidating 2 or more community water systems, at least one of which is a small community water system that serves a disadvantaged community. Existing law requires the department to give funding priority to projects involving physical restructuring of 2 or more community water systems into a single, consolidated system when it is shown that the consolidation would further specified goals.

This bill would require the department to promote the consolidation and merger of small community water systems that serve disadvantaged communities, as specified, and would require the studies performed prior to a construction project to include the feasibility of consolidating

or merging community water systems. This bill would also require the department to give priority to funding projects involving managerial consolidation or merger when the consolidation or merger would further specified goals.

Existing law requires local agency formation commissions (LAFCOs) to conduct a service review of the municipal services provided in the county, as specified, and requires the commissions to review all of the agencies that provide the service within a designated geographic area. Existing law permits LAFCOs to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery, as specified, and allows the commissions to include a review of whether the agencies are in compliance with the California Safe Drinking Water Act.

This bill would require LAFCOs to assess various alternatives for improving efficiency and affordability of infrastructure and service delivery and would require the commissions to include a review of whether the agencies are in compliance with the California Safe Drinking Water Act. By imposing additional duties on local officials, this bill would impose a state-mandated local program.

Under existing law, the State Department of Public Health provides grants and revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law requires the department to administer the Safe Drinking Water State Revolving Fund, which is continuously appropriated for the design and construction of public water systems, as specified.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative measure, provides funding for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements. Existing law establishes the Strategic Growth Council and appropriates \$500,000 from the funding provided by the initiative to support the council and its activities. Existing law requires the council to manage and award grants and loans to support the planning and development of sustainable communities, as specified.

This bill would provide that local agency formation commissions intending to fund public water system consolidation, merger, or extension of services projects are eligible for grants and loans from the Safe Drinking Water State Revolving Fund. By providing that continuously appropriated funds may be spent for a new purpose, this

bill would make an appropriation. This bill would also provide that LAFCOs intending to fund consolidation, merger, or extension of services projects for the purposes of promoting water conservation and to support the planning and development of sustainable communities, are eligible for funding under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 56378 of the Government Code is
2 amended to read:
3 56378. (a) In addition to its other powers, the commission
4 shall initiate and make studies of existing governmental agencies.
5 Those studies shall include, but shall not be limited to, inventorying
6 those agencies and determining their maximum service area and
7 service capacities. In conducting those studies, the commission
8 may ask for land use information, studies, and plans of cities,
9 counties, districts, including school districts, community college
10 districts, and regional agencies and state agencies and departments.
11 Cities, counties, districts, including school districts, community
12 college districts, regional agencies, and state agencies and
13 departments, shall comply with the request of the commission for
14 that information and the commission shall make its studies
15 available to public agencies and any interested person. In making
16 these studies, the commission may cooperate with the county
17 planning commissions.
18 ~~The~~
19 (b) The commission, or the board of supervisors on behalf of
20 the commission, may apply for or accept, or both, any financial
21 assistance and grants-in-aid from public or private agencies or

1 from the state or federal government or from a local government.
2 *This shall include assistance that would enable a commission that*
3 *serves a severely disadvantaged community to meet the long-term*
4 *water needs of the community by conducting feasibility studies of,*
5 *or providing funding for, the consolidation, merger, or extension*
6 *of services of public water systems.*

7 SEC. 2. Section 56430 of the Government Code is amended
8 to read:

9 56430. (a) In order to prepare and to update spheres of
10 influence in accordance with Section 56425, the commission shall
11 conduct a service review of the municipal services provided in the
12 county or other appropriate area designated by the commission.
13 The commission shall include in the area designated for service
14 review the county, the region, the subregion, or any other
15 geographic area as is appropriate for an analysis of the service or
16 services to be reviewed, and shall prepare a written statement of
17 its determinations with respect to each of the following:

18 (1) Growth and population projections for the affected area.

19 (2) The location and characteristics of any disadvantaged
20 unincorporated communities within or contiguous to the sphere
21 of influence.

22 (3) Present and planned capacity of public facilities, adequacy
23 of public services, and infrastructure needs or deficiencies including
24 needs or deficiencies related to sewers, municipal and industrial
25 water, and structural fire protection in any disadvantaged,
26 unincorporated communities within or contiguous to the sphere
27 of influence.

28 (4) Financial ability of agencies to provide services.

29 (5) Status of, and opportunities for, shared facilities.

30 (6) Accountability for community service needs, including
31 governmental structure and operational efficiencies.

32 (7) Any other matter related to effective or efficient service
33 delivery, as required by commission policy.

34 (b) In conducting a service review, the commission shall
35 comprehensively review all of the agencies that provide the
36 identified service or services within the designated geographic
37 area. The commission ~~may~~ *shall* assess various alternatives for
38 improving efficiency and affordability of infrastructure and service
39 delivery within and contiguous to the sphere of influence,

including, but not limited to, the consolidation of governmental agencies.

(c) In conducting a service review, the commission ~~may~~ *shall* include a review of whether the agencies under review, including any public water system as defined in Section 116275, are in compliance with the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code). A public water system may satisfy any request for information as to compliance with that act by submission of the consumer confidence or water quality report prepared by the public water system as provided by Section 116470 of the Health and Safety Code.

(d) The commission may request information, as part of a service review under this section, from identified public or private entities that provide wholesale or retail supply of drinking water, including mutual water companies formed pursuant to Part 7 (commencing with Section 14300) of Division 3 of Title 1 of the Corporations Code, and private utilities, as defined in Section 1502 of the Public Utilities Code.

(e) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or 56426.5 or to update a sphere of influence pursuant to Section 56425.

SEC. 3. Section 116326 of the Health and Safety Code is amended to read:

116326. In administering programs to fund improvements and expansions of small community water systems, the department shall do all of the following:

(a) Give priority to funding projects in disadvantaged communities.

(b) ~~Encourage~~ *Promote* the consolidation or merger of small community water systems that serve disadvantaged communities in instances where consolidation or merger will help *at least one* of the affected agencies and the state to meet all of the following goals:

- (1) Improvement in the quality of water delivered.
- (2) Improvement in the reliability of water delivery.
- (3) Reduction in the cost of drinking water for ratepayers.

(c) Pursuant to subdivision (b), ~~allow~~ *require that funding for feasibility studies performed prior to a construction project to include studies of the feasibility of consolidating two or more community water systems; or merging a community water system with a city water system, when at least one of which is a of the water systems is a small community water system that serves a disadvantaged community, unless the department makes a written determination that consolidation or merger is not feasible under the circumstances.*

(d) ~~In instances where~~ *If it is shown that small community water system consolidation or merger will further the goals of subdivision (b), give priority to funding construction projects that involve the physical restructuring and managerial consolidation of two or more community water systems or merger of one or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system.*

SEC. 4. Section 116760.30 of the Health and Safety Code is amended to read:

116760.30. (a) There is hereby created in the State Treasury the Safe Drinking Water State Revolving Fund for the purpose of implementing this chapter, and, notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated, without regard to fiscal years, to the department to provide, from moneys available for this purpose, grants or revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards, *or to fund feasibility studies of, or to provide funding for, public water system projects pursuant to Section 56378 of the Government Code.* The department shall be responsible for administering the fund.

(b) Notwithstanding Section 10231.5 of the Government Code, the department shall report at least once every two years to the policy and budget committees of the Legislature on the implementation of this chapter and expenditures from the fund. The report shall describe the numbers and types of projects funded, the reduction in risks to public health from contaminants in drinking water provided through the funding of the projects, and the criteria used by the department to determine funding priorities. Commencing with reports submitted on or after January 1, 2013,

the report shall include the results of the United States Environmental Protection Agency's most recent survey of the infrastructure needs of California's public water systems, the amount of money available through the fund to finance those needs, the total dollar amount of all funding agreements executed pursuant to this chapter since the date of the previous report, the fund utilization rate, the amount of unliquidated obligations, and the total dollar amount paid to funding recipients since the previous report.

(c) Notwithstanding any other law, the Controller may use the moneys in the Safe Drinking Water State Revolving Fund for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. However, interest shall be paid on all moneys loaned to the General Fund from the Safe Drinking Water State Revolving Fund. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which loaned. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the Safe Drinking Water State Revolving Fund was created.

SEC. 5. Section 116760.70 of the Health and Safety Code is amended to read:

116760.70. (a) The department, after public notice and hearing, shall, from time to time, establish a priority list of proposed projects to be considered for funding under this chapter. In doing so, the department shall determine if improvement—~~or~~, rehabilitation, *merger, consolidation, or extension of services* of the public water system is necessary to provide pure, wholesome, and potable water in adequate quantity and at sufficient pressure for health, cleanliness, and other domestic purposes. The department shall establish criteria for placing public water systems on the priority list for funding that shall include criteria for priority list categories. Priority shall be given to projects that meet all of the following requirements:

- (1) Address the most serious risk to human health.
- (2) Are necessary to ensure compliance with requirements of Chapter 4 (commencing with Section 116270) including requirements for filtration.
- (3) Assist systems most in need on a per household basis according to affordability criteria.

1 (b) The department may, in establishing a new priority list,
2 merge those proposed projects from the existing priority list into
3 the new priority list.

4 (c) In establishing the priority list, the department shall consider
5 the system's implementation of an ongoing source water protection
6 program or wellhead protection program.

7 (d) In establishing the priority list categories and the priority
8 for funding projects, the department shall carry out the intent of
9 the Legislature pursuant to subdivisions (e) to (h), inclusive, of
10 Section 116760.10 and do all of the following:

11 (1) Give priority to upgrade an existing system to meet drinking
12 water standards.

13 (2) After giving priority pursuant to paragraph (1), consider
14 whether the applicant has sought other funds when providing
15 funding for a project to upgrade an existing system and to
16 accommodate a reasonable amount of growth.

17 (e) Consideration of an applicant's eligibility for funding shall
18 initially be based on the priority list in effect at the time the
19 application is received and the project's ability to proceed. If a
20 new priority list is established during the time the application is
21 under consideration, but before the applicant receives a letter of
22 commitment, the department may consider the applicant's
23 eligibility for funding based on either the old or new priority list.

24 (f) The department may change the ranking of a specific project
25 on the priority lists at any time following the publication of the
26 list if information, that was not available at the time of the
27 publication of the list, is provided that justifies the change in the
28 ranking of the project.

29 (g) The department shall provide one or more public hearings
30 on the Intended Use Plan, the priority list, and the criteria for
31 placing public water systems on the priority list. The department
32 shall provide notice of the Intended Use Plan, criteria, and priority
33 list not less than 30 days before the public hearing. The Intended
34 Use Plan, criteria, and priority list shall not be subject to the
35 requirements of Chapter 3.5 (commencing with Section 11340) of
36 Part 1 of Division 3 of Title 2 of the Government Code. The
37 department shall conduct duly noticed public hearings and
38 workshops around the state to encourage the involvement and
39 active input of public and affected parties, including, but not limited
40 to, water utilities, local government, public interest, environmental,

1 and consumer groups, public health groups, land conservation
2 interests, health care providers, groups representing vulnerable
3 populations, groups representing business and agricultural interests,
4 and members of the general public, in the development and periodic
5 updating of the Intended Use Plan and the priority list.

6 (h) The requirements of this section do not constitute an
7 adjudicatory proceeding as defined in Section 11405.20 of the
8 Government Code and Section 11410.10 of the Government Code
9 is not applicable.

10 SEC. 6. Section 116760.90 of the Health and Safety Code is
11 amended to read:

12 116760.90. (a) The department shall not approve an application
13 for funding unless the department determines that the proposed
14 study or project is necessary to enable the applicant to meet safe
15 drinking water standards, and is consistent with an adopted
16 countywide plan, if any, *or is necessary to assist a local agency*
17 *formation commission provide long-term water needs pursuant to*
18 *Section 56378 of the Government Code.* The department may refuse
19 to fund a study or project if it determines that the purposes of this
20 chapter may more economically and efficiently be met by means
21 other than the proposed study or project. The department shall not
22 approve an application for funding a project with a primary purpose
23 to supply or attract future growth. The department may limit
24 funding to costs necessary to enable suppliers to meet primary
25 drinking water standards, as defined in Chapter 4 (commencing
26 with Section 116270).

27 (b) With respect to applications for funding of project design
28 and construction, the department shall also determine all of the
29 following:

30 (1) Upon completion of the project, the applicant will be able
31 *either to supply water that meets safe drinking water standards or*
32 *meet the long-term water needs of the community.*

33 (2) The project is ~~cost-effective~~ *cost effective.*

34 (3) If the entire project is not to be funded under this chapter,
35 the department shall specify which costs are eligible for funding.

36 (c) In considering an application for funding a project that meets
37 all other requirements of this chapter and regulations, the
38 department shall not be prejudiced by the applicant initiating the
39 project prior to the department approving the application for
40 funding. Preliminary project costs that are otherwise eligible for

1 funding pursuant to the provisions of this chapter shall not be
2 ineligible because the costs were incurred by the applicant prior
3 to the department approving the application for funding.
4 Construction costs that are otherwise eligible for funding pursuant
5 to the provisions of this chapter shall not be ineligible because the
6 costs were incurred after the approval of the application by the
7 department but prior to the department entering into a contract
8 with the applicant pursuant to Section 116761.50.

9 SEC. 7. Section 75125 of the Public Resources Code is
10 amended to read:

11 75125. The council shall do all of the following:

12 (a) Identify and review activities and funding programs of
13 member state agencies that may be coordinated to improve air and
14 water quality, improve natural resource protection, increase the
15 availability of affordable housing, improve transportation, meet
16 the goals of the California Global Warming Solutions Act of 2006
17 (Division 25.5 (commencing with Section 38500) of the Health
18 and Safety Code), encourage sustainable land use planning, and
19 revitalize urban and community centers in a sustainable manner.
20 At a minimum, the council shall review and comment on the
21 five-year infrastructure plan developed pursuant to Article 2
22 (commencing with Section 13100) of Chapter 2 of Part 3 of
23 Division 3 of the Government Code and the State Environmental
24 Goals and Policy Report developed pursuant to Section 65041 of
25 the Government Code.

26 (b) Recommend policies and investment strategies and priorities
27 to the Governor, the Legislature, and to appropriate state agencies
28 to encourage the development of sustainable communities, such
29 as those communities that promote equity, strengthen the economy,
30 protect the environment, and promote public health and safety,
31 consistent with subdivisions (a) and (c) of Section 75065.

32 (c) Provide, fund, and distribute data and information to local
33 governments and regional agencies that will assist in developing
34 and planning sustainable communities.

35 (d) Manage and award grants and loans to support the planning
36 and development of sustainable communities, pursuant to Sections
37 75127, 75128, ~~and~~ 75129, *and* 75129.5. To implement this
38 subdivision, the council may do all of the following:

39 (1) Develop guidelines for awarding financial assistance,
40 including criteria for eligibility and additional consideration.

(2) Develop criteria for determining the amount of financial assistance to be awarded. The council shall award a revolving loan to an applicant for a planning project, unless the council determines that the applicant lacks the fiscal capacity to carry out the project without a grant. The council may establish criteria that would allow the applicant to illustrate an ongoing commitment of financial resources to ensure the completion of the proposed plan or project.

(3) Provide for payments of interest on loans made pursuant to this article. The rate of interest shall not exceed the rate earned by the Pooled Money Investment Board.

(4) Provide for the time period for repaying a loan made pursuant to this article.

(5) Provide for the recovery of funds from an applicant that fails to complete the project for which financial assistance was awarded. The council shall direct the Controller to recover funds by any available means.

(6) Provide technical assistance for application preparation.

(7) Designate a state agency or department to administer technical and financial assistance programs for the disbursing of grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, ~~and 75129, and 75129.5.~~

(e) (1) No later than July 1, 2010, and every year thereafter, provide a report to the Legislature that shall include, but is not limited to, all of the following:

~~(1)~~

(A) A list of applicants for financial assistance.

~~(2)~~

(B) Identification of which applications were approved.

~~(3)~~

(C) The amounts awarded for each approved application.

~~(4)~~

(D) The remaining balance of available funds.

~~(5)~~

(E) A report on the proposed or ongoing management of each funded project.

~~(6)~~

(F) Any additional minimum requirements and priorities for a project or plan proposed in a grant or loan application developed

1 and adopted by the council pursuant to subdivision (c) of Section
2 75126.

3 *(2) A report submitted pursuant to paragraph (1) shall be*
4 *submitted in accordance with Section 9795 of the Government*
5 *Code.*

6 SEC. 8. Section 75129.5 is added to the Public Resources Code,
7 to read:

8 75129.5. To support the planning and development of
9 sustainable communities, the council shall manage and award
10 financial assistance to a city, county, local area formation
11 commission, special district, nonprofit organization, or entity
12 formed pursuant to Chapter 5 (commencing with Section 6500)
13 of Division 7 of Title 1 of the Government Code, or a local agency
14 formation commission formed pursuant to Chapter 4 (commencing
15 with Section 56425) of Division 7 of Title 1 of the Government
16 Code, if at least one of the parties to the joint powers agreement
17 qualifies as an eligible applicant, for the preparation, planning,
18 and implementation of a public water system consolidation, merger,
19 or extension of services project for the purposes of promoting
20 water conservation. The financial assistance provided pursuant to
21 this section shall be funded from moneys made available pursuant
22 to subdivision (c) of Section 75065. The council shall give priority
23 to funding projects proposed by an economically disadvantaged
24 community.

25 SEC. 9. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.