

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Cottie Petrie-Norris, Chair

SB 1255 (Durazo) – As Amended June 19, 2024

SENATE VOTE: 33-6

SUBJECT: Public water systems: needs analysis: water rate assistance program

SUMMARY: Requires, on or before July 1, 2027, retail water suppliers that serve over 3,300 residential connections to establish a water rate assistance program (WRAP), as specified, to provide assistance to eligible ratepayers for their water and wastewater bills.

Specifically, **this bill:**

Definitions:

- 1) Defines “available information” as any of the following:
 - a) Information documenting the residential ratepayer’s participation in an affordability program, as specified;
 - b) A benefits award letter provided by the residential ratepayer documenting that the customer is an enrollee in, or is a recipient of, an affordability program; or
 - c) Self-certification of eligibility, under penalty of perjury, by the residential ratepayer.
- 2) Defines “balancing account” as a reserved amount of sufficient funding to address fluctuations in voluntary contributions received or changes in eligible ratepayers, not to exceed 25% of the annual expenditures of the program.
- 3) Defines “eligible ratepayer” as a low-income residential ratepayer with an annual household income that is no greater than 200% of the federal poverty guideline level.
- 4) Defines “qualified system” as any retail water supplier that serves over 3,300 residential connections.

Needs Analysis:

- 1) Requires the State Water Resources Control Board (State Water Board), on or before July 1, 2026, and on or before July 1 of each three years thereafter, to, in consultation with the Safe and Affordable Funding for Equity and Resilience (SAFER) Program advisory group and appropriate stakeholders, to update the needs analysis of the state’s public water systems.
- 2) Requires the update of the needs analysis to include:
 - a) An assessment of the funds necessary to provide a 20% bill credit for low-income households served by community water systems with fewer than 3,300 service connections; and,

- b) An assessment of the funds necessary for community water systems with fewer than 3,300 service connections to meet the affordability threshold established pursuant to the SAFER Program Fund Expenditure Plan.
- 3) Requires the State Water Board, in order to develop the assessment described above, to do all of the following:
 - a) Collect arrearage data from water systems not regulated by the California Public Utilities Commission (CPUC) and request data from the CPUC on the systems they regulate;
 - b) Estimate the number of households in need of assistance using arrearage data as well as information provided by the United States Census or other comparable data sources;
 - c) Identify available data on water rates charged by community water systems with fewer than 3,300 service connections; and,
 - d) Where data is unavailable for a water system, use an average of existing data to estimate the level of need for that system.

Water Rate Assistance Program (WRAP):

- 1) Requires, on or before July 1, 2027, a qualified system, other than a system that already offers an existing WRAP, to establish a WRAP, as specified, and to begin providing water rate assistance to eligible ratepayers.
- 2) Requires a WRAP offered pursuant to this bill to, at a minimum, include both of the following:
 - a) Automatic enrollment of eligible ratepayers if available information, as defined in the bill, indicates that they are qualified to receive assistance; and,
 - b) Provision of a bill credit for eligible ratepayers of no less than 20% of the total water charges, and, if present on the bill, wastewater charges, for a volume of water similar to that identified in urban water use objectives law (currently 47 gallons per capita daily for indoor residential water) or, if the eligible ratepayer uses less, the actual volume used.
- 3) Provides that in the event that there is not sufficient funding for the WRAP, including any balancing account funds, to support a 20% bill credit, the WRAP shall provide the maximum bill credit available that funding is able to support, unless the maximum bill credit available that funding is able to support is less than 10%, in which case the qualified system shall instead provide crisis assistance to the extent funds are available, as specified.
- 4) Authorizes the qualified system to select the elements, as described below, of the water charges upon which the bill credit is applied or to provide a bill credit as a set percentage of

the total water bill, provided that the total bill credit is equivalent in value to the bill credit required above.

- 5) Provides that the element, or elements, of the drinking water charges upon which the bill credit may be applied, include, but are not limited to, the fixed, volumetric, or fixed and volumetric charges levied by the system.
- 6) Authorizes a qualified system to, on or before September 1, 2026, begin collecting voluntary contributions for the reasonable costs, as specified, associated with the administration of the WRAP and to establish initial program funding.
- 7) Prohibits, beginning July 1, 2027, the reasonable costs associated with the administration of the WRAP from exceeding 10% of voluntary contributions collected.
- 8) Authorizes a qualified system to, in establishing a WRAP, establish a balancing account to manage fluctuations in voluntary contributions and the granting of bill credits to eligible ratepayers.
- 9) Provides that this bill does not require a qualified system to use funds other than voluntary contributions collected pursuant to the WRAP to provide rate assistance to eligible ratepayers or to pay for associated administrative costs, but provides that a qualified system may use other funds available for this purpose that are not derived from fees or assessments, as allowed by the California Constitution.
- 10) Exempts any qualified system that offers an existing water rate assistance program on or before September 1, 2026, that meets the minimum enrollment and bill credit requirements specified in this bill by July 1, 2027, from being required to comply with the provisions of this bill, and authorizes those systems to collect voluntary contributions to supplement or expand the existing program or to provide crisis assistance.
- 11) Provides that nothing in this bill shall prohibit a qualified system from offering assistance to residential ratepayers if the program does either, or both, of the following
 - a) Provides a greater bill credit benefit; or,
 - b) Exceeds the definition of low income as specified in this bill for ratepayer eligibility.
- 12) Authorizes any public water system that is not a qualified system to collect voluntary contributions to fund a water affordability program, but does not require the system to comply with the provisions of this bill.
- 13) Authorizes a qualified system to require verification of eligibility from a sample of enrolled eligible ratepayers on an annual basis to verify the ratepayer's low-income status and eligibility for assistance, and to remove any ratepayers found to not be eligible for assistance from the WRAP.
- 14) Requires a qualified system to continue to have a WRAP as long as there is sufficient funding available to provide water rate assistance or crisis assistance, to pay for the qualified

system's reasonable costs for administration of the program, and to establish a balancing account if the qualified system chooses to do so.

Crisis Assistance:

- 1) Requires that if, after three months of accepting voluntary contributions, the qualified system can demonstrate there will not be sufficient funds to support a program at a minimum of a 10% discount or \$5 per month, whichever amount is greater, and pay for the qualified system's reasonable costs for administration of the program, the system must instead use the collected contributions to provide ongoing crisis assistance and pay for the qualified system's reasonable costs for administration of crisis assistance.
- 2) Requires crisis assistance to be offered on or before July 1, 2027, and to be offered to eligible ratepayers, at a minimum, when a qualified system provides a discontinuation of residential water service notification or when an eligible customer contacts the qualified system about a delinquent account.
- 3) Limits crisis assistance to only being provided to an eligible ratepayer once per year and limits it to an amount determined by the qualified system, taking into account the overall past due amount and available funding. Provides that to the extent the amount of crisis assistance provided does not eliminate an eligible ratepayer's arrearages, the ratepayer shall enter into an amortization agreement, alternative payment schedule, or plan for deferred or reduced payment, pursuant to discontinuation of residential water service law, to be eligible for crisis assistance.

Voluntary Contributions:

- 1) Requires, on or before September 1, 2026, a qualified system to provide an opportunity for each ratepayer of the system to provide a voluntary contribution as part of the ratepayer's water bill to provide funding for the qualified system's WRAP.
- 2) Requires a qualified system to establish a recommended voluntary contribution amount on the bill of each ratepayer other than an eligible ratepayer based on available information as of July 1, 2026, at a level intended to raise sufficient funding to provide a bill credit to eligible ratepayers, pay for the qualified system's administrative costs to implement a WRAP beginning January 1, 2025, and establish a balancing account if the qualified system chooses to do so.
- 3) Requires a qualified system, when setting the recommended voluntary contribution, to assume that 60% of ratepayers other than eligible ratepayers will provide the contribution. Authorizes a qualified system, on or before July 1, 2027, to adjust the voluntary contribution, as necessary, considering the previous year's actual participation rate. Prohibits the recommended voluntary contribution from exceeding 5% of the charges for water and wastewater on the water bill for any residential ratepayer.
- 4) Requires a bill from a qualified system to label the voluntary contribution in a way that describes the purpose of the funds. Requires the qualified system to notify their ratepayers of the voluntary contribution and, in a visually accessible manner and using clear and unambiguous language, to provide each ratepayer the option and method of opting out of providing the voluntary contribution at least three months prior to beginning collection of the voluntary contribution, and thereafter on at least an annual basis.

- 5) Requires voluntary contributions to commence on the qualified system's subsequent billing cycle from the notice.
- 6) Authorizes the qualified system to choose to include alternative amounts for contributions.
- 7) Requires a qualified system to also provide this information on its internet website in English, and any other language spoken by at least 10% of the people residing in its service area, and other languages, as specified.
- 8) Authorizes a ratepayer to opt out of the voluntary contribution at any time in a manner that is specified by the qualified system in the notice about the voluntary contributions, with voluntary contributions terminating on the qualified system's subsequent normal billing cycle.
- 9) Provides that a ratepayer may only request a refund for contributions made since the last notice of opportunity to opt out of the program was provided or for the period of the last billing cycle prior to the date the ratepayer opts out, whichever time period is greater. Authorizes qualified systems to provide refunds in the form of a bill credit.
- 10) Prohibits a qualified system from sanctioning, taking any enforcement or collection action against, imposing any late charge or penalty against, or otherwise holding liable a ratepayer in any manner for exercising the option of not paying a voluntary contribution.
- 11) Requires the voluntary contributions to be used only to provide rate assistance to eligible ratepayers, pay for associated administrative costs to implement the WRAP, and establish a balancing account. Authorizes administrative costs of establishing the WRAP to be reimbursed from voluntary contributions.
- 12) Authorizes a qualified system to contract with a third party to receive voluntary contributions and comply with the requirements of the bill.
- 13) Requires that any partial payment made by a ratepayer that is insufficient to pay for charges on the bill be used to pay the qualified system's charges shown on the ratepayer's bill before being attributed to a voluntary contribution.
- 14) Prohibits a penalty or late fee from being assessed by a qualified system for the failure of a ratepayer to make timely payment of a voluntary contribution regardless of whether the ratepayer has exercised the option of not paying a voluntary contribution.
- 15) Authorizes a qualified system to use any state or federal funds that are available to support a WRAP by offsetting or supplementing the funds collected from voluntary contributions.

CPUC Data Collection:

- 1) Requires the CPUC to, on or before January 1, 2026, establish a mechanism for electrical corporations and gas corporations to provide data to all qualified systems no later than April 1, 2026, and annually by April 1 thereafter, regarding ratepayers enrolled in, or

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

- 2) Authorizes all qualified systems to enter into agreements with local gas and electric publicly owned utilities (POUs), including, but not limited to, municipal utility districts and irrigation districts, for the purpose of regularly receiving data regarding ratepayers enrolled in, or eligible to be enrolled in, affordability programs benefiting eligible ratepayers.
- 3) Specifies the laws under which the data collection is subject.

State Water Board Data Collection:

- 1) Requires the State Water Board, beginning in 2028, to require qualified systems to annually report the following information in required technical reports:
 - a) The total amount of voluntary contributions collected, the administrative costs of operating the WRAP, the number of eligible households that were provided rate assistance or crisis assistance, and the total amount of rate assistance or crisis assistance provided to eligible households; and,
 - b) An evaluation of available relevant information regarding any arrearages that remain after application of bill assistance.

Enforcement:

- 1) Authorizes the Attorney General to bring an action in state court to restrain, by temporary or permanent injunction, the use of any method, act, or practice in violation of the WRAP provisions of this bill by a qualified system, other than a system that has an existing WRAP program, including nonparticipation by a qualified system.
- 2) Prohibits the Attorney General from bringing an action against a qualified system with an existing WRAP program for failing to meet the requirements of the bill, as long as the qualified system makes a good faith effort to raise sufficient funding.

EXISTING LAW:

- 1) Provides that the California CPUC has regulatory authority over public utilities, including water investor-owned utilities (IOUs). Defines “public utility” to include every water corporation and sewer system corporation where the service is performed for, or the commodity delivered to, the public or any portion thereof. (California Constitution Article XII and Public Utilities Code (PUC) § 2701)
- 2) Declares that it is 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 (WC) § 106.3)
- 3) Establishes the California Safe Drinking Water Act to provide for the operation of public water systems and imposes on the State Water Board various responsibilities and duties relating to the regulation of drinking water to protect public health. (Health & Safety Code (HSC) §§ 116270 – 116755)

- 4) Establishes the Safe and Affordable Drinking Water Fund in the State Treasury to help water systems provide an adequate and affordable supply of safe drinking water in both the near and long term. (HSC §116766)
- 5) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. (HSC § 116275)
- 6) Defines a "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))
- 7) Requires the CPUC to continue the CARE program for low-income electric and gas customers with annual household incomes less than 200% of the federal poverty guideline levels. (PUC § 739.1)
- 8) Requires the CPUC to continue the FERA program to residential customers of the state's three largest electrical IOUs consisting of households of three or more persons with total household annual gross income levels between 200 and 250% of the federal poverty guideline level. (PUC § 739.12)
- 9) Requires the State Water Board, by January 1, 2018, to develop a plan for the funding and implementation of the Low-Income Water Rate Assistance Program, as prescribed. Requires the State Water Board to report to the Legislature on its findings regarding the feasibility, financial stability, and desired structure of the program, including any recommendations for any needed legislative action. (WC§189.5)
- 10) Requires the State Water Board to base the fund expenditure plan on data and analysis drawn from a specified drinking water needs assessment. (HSC §§ 116768 – 116770)

FISCAL EFFECT: Unknown. This bill has been significantly amended with recently adopted amendments, such that its prior fiscal analysis no longer applies. This measure is keyed fiscal and will be referred to the Assembly Committee on Appropriations for its review.

BACKGROUND:

Human Right to Water – AB 685 (Eng, Chapter 524, Statutes of 2012) established California as the first state to enact a Human Right to Water law. 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. However, challenges such as the need for an adequate supply of water suitable for drinking, the costs of constructing and maintaining treatment and distribution systems, and the number and nature of small public water systems – especially those in economically disadvantaged communities – among others continue to plague the State's progress in achieving this human right.¹

¹State Water Resources Control Board, "Report to the Legislature in Compliance with the Health and Safety Code Section 116365"; September 2021

Regulation of California's Drinking Water Systems – The State Water Board has primary responsibility for regulating the state's drinking water quality.² It works together with the CPUC or local agencies who regulate water utilities. More specifically, the CPUC regulates water IOUs to ensure that ratepayers have access to safe and reliable water utility infrastructure and services. Water POU's are governed by local boards, not the CPUC, in addition to the State Water Board. To distinguish and outline the responsibilities between these governing bodies, the State Water Board has entered into a memorandum of understanding with the CPUC;³ for many of these responsibilities though, the State Water Board and CPUC work in consultation with one another. The following describes in greater detail the various groups with regulatory oversight of California's drinking water systems:

- *State Water Resources Control Board (State Water Board)*: Specifically, the State Water Board has general authority with regard to water quality and drinking water functions, and administers provisions relating to public water systems and regulation of drinking water to protect public health. These include establishing drinking water standards, maximum contaminant levels in drinking water, and permitting public water systems. The State Water Board oversees approximately 7,500 public water systems which are also overseen by either the CPUC or local boards.⁴
- *CPUC*: The CPUC Water Division regulates over 100 water and sewer IOUs providing water service to about 16% of California's residents with annual water and wastewater revenues totaling \$1.4 billion.⁵ Approximately 95% of those residents are served by nine large water utilities each serving more than 10,000 connections. The majority of the CPUC-regulated water utilities (92) have service connections of 2,000 or less, and 87 of those have service connections of 500 or less. As with other IOUs, the CPUC regulates the customer rates assessed by water utilities under its jurisdiction, ensuring that costs are just and reasonable.
- *Water POU's*: The majority of California's water customers (more than 80%) are served by cities, water districts, and mutual water companies, which are governed by local boards. These utilities are not regulated by the CPUC, but are instead governed by the city council, or other local governing bodies, which set their own rates. Like IOUs, these utilities can also vary greatly in size of their customer base, from the Los Angeles Department of Water and Power which owns and maintains over 700,000 water meters and service connections,⁶ to the City of Ukiah's water system that serves approximately 6,000 customers.⁷

²Ibid

³CPUC; "Memorandum of Understanding Between the State Water Resources Control Board and the California Public Utilities Commission Regarding the Regulation of Public Water Systems"; https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/mous/12920-signed-mou-between-cpuc-and-swrbc.pdf?sc_lang=en&hash=9E9654130F6F54CDAC0E3751845F896D

⁴ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html

⁵ CPUC, "Water Division"; <https://www.cpuc.ca.gov/about-cpuc/divisions/water-division>

⁶ LADWP, "Provision of Water Service for Single-Family Residential Dwelling Units" December 2018

⁷ The Ukiah Daily, "Improving Ukiah water system' has been a massive project"

<https://www.ukiahdailyjournal.com/2021/05/12/improving-ukiah-water-supply-system-has-been-a-massive-project/>

- *Public Water Systems* – Existing law stipulates that a public water system (PWS) provides water for human consumption to 15 or more connections, or serves 25 or more people daily for at least 60 days out of the year.⁸ These systems can include not only large city or regional water suppliers, but also small housing communities, businesses, schools, and hospitals. A public water system is not necessarily a public entity, and most are privately owned. Approximately 92% of PWS serve less than 1,000 connections.⁹ The State Water Board has primary responsibility for regulating all PWS, but other state agencies can also regulate certain aspects of specific classes of water systems: 1) the CPUC for IOUs, 2) the Division of Corporations for mutual water companies, and 3) the Department of Housing and Community Development for mobile home parks.

In summary, the existence of a numerous number of state and local agencies make the allocation and management of the state’s water resources complex. According to a 2018 report published by the Public Policy Institute, on, *Allocating California’s Water*, “California’s system for allocating water prevents it from meeting the state’s diverse needs, especially in times of scarcity. It is fragmented, inconsistent, and lacking in transparency and clear lines of authority.”

The High Costs of Water – The State Drinking Water Plan for California has indicated that water costs have, on average over a five-year period from 2012 to 2017, increased about 35% within all size groups of water systems.¹⁰ 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.¹¹ On average, customers of small water systems (serving fewer than 200 service connections) pay approximately 21% more for water than customers served by larger systems. Unfortunately, many economically disadvantaged communities are served by small water systems which face several barriers to funding their operations.¹² The State Water Board expects that the cost of drinking water will continue to rise into the future.

Statewide Plan for Funding a Low-Income Water Rate Assistance Program – AB 401 (Dodd, Chapter 662, Statutes of 2015) required 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, which was known as W-LIRA. In the development of the plan, the state board was permitted to consider existing rate assistance programs authorized by the CPUC and provide recommendations for other cost-effective methods of offering assistance to low-income water customers. In addition, the State Water Board was required to report to the Legislature on its findings regarding the feasibility, financial stability, and desired structure of the program, including any recommendations for legislative action that may need to be taken. In a report released in February 2020, the State Water Board recommended W-LIRA be funded through taxes on personal income, business income, and bottled water, as most water systems are not able to fund low-income assistance programs.¹³

⁸ HSC § 116275

⁹ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html

¹⁰ Ranges between 23 to 40%. State Water Resources Control Board, Pg VIII; “Safe Drinking Water Plan for California.” September 2021

¹¹ Ibid

¹² Ibid

¹³ State Water Board, “Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program.” February, 2020

Such a program would be able to provide qualifying customers bill discounts, crisis assistance, and a tax credit for those who are renters and pay for their water indirectly through rent. These bill discounts were modeled on the low-income assistance program for customers of CPUC-regulated electrical and gas utilities, and the crisis assistance was modeled on the federal energy crisis program known as Low Income Heating and Assistance Program (LIHEAP), which is administered by the Community Services and Development Department in California.

State Water Board's 2023 Needs Assessment – In 2019, the Legislature enacted SB 200 (Dodd, Chapter 120, Statutes of 2019), which enabled the State Water Board to create the Safe and Affordable Funding for Equity and Resilience (SAFER) Drinking Water Program. SB 200 established a set of tools, funding sources, and regulatory authorities that the State Water Board harnesses for the SAFER Program to help struggling water systems sustainably and affordably provide safe drinking water.

The SAFER Program's expenditure plan must be based on data and analysis drawn from the annually updated drinking water needs assessment (referred to as the Needs Assessment), which was established by SB 862 (Committee on Budget and Fiscal Review, Chapter 449, Statutes of 2018). The State Water Board also typically hosts a series of workshops throughout the year for stakeholders to provide comments and inform SAFER's expenditure plan.

In response to stakeholder feedback after the release of the 2021 and 2022 Needs Assessments, the State Water Board, in partnership with the Office of Environmental Health Hazard Assessment (OEHHA), hosted three public Affordability Workshops in 2022 to re-evaluate previously utilized affordability indicators, research new affordability indicators, and explore how to incorporate a new affordability indicator that measures disposable income limitations into the 2023 Needs Assessment and beyond.¹⁴ For the 2023 Needs Assessment, the State Water Board staff analyzed 2,845 community water systems. The majority were identified as having low affordability burden (45%) followed by a medium affordability burden (12%) and a high affordability burden (3%).¹⁵

Proposition 218 and Proposition 26 –Water POU's, unlike IOU's, are subject to constraints on their ability to collect rates for rate relief from one customer to another due to the enactment of these propositions:

- Passed in 1996, Proposition 218 requires, among other things, that the revenues derived from property related fees and charges not exceed the funds required to provide the property related service.¹⁶ It also requires for any fee or charge imposed by a service to be immediately available to the property owner, rather than for future or potential use.
- Adopted in 2010, Proposition 26 places the burden on local governments to prove by a preponderance of evidence that the amount of a fee or charge is “no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits from, the governmental activity.”¹⁷ Simply, charges for programs

¹⁴ Workshop 1 (August 8, 2022); Presentation: <https://bit.ly/3jsI4k8>

¹⁵ California Water Board, “2023 Drinking Water Needs Assessment,” Pg 28; April 2023

¹⁶ California Constitution Article XIII D, § 6, Subd.(b)(1)

¹⁷ California Constitution, Article XIII C, § 1

that provide general public benefits, or that exceed the costs of providing the service, are considered special taxes and require approval by two-thirds of the state legislature or a two-thirds popular vote at the local level. As a result, water POU's instead fund existing W-LIRA programs from revenues derived from sources other than water rates and charges, such as lease revenues or voluntary donations. These non-rate revenue options are limited and considered insufficient to sustainably fund W-LIRA programs throughout the state.

As acknowledged by the AB 401 report, funding individual water low-income rate assistance programs at the system level without violating constitutional restrictions would likely be infeasible for publicly owned water systems.¹⁸ Systems could impose special taxes, but those measures would need to be submitted to the local electorates and approved by a two-thirds majority.¹⁹ Additionally, for those systems with high eligibility burdens, there may be significant local resistance to approving such taxes.

CPUC-Regulated Water Utilities low-Income Assistance Program – The CPUC has authorized the largest nine water utilities to offer low-income rate assistance programs similar in concept to those provided to electricity customers through the California Alternate Rates for Energy (CARE) program. However, each program varies in terms of the amount of assistance provided to low-income customers and the method by which surcharges to cover the cost of the program are collected from non-participating ratepayers. All nine Class A water utilities, one Class B utility, and one Class C utility offer discounts on their monthly bills for qualifying low-income customers.²⁰ Water utilities have been transitioning the unique names of their low-income assistance programs to the uniform name Customer Assistance Program (CAP) pursuant to the CPUC's direction. Discounts and surcharges supporting these programs are reviewed in each utility's general rate case proceeding.

COMMENTS:

- 1) *Author's Statement.* According to the author, "While recognizing water as a basic human right, California has been at the epicenter of a water affordability and access crisis, especially for communities of color. The State [Water] Board reported that water rates rose 45% from 2007 to 2015. Those rate increases led to more than 1.6 million households having an average \$500 water and/or sewer utility debt. Further exacerbating the problem have been how efforts to address this access gap have been delayed including AB 401 (Chap. 662, Stats. 2015). SB 1255 is a critically needed bill that will finally establish a statewide water rate assistance program for large and medium water systems that serve most of the state's population, through a voluntary ratepayer contribution fund, that will not require use of assessments or fees, consistent with Prop. 218. This program will direct voluntarily collected funds to help qualified households, defined as those with an annual household income that is no greater than 200% of the federal poverty guideline level."

¹⁸ State Water Board, Pg. 22; "Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program." February, 2020

¹⁹ Cal. Const., art. XIII C, § 2, subd. (d)

²⁰ **Class A Utilities** having more than 10,000 service connections, **Class B Utilities** having between 2,000 service connections and 10,000 service connections, **Class C Utilities** having between 500 service connections and 2,000 service connections.

- 2) *Complications with Financing Water Infrastructure.* Local governments in California provide most water related services such as water service, sewer service, flood control, and storm water management. According to a 2014 Policy Institute of California (PIC) report, *Paying for Water in California*, there are currently four funding sources for water currently in California:
- a) Fees, which include water and wastewater bills, property assessments or fees, developer or connection fees, and permitting fees;
 - b) Taxes, which include both general and special taxes, including parcel taxes;
 - c) Fines and penalties, which include excessive pumping of groundwater or directly to customers in violation of rationing restrictions during drought emergencies; and
 - d) Bonds, which include general obligation and revenue bonds.

Local agencies frequently point to the series of constitutional reforms such as Proposition 218 as a barrier for generating necessary revenue to fund the cost of water related services. Proposition 218 requires that fees charged by local agencies be proportional to the cost of service and places limits the use of funds. The intent of this proposition was to ensure that fees and other charges paid by property owners reflect only the cost to serve them and do not subsidize other government programs. Consequently, public water utilities are prevented from using revenue from water bills to offset the cost of operating assistance programs for low-income residents.

3) *Low-Income Energy Affordability Programs (CARE and FERA) as Models.*

- *CARE Program.* Currently, about 25 years old, the CARE program is the primary existing state policy to help low-income customers of the state's IOUs pay their electric and gas bills.²¹ Households enrolled in CARE receive a 30-35% discount – 20% if the household is subscribed to an IOU with fewer than 100,000 customers – on their electric bill and a 20% discount on their natural gas bill.²² CARE is funded through a rate surcharge paid by all other utility customers, both residential and non-residential. The spending on CARE has grown massively since its inception in 1998. At the beginning of 2001, the four largest utilities – Pacific Gas and Electric (PG&E), San Diego Gas and Electric (SDG&E), Southern California Edison (SCE), and Southern California Gas Company (SoCal Gas) – spent about \$126 million on the program;²³ by the end of 2022, the utilities spent \$1.9 billion to help 4.5 million households.²⁴ In their May 2023 monthly reports, the IOUs cited penetration rates, or the percentage of eligible beneficiaries that are enrolled, between 90-112%, with a cumulative authorized

²¹ Public Utilities Code § 739.1

²² CPUC; “California Alternate Rates for Energy (CARE)”; <https://www.cpuc.ca.gov/consumer-support/financial-assistance-savings-and-discounts/california-alternate-rates-for-energy>.

²³ LIHEAP Clearinghouse; “State PBF/USF History, Legislation, and Implementation”; <https://liheapch.acf.hhs.gov/dereg/states/california.htm>; August 2016.

²⁴ See each IOU report at <https://liob.cpuc.ca.gov/monthly-annual-reports/>.

program budget of over \$1.4 billion serving over 4.8 million customers.²⁵ The IOUs continue to engage in outreach to increase penetration rates of CARE today.²⁶

- *FERA Program.* The FERA program was established by a CPUC decision in 2004 as the Lower Middle Income Large Household program for families of three or more persons.²⁷ FERA is funded by “public purpose program surcharge²⁸” that appears on utility bills, like CARE. FERA offers an 18% discount on electric bills if household income slightly exceeds CARE allowances (up to 250% of federal poverty). FERA is an effort to help families who may have incomes that are just above the income eligibility for CARE, but who likely still experience hardships paying their utility bills. According to the CPUC, the IOUs did not meet the 50% (Range from 11.7% to 28%)²⁹ enrollment goal by 2023 and are exploring ways to increase program enrollment.

CARE and FERA together cost approximately \$6 to \$12 for non-qualified customers. However, the costs of a water assistance program to non-qualified customers is difficult to quantify and compare. Unlike electrical and/or gas IOUs which can serve millions of customers and take advantage of economies of scale, California’s water utilities serve much smaller bases of retail customers. The majority of drinking water systems serve fewer than 10,000 customers; since this bill would require all water utilities with more than 3,300 customers to establish a water assistance program that means the majority of water systems that would be required by this bill to establish a program would have between 3,300 and 10,000 customers. For comparison, Southern California Edison serves nearly 3.2 million residential customers. The differences in scale could become even larger if there are water customers who choose to opt out of the water assistance program – as this bill puts forward a program that is funded by voluntary contributions. Electric and gas customers do not, by contrast, have the option to opt out of the CARE and FERA surcharge. Importantly, while the CARE and FERA programs provide a helpful bill discount to qualified customers, they do not guarantee an affordable bill.

- 4) *Balancing Tradeoffs is Challenging.* While water may not be as costly as other essential needs such as housing and healthcare, many households that are already struggling to afford day-to-day basics have difficulty paying their bills. This is prevalent among low-income households. On the other hand, climate related weather events, aging infrastructure, under-investment in drinking water systems, declining financial support from the state and federal government, and stricter water quality regulations, among other constraints contribute to the increasing price of water. As such, most water systems face a

²⁵ Or roughly ~\$292/customer per year, without accounting for other indirect costs such as CARE participant exemptions from some legislatively mandated program fees. See each IOU report at <https://liob.cpuc.ca.gov/monthly-annual-reports/>.

²⁶ Advice 7107-E, PG&E; “Information-only Advice Letter on Pacific Gas and Electric Company’s Progress to Increase Family Electric Rate Assistance Program Enrollment Pursuant to Decision (D.)18-08-013”; December 2023.

²⁷ CPUC; Pg 54; “AB 67 Report” April 2024

²⁸ These charges are assessed on the amount of electricity used

²⁹ Based on the reports submitted to the CPUC in April 2023, estimated enrollment participation rates for the FERA program ranged from 11.7 to 28% among the three IOUs.

big dilemma: they need to balance tradeoffs between providing affordable water while simultaneously attempting to control its increasing cost.

- 5) *Lack of Funding in Perpetuity.* As mentioned above, relying on voluntary contributions as a funding mechanism for a water assistance program, as proposed by this measure, introduces uncertainties in the program's budget. With individuals being hit hard by the increasing prices of essential goods including utilities, food, and fuel, customers who do not qualify as low-income may still feel some heartburn at the thought of additional costs, however small they might be.

The committee is also unclear on how much the ratio of qualified customers to non-qualified customers could vary from one utility to another. In service areas that might serve a greater density of qualified customers than others, non-qualified customers could face a higher cost burden. With the option to opt-out and a cap on the surcharge – the bill requires the surcharge to be no more than 5% of a customer's water and wastewater bill – there is a likely case that the voluntary donations are insufficient in supporting the low-income assistance program.

- 6) *Outreach.* CARE has reached high penetration rates due to urging by the CPUC for outreach efforts. Unlike CARE, FERA enrollment participation rates are low across all three large IOUs. Comparatively, the water utilities may equally struggle to reach eligible low-income households as required by this measure unless more targeted outreach is also simultaneously conducted.
- 7) *California's Promise.* California's Human Right to Water Act declared access to safe, clean, affordable, and accessible water adequate for human consumption, cooking and sanitary purposes as a basic human right. The affordability of water, and therefore, water utility rates, has a strong impact on that right. California has passed numerous succeeding laws³⁰ to move closer and closer to realizing this policy, but much work remains ahead. While the magnitude of the challenges that continue to lay ahead is clear – approximately 34% of Californians live in households with incomes under 200% of the federal poverty line³¹ and 1 in 10 California households are in arrears on their water payments³² – the solutions remain more elusive. Certainly, establishing a water assistance program to increase the affordability of water for low-income households, as proposed by this legislation may help to make strides in meeting the state policy, but a successful program will hinge on thoughtful planning and implementation, with diverse stakeholder input and support, or it could risk spending state and ratepayer dollars in a manner that is unstable and untenable. It also remains a question as to how such a program can be implemented by water POUs that are precluded from collecting funds for rate relief by Propositions 218 and 26.

³⁰ These laws include: SB 88 (2015), SB 552 (2016), SB 1263 (2016), AB 401 (2015), AB 1668, SB 606 (2018), AB 2501 (2018), SB 998 (2018), and SB 200 (2019).

³¹ State Water Board, Pg. 13; "Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program." February, 2020

³² LA Times; "Millions of Californians are struggling to pay for water"; October 2022; <https://www.latimes.com/california/story/2022-10-24/millions-of-californians-are-struggling-to-pay-for-water>

This legislation is unquestionably a meritorious effort in uplifting low-income communities and should be revisited in the near future. More immediately, however, it may be valuable for the author and sponsors to continue having meaningful conversations with diverse stakeholders to assess the best practices and mechanisms that are viable, equitable, and ultimately create a successful program before instituting a statewide mandated program as this bill stipulates.

- 8) *Myriad of Concerns Persist.* While this bill is supported by over 40+ organizations, significant opposition from numerous entities such as CMUA, ACWA, Water Agencies and many others remain. Some of the pending concerns include:
- *Voluntary Contributions/Opt-Out Approach:* This bill would require retail water agencies to provide each ratepayer the option and method of opting out of providing the "voluntary contribution" to fund the low-income water rate assistance program, at least three months prior to beginning collection of the "voluntary contribution," and at least annually thereafter. According to ACWA, the proposed "opt-out" approach would lack transparency and would create damaging distrust. The bill should instead propose an "opt-in" approach.... The bill would require notice of the voluntary contribution, but many ratepayers would not see the notice (e.g., customers on automatic payments) and would be charged for the "voluntary" contribution on their water bill. They could later opt out and seek refunds, as specified, but this would create funding instability and a negative public perception of the program. It is also important to note that many ratepayers will be at income levels not far above the eligibility cut-off for this program....This concern is also shared by CMUA and numerous other opposing groups. CMUA also contends, "We urge the author to amend the bill so water systems have the flexibility to decide whether using an opt-in or opt-out approach is most appropriate for their customers.
 - *Administrative Costs:* This bill restricts a water system's ability to offset administrative expenses by establishing a 10% limit on voluntary contributions for administrative costs. According to CMUA, "Locally administered program is expected to have significant costs that for many agencies will exceed the 10% cap.. {We} urge the author to engage with water systems on a more appropriate cap or other way to keep costs at a reasonable level so ratepayers not participating in the program aren't subsidizing other customers, which could create constitutional issues for water systems." Many other opposing groups share similar concerns.
 - *60% Ratepayer Participation:* This bill requires a qualified system, when setting the recommended voluntary contribution, to assume that 60% of ratepayers other than eligible ratepayers will provide the volunteer contribution. Creating and funding a low-income water rate assistance program solely through voluntary contributions from ratepayers may not be an easy task. According to San Gabriel Valley Water Association, "the current version of the bill assumes 60% ratepayer participation, which may not align with the reality of many communities. The bill also lacks guidance on how a water system serving a large economically disadvantaged population can afford a program when more residents may need

assistance than can contribute to funding it.” This issue has equally been raised by other opposing groups.

- *Potential Fraud:* The bill defines “available information” as Self-certification of eligibility, under penalty of perjury, by the residential ratepayer. Opposing groups contend that “Self-Certification should not be an allowed method of establishing eligibility... This option is too susceptible to fraud...”
- *Short Timelines for Deliberations:* Ten water agencies from San Bernardino and Riverside counties write in an "oppose unless amended" position, by stating "It is very concerning that this bill is a second house gut and amend. SB 1255 is a significant new policy that deserves ample discussion from both houses and stakeholders...”
- *Too Many to List:* Given the limited time this committee has had to vet this proposal, the above-bulleted list does not reflect a bevy of other concerns and questions brought forth to the committee.

9) *Prior Legislation*

SB 222 (Dodd, 2021) would have created a Low-Income Water Rate Assistance program for all California water agencies. This bill was vetoed by the Governor.

SB 200 (Monning) created the SAFER program to support rollout of safe and affordable drinking water for disadvantaged communities. Chapter 120, Statutes of 2019

AB 217 (E. Garcia, 2019) would have created the Safe Drinking Water for All Act (Act), which would have established the Safe and Affordable Drinking Water Fund (Fund) to provide a source of funding for safe drinking water for all Californians, and long-term sustainability of drinking water systems. Would have imposed several fees on agricultural activities and a charge on retail water systems that together would provide the source of revenue to the Fund. This bill was subsequently amended into another subject.

SB 669 (Caballero, 2019) would have established the Safe Drinking Water Fund to assist community water systems in disadvantaged communities that are chronically noncompliant. Would have created Safe Drinking Water Trust Fund to receive funding from the state and provide the fund source to the Safe Drinking Water Fund. This bill was held in the Senate Appropriations Committee.

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SB 998 (Dodd) required 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. Status: Chapter 891, Statutes of 2018

SB 623 (Monning, 2017) would have created the Safe and Affordable Drinking Water Fund, administered by the State Water Board, and would have imposed water, fertilizer and dairy fees to fund safe drinking water programs. This bill was held in the Assembly Rules Committee.

AB 401 (Dodd) required 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. Status: Chapter 662, Statutes of 2015

AB 685 (Eng) declared the right to clean, safe, and affordable water for drinking and sanitation. Chapter 524, Statutes of 2012

Support

350 Humboldt
California Coastal Protection Network
California Coastkeeper Alliance
California Environmental Justice Alliance (CEJA) Action
California Environmental Voters
California Immigrant Policy Center
California Water Association
California Water Research
Central California Environmental Justice Network
Clean Water Action
Cleaneearth4kids.org
Climate Resolve
Community Water Center
Courage California
Defenders of Wildlife
Environmental Defense Fund
Environmental Working Group
Families Advocating for Chemical and Toxics Safety
Friends Committee on Legislation of California
Friends of The River
Grace - End Child Poverty in California
Heal the Bay
LA Waterkeeper
Leadership Counsel for Justice & Accountability
Los Angeles Alliance for A New Economy
Lutheran Office of Public Policy - California
Mono Lake Committee
National Parks Conservation Association
National Resources Defense Council
Natural Resources Defense Council
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League

San Francisco Baykeeper
San Francisco Public Utilities Commission
Sierra Club California
The Nature Conservancy
Ufcw - Western States Council
Union of Concerned Scientists
Voices for Progress
Western Center on Law & Poverty

Support If Amended

Sweetwater Authority

Oppose

Helix Water District
Valley Center Municipal Water District
Vista Irrigation District

Oppose Unless Amended

Association of California Water Agencies (ACWA)
California Municipal Utilities Association
City of Chino
City of Chino Hills
City of Montclair
Cucamonga Valley Water District
Eastern Municipal Water District
Elsinore Valley Municipal Water District
Inland Empire Utilities Agency
Irvine Ranch Water District
Monte Vista Water District
Ontario Municipal Utilities Company
Rancho California Water District
Regional Water Authority
San Gabriel Valley Water Association
Western Municipal Water District

Other

East Bay Municipal Utility District

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