

ASSEMBLY BILL

No. 118

**Introduced by Committee on Environmental Safety and Toxic
Materials (Alejo (Chair), Bloom, Lowenthal, Stone, and Ting)
(Coauthors: Assembly Members Perea and Wiecewski)**

January 14, 2013

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 drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 118, as introduced, Committee on Environmental Safety and Toxic Materials. 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. 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, including the time for the completion of the project, and authorize the contracts to include certain additional information, including an agreement by the supplier to complete, as part of the project, a rate study.

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*

1 *shall not be subject to the rulemaking provisions of Chapter 3.5*
2 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
3 *2 of the Government Code, and:*

4 *(1) Shall be subject to a public review and comment period of*
5 *not less than 30 days.*

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

8 *(3) Shall remain in effect for three years, unless sooner repealed*
9 *or amended by additional regulations adopted pursuant to this*
10 *subdivision.*

11 *(4) May amend or repeal emergency regulations adopted*
12 *pursuant to subdivision (a).*

13 *(5) Shall supersede any conflicting emergency regulations*
14 *adopted pursuant to subdivision (a).*

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

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

24 116760.50. The department shall establish criteria that shall
25 be met for projects to be eligible for consideration for funding
26 under this chapter. The criteria shall include all of the following:

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

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

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

1 (d) (1) The applicant shall have completed, *prior to receiving*
 2 *a funding agreement, environmental review and documentation*
 3 *of the defined project, including, but not limited to,* any review
 4 required pursuant to the California Environmental Quality Act
 5 (Division 13 (commencing with Section 21000) of the Public
 6 Resources Code) and the guidelines adopted pursuant ~~thereto, and~~
 7 ~~have included plans thereto.~~ *Any measures required for compliance*
 8 *with that act in its preliminary applicable environmental laws and*
 9 *regulations shall be included in the final plans for the defined*
 10 *project.*

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

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

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

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

25 116761.20. (a) Planning and preliminary engineering studies,
 26 project design, and construction costs *incurred by community and*
 27 *not-for-profit noncommunity public water systems* may be funded
 28 under this chapter by loans, ~~or, in the case of and, if these systems~~
 29 *are owned by public agencies or private not-for-profit water*
 30 *companies, by grants or a combination of grants and loans.*

31 (b) (1) The department shall determine what portion of the full
 32 costs the public agency or private not-for-profit water company is
 33 capable of repaying and authorize funding in the form of a loan
 34 for that amount. The department shall authorize a grant only to the
 35 extent the department finds the public agency or not-for-profit
 36 water company is unable to repay the full costs of a loan.

37 (2) *Notwithstanding any other provision of this chapter, a small*
 38 *community water system or nontransient noncommunity water*
 39 *system that is owned by a public agency or a private not-for-profit*

1 *water company and serving a severely disadvantaged community,*
2 *is deemed to have no ability to repay a loan.*

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

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

9 116761.21. Not more than 30 percent and not less than 15
10 percent, provided that there are projects eligible for funding as
11 prescribed in Section 116760.70, of the total amount ~~deposited in~~
12 ~~the fund of the capitalization grant~~ may be expended for grants.
13 This amount shall be limited to disadvantaged communities
14 specified in Section 1452(d) of the federal act (~~42 U.S.C.A.~~ *U.S.C.*
15 *Sec. 300j-12*).

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

18 116761.23. (a) The maximum amount of a planning grant
19 permitted under this chapter for each participating public water
20 system's share of the costs of the planning, engineering studies,
21 environmental documentation, and design of a single project shall
22 be no more than five hundred thousand dollars (\$500,000).

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

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

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

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

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

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

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

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

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

22 116761.50. (a) The department may enter into contracts with
23 applicants for grants or loans for the purposes set forth in this
24 chapter. Any contract entered into pursuant to this section shall
25 include only terms and conditions consistent with this chapter and
26 the regulations established under this chapter.

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

- 29 (1) An estimate of the reasonable cost of the project or study.
- 30 (2) An agreement by the department to loan or grant, or loan
31 and grant, the applicant an amount that equals the portion of the
32 costs found by the department to be eligible for a state loan or
33 grant. The agreement may provide for disbursement of funds during
34 the progress of the study or construction, or following completion
35 of the study or construction, as agreed by the parties.
- 36 (3) An agreement by the applicant to proceed expeditiously with
37 the project or study.
- 38 (4) An agreement by the applicant to commence operations of
39 the project upon completion of the project, and to properly operate

1 and maintain the project in accordance with the applicable
2 provisions of law.

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

8 (A) The amount of the loan.

9 (B) The administrative fee specified in subdivision (a) of Section
10 116761.70.

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

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

17 (7) *The time for the completion of the project. Subject to any*
18 *requirements of the federal act and its implementing regulations*
19 *and guidelines, in the case of a project for planning and a*
20 *preliminary design, pursuant to Section 116760.80, the department*
21 *may determine on a case-by-case basis an appropriate amount of*
22 *time for completion of the project, not to exceed 36 months.*

23 (c) The contract may include any of the following terms and
24 conditions:

25 (1) An agreement by the supplier to adopt a fee structure that
26 provides for the proper maintenance and operations of the project
27 and includes a sinking fund for repair and replacement of the
28 facilities in cases where appropriate. The fee structure shall also
29 provide an acceptable dedicated source of revenue for the
30 repayment of the amount of the loan, and the payment of
31 administrative fees and interest.

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

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

38 (4) *An agreement by the supplier to implement, not later than*
39 *the conclusion of the project, the approved plan for achieving*

1 *technical, managerial, and financial capacity as specified in*
2 *subdivision (f) of Section 116760.50.*

3 (5) *If the supplier is a small community water system or*
4 *nontransient noncommunity water system, owned by a public*
5 *agency or private not-for-profit water company, receiving grant*
6 *funding, an agreement by the supplier to comply with guidelines*
7 *adopted by the department for any procurement of engineering,*
8 *environmental compliance, or architectural services.*

9 (d) The department may require applicants to provide security
10 for loan contracts.

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

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

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

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

28 116761.70. (a) Not more than 4 percent of the capitalization
29 grant may be used by the department for administering this chapter.
30 The department may establish a reasonable schedule of
31 administrative fees for loans, which shall be paid by the ~~applicant~~
32 *funding recipient* to reimburse the state for the costs of the state
33 administration of this chapter. *The department annually shall*
34 *establish in the Intended Use Plan the amount of any administrative*
35 *fee.*

36 (b) Charges incurred by the Attorney General in protection of
37 the state's interest in the use of repayment of grant and loan funds
38 under this chapter shall be paid. These charges shall not be paid
39 from funds allocated for administrative purposes, but shall be

- 1 treated as a program expense not to exceed one-half of 1 percent
- 2 of the total amount deposited in the fund.

O