

**ASSEMBLY BILL**

**No. 115**

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**Introduced by Assembly Member Perea  
(Coauthor: Assembly Member Alejo)**

January 14, 2013

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An act to amend Sections 116760.50, 116760.70, 116760.79, 116760.90, and 116761.20 of the Health and Safety Code, relating to drinking water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 115, as introduced, Perea. Safe Drinking Water State 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, including, but 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 requires the department to establish criteria for projects to be eligible for the grant and loan program, including that a legal entity exist that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the

right to operate the public water system under a lease with a term of at least 20 years, unless otherwise authorized by the department.

This bill would authorize the department to fund projects, by grant, loan, or a combination of the two, where multiple water systems apply for funding as a single applicant for the purpose of consolidating water systems or extending services to households relying on private wells, as specified. The bill would authorize funding of a project to benefit a disadvantaged community that is not the applying agency. The bill, for purposes of considering eligibility for construction funding, would require a legal entity to exist that is not necessarily the applicant, but that has the authority to enter into contracts and incur debt on behalf of at least one of the communities to be served and has the right to operate at least one of the public water systems under a lease or memorandum of understanding with a term of at least 20 years. By authorizing the use of a continuously appropriated fund for new purposes, this bill would make an appropriation.

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

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

- 1 SECTION 1. Section 116760.50 of the Health and Safety Code
- 2 is amended to read:
- 3 116760.50. The department shall establish criteria that shall
- 4 be met for projects to be eligible for consideration for funding
- 5 under this chapter. The criteria shall include all of the following:
- 6 (a) All preliminary design work for a defined project that will
- 7 enable the applicant *or another public water system* to supply water
- 8 that meets safe drinking water standards, including a cost estimate
- 9 for the project, shall be completed.
- 10 (b) ~~A~~ *For purposes of the department considering eligibility*
- 11 *for construction funding, a legal entity shall exist that has the*
- 12 *authority to enter into contracts and incur debt on behalf of* ~~the~~
- 13 ~~community~~ *at least one of the communities* to be served and owns
- 14 the public water system or has the right to operate *at least one of*
- 15 ~~the public water system~~ *systems* under a lease *or memorandum of*
- 16 *understanding* with a term of at least 20 years, unless otherwise
- 17 authorized by the department. *The applicant need not be the legal*
- 18 *entity.* If the proposed project is funded by a loan under this
- 19 chapter, the department may require the applicant *or other legal*

1 *entity* to secure a lease for the full term of the loan if the loan  
2 exceeds 20 years.

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

4 (d) The applicant shall have completed any review required  
5 pursuant to the California Environmental Quality Act (Division  
6 13 (commencing with Section 21000) of the Public Resources  
7 Code) and the guidelines adopted pursuant thereto, and have  
8 included plans for compliance with that act in its preliminary plans  
9 for the project.

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

13 SEC. 2. Section 116760.70 of the Health and Safety Code is  
14 amended to read:

15 116760.70. (a) The department, after public notice and hearing,  
16 shall, from time to time, establish a priority list of proposed projects  
17 to be considered for funding under this chapter. In doing so, the  
18 department shall determine if improvement or rehabilitation of the  
19 public water system is necessary to provide pure, wholesome, and  
20 potable water in adequate quantity and at sufficient pressure for  
21 health, cleanliness, and other domestic purposes. The department  
22 shall establish criteria for placing public water systems on the  
23 priority list for funding that shall include criteria for priority list  
24 categories. Priority shall be given to projects that meet all of the  
25 following requirements:

26 (1) Address the most serious risk to human health.

27 (2) Are necessary to ensure compliance with requirements of  
28 Chapter 4 (commencing with Section 116270) including  
29 requirements for filtration.

30 (3) Assist systems most in need on a per household basis  
31 according to affordability criteria.

32 (b) The department may, in establishing a new priority list,  
33 merge those proposed projects from the existing priority list into  
34 the new priority list.

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

38 (d) In establishing the priority list categories and the priority  
39 for funding projects, the department shall carry out the intent of

1 the Legislature pursuant to subdivisions (e) to (h), inclusive, of  
2 Section 116760.10 and do all of the following:

3 (1) Give priority to upgrade an existing system to meet drinking  
4 water standards. *This includes an upgrade to an existing system*  
5 *to meet drinking water standards in a disadvantaged community*  
6 *that is distinct from the applicant agency.*

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

11 (e) Consideration of an applicant’s eligibility for funding shall  
12 initially be based on the priority list in effect at the time the  
13 application is received and the project’s ability to proceed. If a  
14 new priority list is established during the time the application is  
15 under consideration, but before the applicant receives a letter of  
16 commitment, the department may consider the applicant’s  
17 eligibility for funding based on either the old or new priority list.

18 (f) The department may change the ranking of a specific project  
19 on the priority lists at any time following the publication of the  
20 list if information, that was not available at the time of the  
21 publication of the list, is provided that justifies the change in the  
22 ranking of the project.

23 (g) The department shall provide one or more public hearings  
24 on the Intended Use Plan, the priority list, and the criteria for  
25 placing public water systems on the priority list. The department  
26 shall provide notice of the Intended Use Plan, criteria, and priority  
27 list not less than 30 days before the public hearing. The Intended  
28 Use Plan, criteria, and priority list shall not be subject to the  
29 requirements of Chapter 3.5 (commencing with Section 11340) of  
30 Part 1 of Division 3 of Title 2 of the Government Code. The  
31 department shall conduct duly noticed public hearings and  
32 workshops around the state to encourage the involvement and  
33 active input of public and affected parties, including, but not limited  
34 to, water utilities, local government, public interest, environmental,  
35 and consumer groups, public health groups, land conservation  
36 interests, health care providers, groups representing vulnerable  
37 populations, groups representing business and agricultural interests,  
38 and members of the general public, in the development and periodic  
39 updating of the Intended Use Plan and the priority list.

1 (h) The requirements of this section do not constitute an  
2 adjudicatory proceeding as defined in Section 11405.20 of the  
3 Government Code and Section 11410.10 of the Government Code  
4 is not applicable.

5 SEC. 3. Section 116760.79 of the Health and Safety Code is  
6 amended to read:

7 116760.79. (a) Applications for funding under this chapter  
8 shall be made in the form and with the supporting material  
9 prescribed by the department.

10 (b) *The department shall establish a process by which multiple*  
11 *water systems may apply for funding as a single applicant for the*  
12 *purpose of consolidating water systems or extending services to*  
13 *households relying on private wells. Funding shall be available*  
14 *to these applicants if the following criteria are met:*

15 (1) *At least one of the systems of private wells serves a*  
16 *disadvantaged community or a severely disadvantaged community*  
17 *that is in violation of Chapter 4 (commencing with Section 116270).*

18 (2) *Fifty percent of the project funds support, facilitate, or allow*  
19 *for planning and preliminary engineering studies, project design,*  
20 *or construction to consolidate with, or extend services to, existing*  
21 *water system facilities or private wells that are in violation of*  
22 *Chapter 4 (commencing with Section 116270).*

23 (3) *The purpose of the consolidation or service extension*  
24 *includes providing safe and potable drinking water to a community,*  
25 *bringing one or more of the applying water systems into*  
26 *compliance with this chapter.*

27 SEC. 4. Section 116760.90 of the Health and Safety Code is  
28 amended to read:

29 116760.90. (a) The department shall not approve an application  
30 for funding unless the department determines that the proposed  
31 study or project is necessary to enable the applicant to meet safe  
32 drinking water standards, and is consistent with an adopted  
33 countywide plan, if any. The department may refuse to fund a  
34 study or project if it determines that the purposes of this chapter  
35 may more economically and efficiently be met by means other  
36 than the proposed study or project. The department shall not  
37 approve an application for funding a project with a primary purpose  
38 to supply or attract future growth. The department may limit  
39 funding to costs necessary to enable suppliers to meet primary

1 drinking water standards, as defined in Chapter 4 (commencing  
2 with Section 116270).

3 (b) With respect to applications for funding of project design  
4 and construction, the department shall also determine all of the  
5 following:

6 (1) Upon completion of the project, the applicant *and other*  
7 *beneficiaries of the project* will be able to supply water that meets  
8 safe drinking water standards.

9 (2) The project is cost-effective.

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

12 (c) In considering an application for funding a project that meets  
13 all other requirements of this chapter and regulations, the  
14 department shall not be prejudiced by the applicant initiating the  
15 project prior to the department approving the application for  
16 funding. Preliminary project costs that are otherwise eligible for  
17 funding pursuant to the provisions of this chapter shall not be  
18 ineligible because the costs were incurred by the applicant prior  
19 to the department approving the application for funding.  
20 Construction costs that are otherwise eligible for funding pursuant  
21 to the provisions of this chapter shall not be ineligible because the  
22 costs were incurred after the approval of the application by the  
23 department but prior to the department entering into a contract  
24 with the applicant pursuant to Section 116761.50.

25 SEC. 5. Section 116761.20 of the Health and Safety Code is  
26 amended to read:

27 116761.20. (a) Planning and preliminary engineering studies,  
28 project design, *consolidation with or extension of services to an*  
29 *existing water system*, and construction costs may be funded under  
30 this chapter by loans, or, in the case of public agencies or private  
31 not-for-profit water companies, by grants or a combination of  
32 grants and loans. *Multiple water systems that apply under a single*  
33 *application, as provided in subdivision (b) of Section 116760.79,*  
34 *may be funded by grants, loans, or a combination thereof.*

35 (b) The department shall determine what portion of the full  
36 costs the public agency or private not-for-profit water company is  
37 capable of repaying and authorize funding in the form of a loan  
38 for that amount. The department shall authorize a grant only to the  
39 extent the department finds the public agency or not-for-profit  
40 water company is unable to repay the full costs of a loan.

1 (c) At the request of the department, the Public Utilities  
2 Commission shall submit comments concerning the ability of  
3 suppliers, subject to its jurisdiction, to finance the project from  
4 other sources and to repay the loan.

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