

Date of Hearing: June 16, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

SB 222 (Dodd) – As Amended May 20, 2021

SENATE VOTE: 31-7

SUBJECT: Water Rate Assistance Program

SUMMARY: Requires the Department of Community Services and Development (CSD) to develop and administer the Water Rate Assistance Program to provide water affordability assistance for both drinking water and wastewater services to low-income ratepayers. Specifically, **this bill:**

- 1) Requires the Department of Community Services and Development (CSD) to develop and administer the Water Rate Assistance Program and expend money appropriated by the Legislature for purposes of the program.
- 2) Establishes the Water Rate Assistance Fund (Fund) in the State Treasury to provide water affordability assistance, for both drinking water and wastewater services, to low-income ratepayers and ratepayers experiencing economic hardship in California. The Fund shall be available, upon appropriation by the Legislature to CSD, in consultation with the State Water Resources Control Board (State Water Board) for all of the following: direct water bill assistance; water bill credits to renters and individuals or households for residential water or wastewater service; and, water crisis assistance.
- 3) Requires CSD, in administering the Fund, to do all of the following: track and manage revenue in the Fund separately from all other revenue; develop and implement a process for disbursing program funds to public water systems or third-party providers for direct payments to community water systems; manage and maintain fund balances in conjunction with the Controller, the Treasurer, the California State Auditor's Office and the Department of Finance; and, expend, upon appropriation by the Legislature, money in the Fund for grants, contracts, direct monetary assistance, or services to assist eligible recipients.
- 4) Requires CSD, in consultation with the State Water Resources Control Board (State Water Board), by January 1, 2023, to develop guidelines and fund oversight procedures for implementation of the program. In developing the guidelines, CSD shall consult with an advisory group that includes representatives of the following: public water systems; technical assistance providers, including organizations that support federal Low-Income Home Energy Assistance Program; local agencies; nongovernmental organizations that work with residents of disadvantaged communities; and, representatives from the public, including but not limited to, low-income residents, low-income residents who live in multifamily housing, and residents served by tribal water systems.
- 5) Requires CSD and the State Water Board, in consultation with the advisory group established by this bill, and after a public hearing, adopt an annual fund expenditure plan.
- 6) Requires, by July 1, 2022, the Public Utilities Commission (PUC) to establish a mechanism for electrical corporations and gas corporations to regularly share data with the CSD

regarding the utility customers enrolled in, or eligible to be enrolled in, the California Alternate Rates for Energy (CARE) program and the Family Electric Rate Assistance program.

- 7) Provides that the Water Rate Assistance program, established by this bill, is contingent on an appropriation in the annual Budget Act or another statute.
- 8) Authorizes CSD, in consultation with the State Water Board, if money is deposited into the Fund before the adoption of an annual fund expenditure plan, to, upon appropriation by the Legislature, expend those moneys from the Fund to provide water crisis assistance to low-income households. Authorizes CSD to adopt emergency regulations to provide details on how it will provide water crisis assistance to low-income households.
- 9) Requires CSD to do all of the following in administering the water rate assistance program: coordinate with the PUC regarding existing rate assistance programs for investor-owned utilities; for a public water system that is not regulated by the PUC, consult with the State Water Board on options to provide oversight of the public water system's implementation of the water rate assistance program; in consultation with the State Water Board and the PUC develop and publish performance metrics for the water rate assistance program; coordinate with other state agencies and resolve disputes as necessary; and, identify alternative entities to distribute and track benefits if a public water system is unwilling to do so or if CSD has determined a public water system is incapable of administering the water rate assistance program.

EXISTING LAW:

- 1) Vests the State Water Board with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health (CDPH) and its predecessor to enforce the State Drinking Water Act (SDWA). (Health and Safety Code (HSC) § 116271)
- 2) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)
- 3) Defines "Community water system" as a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system. (HSC § 116275(i))
- 4) Defines "Resident" as a person who physically occupies, whether by ownership, rental, lease, or other means, the same dwelling for at least 60 days of the year. (HSC § 116275(t))
- 5) Declares to be 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. (Water Code § 106.3)

- 6) Defines a "water corporation" to include every corporation or person owning, controlling, operating, or managing any water system for compensation within this state. (Public Utilities Code (PUC) § 241)
- 7) Defines a "public utility" to include every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public. (PUC § 216 (a))
- 8) Provides that when any public utility performs a service for, or delivers a commodity to, the public for which any compensation or payment is received, it is subject to the jurisdiction, control, and regulation of the CPUC. (PUC § 216(b))

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "Water is the most basic form of PPE, yet millions of Californians face a looming threat of water shutoffs because of water unaffordability and the pandemic-induced economic recession. Currently, Californians are carrying \$1 billion in water debt affecting 1.6 million Californian households and 5 million Californians. Moreover, California has effective affordability programs in place for nearly all other basic utilities, including electricity, heat/gas, and even cell phones — but not for water. Recognizing this gap, in 2015, the California Legislature passed AB 401 (Dodd), which required the State Water Board to create a plan for a statewide water affordability program. That plan was released in early 2020 and helped inform this legislation. SB 222 would establish a long-needed framework for a statewide water affordability assistance program. The pandemic has dramatically increased attention to this lack of a statewide water affordability program and the real urgency to address it. Access to affordable water is a racial justice and equity issue, and we must ensure equitable access for all Californians to realize the Human Right to Water (AB 685, 2012). The need for water affordability assistance will not magically disappear — it has been a major challenge and gap in our utility safety net for decades, and water affordability challenges will only continue to increase due to the rising cost of water. It is appropriate for the Legislature to develop a policy framework and provide directives, including regarding how to implement future sources of water affordability funding, to the relevant state agency (the State Water Board) in order to respond to the important ongoing challenge of access to affordable water."

California's drinking water program: Senate Bill 861 (Committee on Budget and Fiscal Review, Chapter 35, Statutes of 2014) transferred the drinking water program from the California Department of Public Health (CDPH) to the State Water Board effective July 1, 2014, creating the new Division of Drinking Water within the State Water Board and made other statutory changes to create efficiencies and adoption and administration of the drinking water program.

The State Water Board directly enforces the federal Safe Drinking Water Act (SDWA) for all large water systems (those with 200 or more service connections), including those water systems regulated under the California Public Utilities Commission (CPUC), Division of Corporations (DOC), or Department of Housing and Community Development (DHCD). For small water systems (those with less than 200 connections), local health departments can be delegated to

have regulatory authority as the local primacy agency. Along with the regulation of drinking water, the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) are responsible for protecting the waters of the state, including drinking water sources, both surface water and groundwater supplies.

According to the State Drinking Water Plan for California, June 2015, "Over the last two decades, water costs have, on average, increased about 45 percent within all size groups of water systems (range of 42 to 47 percent). Average water costs remain highest in the San Francisco Bay Area, Central Coast, and Southern California, and lowest in the Central Valley/Agricultural (including Imperial County), Foothill, and Mountain/Desert regions. On average, customers of small water systems (serving less than 200 service connections) pay approximately 20 percent more for water than those customers served by larger systems. Many disadvantaged communities are served by small water systems. As a result, water affordability has become a significant issue among residents in these communities."

What is a public water system? A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. Many people think of public water systems as large city or regional water suppliers, but they also include small housing communities, businesses, and even schools and restaurants that provide water. A public water system is not necessarily a public entity, and most public water systems are privately owned. There are three legal distinctions between the types of public water systems: community, non-transient non-community, and transient. The type of water system is based on how often people consume the water. Drinking water regulations impose the most stringent monitoring requirements on community and non-transient non-community water systems because the people they serve obtain all or much of their water from that system each day. Community water systems are city, county, regulated utilities, regional water systems, and even small water companies and districts where people live. Non-community non-transient water systems are places like schools and businesses that provide their own water. Transient water systems include entities like rural gas stations, restaurants, and State and National parks that provide their own potable water.

States agencies involved in the regulation of public water systems: The regulation of water supply, water quality, and the various types of water systems that serve drinking water is shared among several agencies, including local agencies, in California. The State Water Board has primary responsibility for regulating all public water systems. There are three other state agencies that also regulate certain aspects of specific classes of water systems including: (1) the California Public Utilities Commission (CPUC) for investor-owned systems, (2) the Division of Corporations (DOC) for mutual water companies, and (3) the Department of Housing and Community Development (DHCD) for mobile home parks.

California Public Utilities Commission (CPUC) role in water system regulation: The CPUC regulates investor-owned water utilities with particular attention to rates and quality of service. These utilities are owned by investors expecting a return on investments. Small utilities are generally owned by a single individual, corporation, or a partnership. Owners of large utilities are generally investors holding financial interest in the utility or its parent company. There are several large investor-owned utilities in California that own and operate multiple water systems across a region or across the state. The CPUC ensures that customers of regulated water utilities receive safe and reliable water service while allowing the utility a fair opportunity to earn a reasonable return on its investment.

Division of Corporations (DOC) role in regulating water systems: The DOC within the Department of Business Oversight has responsibility under the Corporate Securities Law of 1968 to approve and register the security offering of mutual water companies. Mutual water companies are privately owned water companies in which each lot owner is entitled to one share per lot that they own. They are managed and operated in accordance with Articles of Incorporation and bylaws approved by the DOC and filed with the Secretary of State. Existing regulations set forth the standards governing the regulation of mutual water companies. These regulations do not deal with the quality of the drinking water served.

Department of Housing and Community Development (DHCD) role in regulating water systems: DHCD is responsible for the regulation of the construction and maintenance of mobile home parks (MHPs) and employee housing facilities, such as labor camps, many of which have independent water systems.

Department of Community Services and Development (CSD): The history of the CSD began with the State Office of Economic Opportunity (OEO) in 1964. The state OEO was created following the passage of federal Economic Opportunity Act of 1964. In 1996, the California Legislature renamed the OEO to more accurately reflect its purpose as the CSD.

CSD works to reduce poverty for Californians by leading the development and coordination of effective and innovative programs for low-income Californians. CSD administers local community services and energy programs through a network of local providers and regional administrators to deliver services to low-income families, individuals, and communities. The services and programs administered by CSD help low-income Californians achieve and maintain economic security, meet their home energy needs, and reduce their utility costs through energy efficiency upgrades and access to clean renewable energy.

One of the programs that CSD administers is the Low Income Home Energy Assistance Program (LIHEAP). The LIHEAP is a federally funded program that provides assistance to eligible low-income households with the goal of managing and meeting their energy costs and immediate home heating and/or cooling needs. The water rate assistance program envisioned within SB 222 is similar to the LIHEAP program.

Human right to water: In 2012, California became the first state to enact a Human Right to Water law, AB 685 (Eng, Chapter 524, Statutes of 2012). Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.

State Water Board survey of COVID-19 impacts on water systems: In January, 2021, the State Water Board released a survey of water systems detailing impacts from COVID-19. The survey found, "Public water systems throughout California are facing heightened financial challenges during the COVID-19 pandemic, as about 1.6 million residential water customers, or 12% of all households, have been unable to pay their bills. The data received from these systems were used to estimate statewide impacts and offer the first detailed assessment of the pandemic's impact on California water systems and their customers, revealing that many households were carrying an

average of \$500 in water debt by the end of October 2020. Many low-income Californians face high levels of water bill debt, with over 155,000 households owing over \$1,000. High debt levels are concentrated in ZIP codes with lower household incomes and higher proportions of Black and Latinx residents. The top-10 ZIP codes with the highest levels of water debt are in Los Angeles, Santa Maria, Rancho Cordova, Colton, Bell Gardens, Norwalk, and Cypress. The survey data indicate that total household debt statewide is currently \$1 billion. Since some water systems also collect payment for wastewater, stormwater and energy on their water bills, the State Water Board estimates \$600 million of that debt is specifically for drinking water. The water systems sampled provide service to 70% of Californians (28 million people). The response rate was high: 84% (428) of small/medium and 87% (131) of large systems contacted by the State Water Board responded to the survey."

Recommendations for implementation of a statewide low-income water rate assistance program February 2020: In February 2020, the State Water Board released a report, to develop plan for funding and implementing a low-income water rate assistance program (W-LIRA). This report was required by AB 401(Dodd, Chapter 662, Statutes of 2015). In the report, the State Water Board recommends components for developing a successful program to help low-income households afford their drinking water. Specifically, this report identifies potential program recipients, different mechanisms for delivering assistance to low-income households, and possible funding sources to implement such a W-LIRA program. The recommendations outlined within the report reflect discussions with public interest groups and stakeholders. According to the report,

"While AB 401 specifically focuses on assisting low-income households in affording their drinking water, the State Water Board is committed to achieving the Human Right to Water in full. While the state continues to develop these comprehensive solutions, creating a W-LIRA program will provide a safety net for low-income residents statewide.

The Growing Water Affordability Challenge Drinking water is a basic human need. California households, however, find it increasingly difficult to satisfy this need as the retail cost of water has risen substantially over the last decade and is expected to rise significantly over the coming years. The burden of rapidly rising drinking water costs falls disproportionately on the 13 million Californians living in low-income households, many of whom have seen their incomes stagnate during the same period. The high and rising costs of other basic needs for California residents, including housing, food, and other utility services, means that cost increases for any single need, such as water, can force families to make difficult and risky tradeoffs which could harm their health and welfare. Expenditures to meet basic water needs are expected to continue to rise rapidly due to the need for water systems to replace aging infrastructure, meet treatment standards, diversify supplies, and maintain a well-trained workforce.

Only about half of California's population is served by a community water system (CWS) offering some form of rate assistance program, and most of these existing programs have low levels of enrollment and limited financial resources. As a result, less than 20% of the state's low-income population served by CWSs currently receives benefits from a low-income rate assistance program.

There are financial obstacles to providing a rate assistance program to water users at the system level. Many of the approximately 2,900 individual CWS cannot operate standalone

rate assistance programs because they lack an adequate rate base to support benefit expenditures. The problem is even more extreme for many smaller systems. To operate individual low-income rate assistance programs, these systems would likely have to impose outsized burdens on higher-income households.

A range of options to finance the W-LIRA were considered, including taxes on high personal income earners or businesses via the state income tax system, bottled water taxes, surcharges on non-eligible households' water bills, a soda tax, and other revenue sources. The State Water Board recommends that revenue sources be progressive to avoid imposing additional financial burdens on low-income households. The State Water Board also recommends that revenue sources have a nexus to water use and support consumption of tap water. Taxes on bottled water or soda would fulfill these criteria and provide additional public and environmental health benefits from reduced consumption of sugar and plastic. A water use surcharge would be consistent with the bill surcharges used to fund low-income rate assistance for electricity and gas. Passing any new tax or surcharge as described would require a supermajority (2/3) vote in the Legislature or potentially a ballot initiative.

Rising drinking water costs have been outpacing inflation and the multitude of upward cost drivers are likely to intensify, leading to even greater future water rate increases across the state. These rate increases will reduce affordability for low-income households already struggling with numerous rising expenses for housing, food, utilities, and other basic needs. This report offers a set of recommendations for rate assistance programs with statewide coverage and meaningful benefit levels. These recommendations have a significant cost, but these are costs that California should support given the clear need and our already existing financial assistance to low-income households for other basic needs."

This bill: SB 222 proposes a program to provide water affordability assistance for low-income ratepayers for both drinking water and wastewater. There does not seem to be any debate over the need for such a program, but rather concerns on how it would be funded and on ensuring that it is implemented in an efficient and cost-effective manner so that it helps those who really need the help. As far as the funding goes, the bill is leaving that debate for a future budget action, which is exactly where the funding will come from; either by a future proposal by the Administration or a proposal by the Legislature via the budget process. This bill is focused on the programmatic side of implementing a water rate affordability program. Given the complexities of such a program and the need to get it right, it is very likely that there may be further improvements to the bill, as discussions with the Administration and stakeholders continue. However, these potential changes would likely be consistent with the current bill and would be designed to ensure effective implementation of this program.

Arguments in Support: According to a number of organizations, including Clean Water Action, the Community Water Center, the Dolores Huerta Foundation for Community Organizing, and the Western Center on Law and Poverty, "SB 222 would establish a long-needed framework for a statewide water affordability assistance program. No one should ever have their water shut off due to inability to pay, but Californians struggled with water affordability issues and experienced high numbers of water shutoffs even before the pandemic. Around 500,000 Californians were impacted by water shutoffs in 2019 according to State Water Board data. The water sector has long lacked a universal affordability state program and adequate shutoff and bill repayment protections for low-income households. The average Californian household paid around 45% more per month for drinking water service in 2015 than in 2007. No less importantly, the need

for water affordability assistance is not going away — it has been a major challenge and gap in our utility safety net for decades and water affordability challenges will only continue to increase due to the rising cost of water. The pandemic has dramatically increased attention to the lack of a statewide water affordability program and there is real urgency to address it. Access to affordable water is a racial justice and equity issue -- and without action, our water debt and water shutoffs crisis will prevent California from achieving an equitable COVID-19 pandemic recovery."

Arguments in Opposition: According to the Association of California Water Agencies (ACWA), "ACWA has an oppose-unless-amended position on SB 222, a bill that would create a water rate assistance program. SB 222 does not propose a funding source for a program that is estimated to cost over \$600 million per year; the implementing agency - the Department of Community Services and Development (Department) – should be charged with approving the funding plan – as opposed to having two State agencies approve it; instead of creating a needs analysis and having three state agencies develop affordability challenge metrics, ACWA suggests that the part of the funding that would have gone to that work go to assisting to low-income households; the proposal for the California Public Utilities Commission to establish a mechanism for electrical and gas corporations to share their customer data with the Department for the corporations' energy customers who are enrolled in, or eligible to be enrolled in, the California Alternate Rates for Energy (CARE) program and the Family Electric Rate Assistance (FERA) program is unnecessary; and, SB 222 proposes a cap on state administration costs but does not propose a cap on state implementation costs."

Double-Referral: Should this bill pass out of the Assembly Environmental Safety and Toxic Materials Committee, it will be re-referred to the Assembly Utilities and Energy Committee.

Related Legislation:

- 1) SB 998 (Dodd, Chapter 891, Statutes of 2018). Requires all public water systems (with more than 200 connections) to have a written policy on discontinuation of residential water service, provide that policy in multiple languages, include provisions for not shutting off water for certain customers that meet specified criteria, prohibit the shutoff of water service until the bill has been delinquent for 60 days, and caps the reconnection fees for restoring water service.
- 2) AB 401 (Dodd, Chapter 662, Statutes of 2015). Requires the State Water Board, in collaboration with the State Board of Equalization and relevant stakeholders, to develop a plan for funding and implementing a Low-Income Water Rate Assistance Program.

REGISTERED SUPPORT / OPPOSITION:

Support

Clean Water Action (Sponsor)
 Alliance of Nurses for Healthy Environments
 American Academy of Pediatrics, California
 Asian Americans Advancing Justice - California
 Avocado Green Brands
 Burton Snowboard

California Apartment Association
California Coastkeeper Alliance
California League of Conservation Voters
Campesinos Unidos
Center for Community Action and Environmental Justice
Central California Environmental Justice Network
Central Coast Energy Services
Ceres
City of Thousand Oaks
Coachella Valley Waterkeeper
Communify
Community Action Marin
Community Action Partnership of Del Norte
Community Action Partnership of San Bernardino County
Community Resource Project, INC.
Community Water Center
Courage California
Defenders of Wildlife
Dignity Health
Dolores Huerta Foundation
Ecos
Ella Baker Center for Human Rights
Environmental Defense Fund
Environmental Working Group
Friends Committee on Legislation of California
Gap, INC.
Humboldt Baykeeper
Impossible Foods
Inland Empire Waterkeeper
LA Alliance for A New Economy
Latino Coalition for A Healthy California
Leadership Counsel for Justice and Accountability
League of Women Voters of California
Local Government Commission
Long Beach Community Action Partnership
Los Angeles Waterkeeper
Monterey Coastkeeper
National Association of Social Workers, California Chapter
Natural Resources Defense Council
Nextgen California
Numi Organic Tea
Orange County Coastkeeper
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League
Policy Link
Redwood Community Action Agency
Russian Riverkeeper
San Diego Coastkeeper
San Francisco Public Utilities Commission

Santa Barbara Channelkeeper
Sierra Club California
Sierra Nevada Brewing Company
Spectrum Community Services
The Nature Conservancy
Tulare County Board of Supervisors
Tulare; County of
Union of Concerned Scientists
Western Center on Law and Poverty
Yuba River Waterkeeper

Opposition

Amador Water Agency
Association of California Water Agencies (ACWA)
Brooktrails Township Community Services District
California Special Districts Association
City of Oceanside
City of Roseville
City of Shasta Lake
Cucamonga Valley Water District
East Valley Water District
Elsinore Valley Municipal Water District
Hidden Valley Lake Community Services District
Irvine Ranch Water District
Mesa Water District
Mid-Peninsula Water District
North Coast County Water District
Padre Dam Municipal Water District
Palmdale Water District
Panoche Water District
Rancho California Water District
Regional Water Authority
Rio Alto Water District
San Juan Water District
Santa Margarita Water District
Scotts Valley Water District
Tahoe City Public Utility District
Tuolumne Utilities District
Valley Center Municipal Water District
Vista Irrigation District
Walnut Valley Water District

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