

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

SB 222 (Dodd) – As Amended June 17, 2021

SENATE VOTE: 31-7

SUBJECT: Water Rate Assistance Program

SUMMARY: Establishes the Water Rate Assistance Program (WRAP) to provide affordability assistance for drinking and wastewater services to low-income ratepayers and ratepayers experiencing economic hardship. Specifically, **this bill:**

- 1) Allows the Water Rate Assistance Fund (hereby referred to as the Fund) to be appropriated for direct water bill assistance; credits to renters or households that pay other fees related to water or wastewater services; and water crisis assistance. Specifies that the Legislation may appropriate no more than 10% of annual deposits into the Fund to cover administration costs.
- 2) Requires the Department of Community Services and Development (CSD) to administer the Fund, including the following:
 - a. Manage the Fund separately from all other revenue;
 - b. Develop and implement a process for disbursing funds to public water systems or third-party providers for payments to community water systems and prevent fraud, waste, and abuse;
 - c. Manage the Fund in conjunction with the Controller, Treasurer, California State Auditor's Office, and the Department of Finance; and
 - d. Expend, upon appropriation by the Legislature, money in the Fund for grants, contracts, direct monetary assistance, or services to assist eligible recipients.
- 3) Requires the CSD to consult with the State Water Resources Control Board (hereby referred to as the Board) to develop guidelines and fund oversight procedures. In doing so, requires the CSD to consult with an advisory group comprised of representatives of:
 - a. Public water systems;
 - b. Technical assistance providers, including organizations that support the federal Low-Income Home Energy Assistance Program;
 - c. Local agencies, including those that manage low-income multifamily housing;
 - d. Nongovernmental organizations serving disadvantaged communities; and
 - e. Members of the public, including, but not limited to, low-income residents, low-income residents in multifamily housing, and those served by tribal water systems.

- 4) Requires the CSD, in consultation with the Board and advisory group, and after a public hearing, to adopt an annual fund expenditure plan that includes:
 - a. A description of how proposed remedies will be identified, evaluated, and prioritized in the plan;
 - b. A report of the expenditures from the prior fiscal year, planned expenditures for the current fiscal year, and an estimate of funding available for the next fiscal year;
 - c. Funding needs of disadvantaged communities and low-income households whose water and wastewater bill charges pose affordability challenges;
 - d. An analysis that evaluates how expenditures from prior fiscal years improved affordability;
 - e. An estimate of the number of eligible households for assistance and those that do not receive a direct bill for water; and
 - f. A section that discusses water and wastewater affordability challenges and proposed solutions for reducing water debt for Californians served by public water systems, sewer systems, state small water systems, local small water systems, and domestic wells.
- 5) Requires the CSD to consider a customer's household enrollment in various state and federal assistance programs or the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) programs.
- 6) Requires the California Public Utilities Commission (CPUC) to establish a mechanism for the electrical and gas investor-owned utilities (IOUs) that it oversees to regularly share data with the CSD regarding the utility customers enrolled in, or eligible to be enrolled in, the CARE and FERA programs.
- 7) Authorizes the CSD to enter into agreements with local publicly owned utilities, including municipal utility districts and irrigation districts, for the purpose of sharing data regarding utility customers enrolled in, or eligible to be enrolled in, affordability programs benefiting low-income customers for the sole purpose of assisting with the administration of the WRAP.
- 8) Specifies that data shared in this Act is subject to the confidentiality protections of Section 6254.16 of the Government Code and that the CSD shall ensure confidentiality of customer contact information is protected under reasonable security procedures.
- 9) Absolves a local publicly owned utility from liability should there be improper use or inaccuracy of their customers' contact information shared with the CSD.
- 10) Upon appropriation by the Legislature, authorizes the CSD, in consultation with the Board, to, expend those moneys from the Fund to provide water crisis assistance to low-income households, if money is deposited into the Fund before the adoption of an annual

fund expenditure plan. Authorizes the CSD to adopt emergency regulations to provide details on how it will provide water crisis assistance to low-income households.

11) Provides WRAP implementation is contingent on an appropriation in the annual Budget Act or another statute.

12) Requires the CSD, in administering the program, to do all of the following:

- a. Coordinate with the CPUC regarding existing rate assistance programs for IOUs;
- b. For a public water system that is not regulated by the CPUC, to consult with the Board on options to provide oversight of the public water system's implementation of the water rate assistance program;
- c. In consultation with the Board and the CPUC, develop and publish performance metrics for WRAP;
- d. Coordinate with other state agencies and resolve disputes as necessary; and,
- e. Identify alternative entities to distribute and track benefits if a public water system is unwilling to do so or if the CSD has determined a public water system is incapable of administering WRAP.

EXISTING LAW:

- 1) 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)
- 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. (Health and Safety Code § 116275)
- 3) Defines "state small water system" as a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. (Health and Safety Code § 116275)
- 4) 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. (Health and Safety Code § 116275(i))
- 5) 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 § 241)

- 6) Requires the CPUC to continue the CARE program to low-income electric and gas customers with annual household incomes less than 200% of the federal poverty guideline levels. (Public Utilities Code § 739.1)
- 7) Requires the CPUC to continue the FERA program to residential customers of the state's three largest 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. (Public Utilities Code § 739.12)
- 8) Establishes the Information Practices Act and declares that the right to privacy is a personal and fundamental right. (Civil Code §§ 1798, 1798.1)
- 9) Requires each agency to establish appropriate and reasonable administrative, technical, and physical safeguards to ensure security and confidentiality of records. (Civil Code § 1798.21)
- 10) Prohibits an agency from disclosing personally identifiable information about an individual except under specified conditions, including with written voluntary consent by the individual and to another agency if the transfer is necessary for the transferee agency to perform its constitutional or statutory duties. (Civil Code § 1798.24)
- 11) Requires an agency to disclose any breach in the security of data to any resident of California whose unencrypted or encrypted personal information was, or is reasonably believed to have been, acquired by unauthorized persons. (Civil Code § 1798.29)
- 12) Authorizes disclosure of customer name, utility usage data, and home address of utility customers of local agencies to specified parties, including an officer or employee of another governmental agency when necessary for performing official duties. (Government Code § 6254.16)

FISCAL EFFECT: According to the Senate Appropriations Committee, implementation of this bill incurs significant costs, upwards of hundreds of millions of dollars. However, amendments in the Senate Appropriations Committee were adopted such that implementation of the bill is contingent on appropriation of funds by the Legislature.

BACKGROUND:

Regulation of California's drinking water systems – The CPUC regulates IOUs to ensure that ratepayers have access to safe and reliable water utility infrastructure and services. Publicly owned water and wastewater utilities are governed by local boards, not the CPUC. Whereas, the State Water Board has regulatory authority over the quality of the state's water resources and drinking water. As such, the state's drinking water systems are not governed by any one body. The following describe the various groups with regulatory oversight of California's drinking water systems:

- *CPUC:* The CPUC Water Division regulates over 100 water and sewer IOUs providing water service to about 16 percent of California's residents. Approximately 95 percent of that total is 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 rates of the water utilities under its jurisdiction, as well as, rules regarding discontinuation of service due to nonpayment.

- *Publicly owned water utilities:* The majority of California’s water customers are served by cities, water districts, and mutual water companies, which are governed by local boards. These utilities are not regulated by the CPUC. As established by Proposition 218 (1996), the majority of these utilities are subject to state constitutional and statutory requirements that ensure water rates are directly tied to the cost-of-service. As a result, these utilities are not able to increase rates in order to fund low-income rate relief programs for customers.
- *State Water Resources Control Board:* 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.¹

Public water systems – As defined in existing law above, a public water system 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. These systems include large city or regional water suppliers, small housing communities, businesses, schools, and restaurants. A public water system is not necessarily a public entity, and most are privately owned.² Approximately 92% of public water systems serve less than 1,000 connections.³ The State Water Board has primary responsibility for regulating all public water systems, 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.

Financial challenges facing water systems and household water affordability – In a January 2021 survey⁴, the State Water Board found that the COVID-19 pandemic had caused substantial water bill debt for households statewide. The survey indicated that 1.6 million residential water customers, or 12% of all households, have been unable to pay their bills, averaging about \$500 of water debt per household. Many low-income Californians faced higher levels of water bill debt, with over 155,000 households owing over \$1,000. The survey estimated total household debt statewide at \$1 billion. Since some water systems also collect payment for wastewater, stormwater and energy on their water bills, the State Water Board estimated \$600 million of that debt is specifically for drinking water.

The State Water Board also surveyed the financial impacts of COVID-19 on public water systems, and found that prolonged revenue losses during the pandemic exacerbated existing

¹ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html

² *What is a Public Water System?* California Water Boards

³ https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/waterpartnership.html

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https://www.waterboards.ca.gov/press_room/press_releases/2021/covid_water_survey_press_release19Jan2021_v11am.pdf

financial and operational challenges faced by many small- and medium-sized water systems. Small public water systems are often less resilient to financial and operational challenges such as natural disasters, adjustments to regulatory changes, and may struggle to fund infrastructure maintenance and replacement due to poor economies of scale and lack of staff.

It's likely that the pandemic similarly worsened already existing water affordability challenges for households. According to the State Water Board, while drinking water is a basic human need, California households "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...adjusting for inflation, the average Californian household paid around 45% more per month for drinking water service in 2015 than in 2007."⁵

Recommendations for a statewide 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 (W-LIRA).

The report identifies potential program recipients, different mechanisms for delivering assistance to low-income households, and possible funding sources to implement W-LIRA. For qualifying customers, the program recommended by the State Water Board will support bill discounts, crisis assistance, and a tax credit for renters who pay for their water indirectly through rent. These bill discounts are modeled on the low-income assistance program for customers of CPUC-regulated energy utilities, and the crisis assistance is modeled on the federal energy crisis program known as Low Income Heating and Assistance Program (LIHEAP), administered by CSD in California.

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 CARE. However, each program varies in terms of the amount of the assistance provided to low-income customers and the collection of the surcharge from non-participating ratepayers to cover the cost of the program. All nine Class A water utilities, one Class B in a few districts, and one Class C water utility offer discounts on their monthly bills for qualifying low-income customers. Water utilities will be slowly transitioning the unique names of their low-income assistance programs to the uniform name Customer Assistance Program (CAP) pursuant to CPUC Decision D.20-08-047. Discounts and surcharges supporting the programs are reviewed in each utility's general rate cases.

CSD energy assistance programs – 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 LIHEAP, a federally funded

⁵ California Water Boards. *Recommendations for Implementation of a Statewide Low-Income Water Rate Assistance Program*, p. 7. February 2020.

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.

Data exchange for low-income water and energy assistance programs – Data on low-income customers have been shared for years between IOUs, CSD, and municipal water districts in order to enhance outreach and enrollment for LIHEAP or low-income water rate assistance programs at the CPUC and CSD. In the case of LIHEAP, local service providers share with the CSD information about households needing energy utilities assistance. CSD then makes direct payments to the IOUs for those accounts belonging to the households identified by the local service providers. The CSD reports that confidentiality and security is ensured through non-disclosure agreements reached between CSD and the IOUs, and through the CPUC’s own privacy and consumer protections regulations applied to the IOUs they oversee.

For the low-income water rate assistance programs overseen by the CPUC, electric and gas IOUs have shared data regarding their CARE and FERA customers to water IOUs in efforts to maximize outreach for their low-income water rate assistance programs. The CPUC adopted mechanisms⁶ to ensure confidentiality and data security when sharing customer personal information between the utilities. These procedures also serve as models for data sharing agreements between some electric and gas IOUs and municipal water districts for similar outreach purposes. The data sharing provision in this bill uses a similar approach, where eligible customers for WRAP can be identified from IOU records on CARE and FERA customer eligibility.

COMMENTS:

- 1) *Author’s Statement.* “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.”

⁶ CPUC D. 11-05-020

- 2) *Considerations for safe implementation:* This bill proposes a program to provide water affordability assistance for low-income ratepayers for both drinking water and wastewater. Both proponents and opponents of this bill underscore the need and importance of creating a state-wide water rate assistance program. Rather, much of the concerns around this bill focus on ensuring that the program is implemented efficiently and judiciously so that it helps those most in need. Recent amendments by the author have addressed the majority of concerns by opposition, streamlining administrative processes for greater cost-efficiency in implementing the program.

Remaining concerns center on customer privacy and protections from the data sharing provisions of this bill. As noted above, customer data is already shared between the IOUs, CSD, and municipal utilities to facilitate customer enrollment in low-income assistance programs across those entities. However, these exchanges have strict regulations and/or non-disclosure agreements providing explicit measures to protect customer confidentiality and data security. The framework of data sharing in this bill seems to align with current practice, but lacks the mechanisms required for consumer privacy and data protection. This bill directs the CSD to take “reasonable security procedures” to ensure confidentiality of customer contact information, but fails to address data security or confidentiality measures as they apply to the utilities. This bill also includes a provision absolving local publicly owned utilities of liability should there be an improper use or release of their customer data, which substantially weakens confidentiality and data security protections for their low-income customers.

The Information Practices Act of 1977 (IPA) (California Civil Code § 1798 et seq.) applies to state government and protects resident confidentiality and data security by providing limits on the collection, management, and dissemination of personal information by state agencies. Stating that the data shared in this bill is subject to IPA will ensure that all entities involved in data exchange take specific actions to protect customer data. *As such, the committee may wish to consider amendments that subject the data shared in this program to the same protections afforded by the Information Practices Act. Additionally, the committee may wish to consider striking subdivision (d) in 116391.2 absolving publicly owned utilities of liability in the case of improper data handling.*

- 3) *Related/Prior Legislation.*

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Avocado Green Brands
Burton Snowboard
California Apartment Association
California Catholic Conference
California Water Association
California Water Service
Dignity Health
Dolores Huerta Foundation
Drug Policy Alliance
Ecos
Gap, INC.
Impossible Foods
League of Women Voters of California
National Association of Social Workers, California Chapter
Numi Organic Tea
Sierra Nevada Brewing Company

Oppose Unless Amended

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
Desert Water Agency
East Valley Water District
El Dorado Irrigation 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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