

ASSEMBLY BILL

No. 2529

Introduced by Assembly Members Beall and Wieckowski

February 24, 2012

An act to amend Sections 116760.43, 116760.50, 116761.20, 116761.21, 116761.23, 116761.50, 116761.65, and 116761.70 of the Health and Safety Code, relating to safe drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2529, as introduced, Beall. Safe Drinking Water: Revolving Fund.

Existing law, the California Safe Drinking Water Act, requires the State Department of Public Health to administer provisions relating to the regulation of drinking water to protect public health. The department's duties include, but are not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the federal Safe Drinking Water Act, adopting and enforcing regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies.

Existing law establishes the Safe Drinking Water State Revolving Fund, which is continuously appropriated to the department for the provision of grants and revolving fund loans to provide for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. Existing law authorizes the department to establish specified separate accounts or subaccounts within the fund.

Existing law requires applicants for loans or grants to provide specified information to the department. Existing law authorizes the

department to enter into contracts with applicants for grants or loans, and requires and authorizes these contracts to contain specified information.

This bill would authorize the department to adopt interim regulations for purposes of implementing provisions relating to the Safe Drinking Water State Revolving Fund. The bill would require an applicant for funding to demonstrate that it has the technical, managerial, and financial capacity to operate and maintain its water system for at least 20 years, as specified. The bill would authorize an applicant, subject to specified conditions, to receive up to the full cost of a project in the form of a loan. The bill would require that contracts entered into between the department and an applicant include certain additional information, and authorize the contracts to include certain additional information.

This bill would make other related changes.

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

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

- 1 SECTION 1. Section 116760.43 of the Health and Safety Code
- 2 is amended to read:
- 3 116760.43. (a) The department may adopt emergency
- 4 regulations pursuant to Chapter 3.5 (commencing with Section
- 5 11340) of Part 1 of Division 3 of Title 2 of the Government Code
- 6 necessary or convenient to implement this chapter and to meet
- 7 requirements pursuant to the federal act.
- 8 (b) The adoption of any emergency regulations that are filed
- 9 with the Office of Administrative Law within 18 months of the
- 10 effective date of this act shall be deemed to be an emergency and
- 11 necessary for the immediate preservation of the public peace, health
- 12 and safety, or general welfare.
- 13 (c) *In addition to the authority granted pursuant to subdivision*
- 14 *(a), the department may adopt interim regulations to implement*
- 15 *this chapter and to meet the requirements of the federal act and*
- 16 *its implementing regulations or guidelines. The interim regulations:*
- 17 *(1) Shall be subject to a public review and comment period of*
- 18 *not less than 30 days.*
- 19 *(2) Shall not be subject to Chapter 3.5 (commencing with Section*
- 20 *11340) of Part 1 of Division 3 of Title 2 of the Government Code.*

1 (3) *Shall take effect when filed with the Secretary of State, and*
2 *shall be published in the California Code of Regulations.*

3 (4) *Shall remain in effect for three years, unless sooner repealed,*
4 *amended, or replaced with additional regulations adopted pursuant*
5 *to this subdivision.*

6 (5) *May amend or repeal emergency regulations adopted*
7 *pursuant to subdivision (a).*

8 (6) *Shall supersede any conflicting emergency regulations*
9 *adopted pursuant to subdivision (a).*

10 (d) *Applicable regulations in effect at the time a complete*
11 *application for funding a project pursuant to this chapter is*
12 *received by the department shall apply to the project funding,*
13 *unless the department determines a regulation adopted later, but*
14 *prior to the date a funding agreement is issued for a project, would*
15 *be more beneficial to the project applicant, in which case the later*
16 *adopted regulation may be applied.*

17 SEC. 2. Section 116760.50 of the Health and Safety Code is
18 amended to read:

19 116760.50. The department shall establish criteria that shall
20 be met for projects to be eligible for consideration for funding
21 under this chapter. The criteria shall include all of the following:

22 (a) ~~All~~ *Except as provided in subdivision (d), all* preliminary
23 design work for a defined project that will enable the applicant to
24 supply water that meets safe drinking water standards, including
25 a cost estimate for the project, shall be completed.

26 (b) A legal entity shall exist that has the authority to enter into
27 contracts and incur debt on behalf of the community to be served
28 and owns the public water system or has the right to operate the
29 public water system under a lease with a term of at least 20 years,
30 unless otherwise authorized by the department. If the proposed
31 project is funded by a loan under this chapter, the department may
32 require the applicant to secure a lease for the full term of the loan
33 if the loan exceeds 20 years.

34 (c) The applicant shall hold all necessary water rights.

35 (d) ~~The applicant shall have completed~~ (1) *Environmental*
36 *review and documentation of the defined project shall be complete,*
37 *including, but not limited to, any review required pursuant to the*
38 *California Environmental Quality Act (Division 13 (commencing*
39 *with Section 21000) of the Public Resources Code) and the*
40 *guidelines adopted pursuant thereto, and have included plans. Any*

1 *measures required for compliance with that act in its applicable*
2 *environmental laws and regulations shall be included in the*
3 *preliminary plans for the defined project.*

4 *(2) Notwithstanding paragraph (1), a defined project may be*
5 *subject to further or supplemental review consistent with the*
6 *requirements of any applicable environmental laws or regulations.*

7 (e) The applicant has assembled sufficient financial data to
8 establish its ability to complete the proposed project and to
9 establish the amount of debt financing it can undertake.

10 (f) *The applicant shall demonstrate that it has the technical,*
11 *managerial, and financial capacity to operate and maintain its*
12 *water system, including the project, in accordance with the federal*
13 *act, state law, and applicable regulations for at least 20 years, or*
14 *shall submit an acceptable plan for achieving such capacity by*
15 *the time the project is scheduled to be completed.*

16 SEC. 3. Section 116761.20 of the Health and Safety Code is
17 amended to read:

18 116761.20. (a) Planning and preliminary engineering studies,
19 project design, and construction costs may be funded under this
20 chapter by loans, or, in the case of public agencies or private
21 not-for-profit water companies, by grants, or, *for community and*
22 *not-for-profit noncommunity public water systems*, a combination
23 of grants and loans.

24 (b) (1) The department shall determine what portion of the
25 full costs the public agency or private not-for-profit water company
26 is capable of repaying and authorize funding in the form of a loan
27 for that amount. The department shall authorize a grant only to the
28 extent the department finds the public agency or not-for-profit
29 water company is unable to repay the full costs of a loan.

30 (2) *Notwithstanding any other provision of this chapter, a small*
31 *community water system or nontransient noncommunity water*
32 *system that is owned by a public agency or a private not-for-profit*
33 *water company and serving a severely disadvantaged community,*
34 *is deemed to have no ability to repay a loan.*

35 (c) At the request of the department, the Public Utilities
36 Commission shall submit comments concerning the ability of
37 suppliers, subject to its jurisdiction, to finance the project from
38 other sources and to repay the loan.

39 SEC. 4. Section 116761.21 of the Health and Safety Code is
40 amended to read:

1 116761.21. Not more than 30 percent and not less than 15
2 percent, provided that there are projects eligible for funding as
3 prescribed in Section 116760.70, of the total amount ~~deposited in~~
4 ~~the fund of the capitalization grant~~ may be expended for grants.
5 This amount shall be limited to disadvantaged communities
6 specified in Section 1452(d) of the federal act (42 U.S.C.A. Sec.
7 300j-12).

8 SEC. 5. Section 116761.23 of the Health and Safety Code is
9 amended to read:

10 116761.23. (a) The maximum amount of a planning grant
11 permitted under this chapter for each participating public water
12 system's share of the costs of the planning, engineering studies,
13 environmental documentation, and design of a single project shall
14 be no more than five hundred thousand dollars (\$500,000).

15 (b) Unless the department approves an increase pursuant to this
16 subdivision, the maximum amount of a construction grant award
17 authorized under this chapter to each participating public water
18 system for its share of the cost of the construction of a single
19 project shall be no more than three million dollars (\$3,000,000).
20 The department may approve an increase in the maximum amount
21 for a construction grant award authorized under this chapter so
22 that the maximum amount of the construction grant award does
23 not exceed ten million dollars (\$10,000,000) only if the department
24 makes all of the following findings:

25 (1) A public water system that serves a disadvantaged
26 community has a defined project need that exceeds the maximum
27 grant amount of three million dollars (\$3,000,000).

28 (2) The defined project has been bypassed in at least one funding
29 cycle due to a lack of funds.

30 (3) The defined project is eligible for funding pursuant to the
31 program regulations.

32 (4) The defined project represents the highest public health risk
33 among unfunded projects, as determined by the department
34 according to its standard criteria.

35 (c) Total funding under this article for planning, engineering
36 studies, environmental documentation, project design, and
37 construction costs of a single project, whether in the form of a loan
38 or a grant, or both, shall be determined by an assessment of
39 affordability using criteria established by the department.

(d) Subject to all other limitations of this chapter, a small community water system or nontransient noncommunity water system, owned by a public agency or private not-for-profit water company, serving severely disadvantaged communities shall be eligible to receive up to 100 percent of eligible project costs in the form of a grant, to the extent the system cannot afford a loan as determined by the department pursuant to Section 116761.20.

(e) Subject to the availability of funds and the applicant's ability to repay, an applicant may receive up to the full cost of the project in the form of a loan bearing interest at the rate established pursuant to subdivision (a) of Section 116761.65.

SEC. 6. Section 116761.50 of the Health and Safety Code is amended to read:

116761.50. (a) The department may enter into contracts with applicants for grants or loans for the purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only terms and conditions consistent with this chapter and the regulations established under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant, or loan and grant, the applicant an amount that equals the portion of the costs found by the department to be eligible for a state loan or grant. The agreement may provide for disbursement of funds during the progress of the study or construction, or following completion of the study or construction, as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operations of the project upon completion of the project, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan, an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 20 years, whichever is shorter, except as provided in the federal act, or in the case of a study, over a period not to exceed five years, all of the following:

(A) The amount of the loan.

1 (B) The administrative fee specified in subdivision (a) of
2 Section 116761.70.

3 (C) Interest on the principal, which is the amount of the loan
4 ~~plus the~~ *including, if applicable, an administrative fee.*

5 (6) In the case of a grant, an agreement by the public agency
6 or private not-for-profit water company to operate and maintain
7 the water system for a period of 20 years, unless otherwise
8 authorized by the department.

9 *(7) The time for the completion of the project. Subject to any*
10 *requirements of the federal act and its implementing regulations*
11 *and guidelines, in the case of a project for planning and a*
12 *preliminary design, pursuant to Section 116760.80, the department*
13 *may determine on a case by case basis an appropriate amount of*
14 *time for completion of the project, not to exceed 36 months.*

15 (c) The contract may include any of the following terms and
16 conditions:

17 (1) An agreement by the supplier to adopt a fee structure that
18 provides for the proper maintenance and operations of the project
19 and includes a sinking fund for repair and replacement of the
20 facilities in cases where appropriate. The fee structure shall also
21 provide an acceptable dedicated source of revenue for the
22 repayment of the amount of the loan, and the payment of
23 administrative fees and interest.

24 (2) If the entire project is not funded pursuant to this chapter,
25 the department may include a provision requiring the applicant to
26 share the cost of the project or obtain funding from other sources.

27 *(3) An agreement by the supplier to complete, as part of the*
28 *project, a rate study pursuant to guidelines established by the*
29 *department.*

30 *(4) An agreement by the supplier to implement, not later than*
31 *the conclusion of the project, the approved plan for achieving*
32 *technical, managerial, and financial capacity as specified in*
33 *subdivision (f) of Section 116760.50.*

34 *(5) Any small community water system or nontransient*
35 *noncommunity water system, owned by a public agency or private*
36 *not-for-profit water company, receiving grant funding, shall comply*
37 *with guidelines adopted by the department for any procurement*
38 *of engineering, environmental compliance, or architectural*
39 *services.*

1 (d) The department may require applicants to provide security
2 for loan contracts.

3 SEC. 7. Section 116761.65 of the Health and Safety Code is
4 amended to read:

5 116761.65. (a) The department shall annually establish the
6 interest rate for loans made pursuant to this chapter at 50 percent
7 of the average interest rate, computed by the true interest cost
8 method, paid by the state on general obligation bonds issued in
9 the prior calendar year. All loans made pursuant to this chapter
10 shall carry the interest rate established for the calendar year in
11 which the funds are committed to the loan, as of the date of the
12 ~~letter of commitment~~ *issuance of the funding*. The interest rate set
13 for each loan shall be applied throughout the repayment period of
14 the loan. Interest on the loan shall not be deferred.

15 (b) Notwithstanding subdivision (a), if the loan applicant is a
16 public water system that is a disadvantaged community or provides
17 matching funds, the interest rate on the loan shall be zero percent.

18 SEC. 8. Section 116761.70 of the Health and Safety Code is
19 amended to read:

20 116761.70. (a) Not more than 4 percent of the capitalization
21 grant may be used by the department for administering this chapter.
22 The department may establish a reasonable schedule of
23 administrative fees for loans, which shall be paid by the ~~applicant~~
24 *funding recipient* to reimburse the state for the costs of the state
25 administration of this chapter. *The department annually shall*
26 *establish in the Intended Use Plan the amount of any administrative*
27 *fee*.

28 (b) Charges incurred by the Attorney General in protection of
29 the state's interest in the use of repayment of grant and loan funds
30 under this chapter shall be paid. These charges shall not be paid
31 from funds allocated for administrative purposes, but shall be
32 treated as a program expense not to exceed one-half of 1 percent
33 of the total amount deposited in the fund.