

community consistently fails to provide an adequate supply of safe drinking water, as provided. (Health and Safety Code §116682(a))

This bill:

- 1) Authorizes a water or sewer system corporation to file an application and obtain approval from the CPUC through an order authorizing the water or sewer system corporation to consolidate with a public water system or state small water system.
- 2) Requires the CPUC to approve or deny the application within eight months, except as provided.
- 3) Authorizes a water or sewer system corporation, for a consolidation valued at \$5,000,000 or less, to instead file an advice letter and obtain approval from the CPUC through a resolution authorizing the water or sewer system corporation to consolidate with a public water system or state small water system.
- 4) Authorizes the executive director of the CPUC or the director of the division of the CPUC having regulatory jurisdiction over the water or sewer system corporation to approve an uncontested advice letter, and would require the CPUC to approve or deny an advice letter within 120 days, except as provided.
- 5) Requires a water or sewer system corporation to submit a fee of \$10,000 when filing an application for authority to complete a consolidation, as specified. Requires that all moneys collected be deposited into the Consolidation for Safe Drinking Water Fund.
- 6) Establishes the Consolidation for Safe Drinking Water Fund and requires that moneys in the fund are available, upon appropriation by the Legislature, to the CPUC to be used only for the purpose of processing applications, as specified.

Background

Water utilities. Water utilities in California may be organized as one of six general types: cities, county districts, special districts, public utilities, mutual water companies or mobile home parks. Cities, special districts and public utilities dominate in terms of the population served, but there are large numbers of mutual water companies and mobile home parks.

CPUC regulated water utilities. The CPUC is responsible for ensuring that California's investor-owned utility (IOU) water utilities deliver clean, safe, and

reliable water to their customers at reasonable rates. While the CPUC Water Division regulates over a 100 IOU water and sewer utilities under the CPUC's jurisdiction 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. Annual water and wastewater revenues under the CPUC's regulation total \$1.4 billion.

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. These entities provide service to about 85 percent of California's residents.

State Water Resources Control Board (SWRCB). SWRCB has general authority with regard to water quality and drinking water functions of the state government. Under the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code), SWRCB administers provisions relating to public water systems and regulates drinking water to protect public health, including, among other things, adopting primary drinking water standards and maximum contaminant levels for contaminants in drinking water and permitting public water systems.

CPUC v. SWRCB. Under existing law, the CPUC generally has authority over the regulation of services and utilities and assures that California residents have access to safe and reliable utility infrastructure and services. In comparison, the SWRCB has regulatory authority over the quality of the state's water resources and drinking water. The SWRCB is involved with the quality of the water, especially drinking water, whereas the CPUC is involved with the supply and access to that water. As discussed above, there are IOU water utilities that are regulated by the CPUC and publicly-owned utilities that are not regulated by the CPUC but by their own governing boards.

Consolidations. Per statute, the CPUC must approve all water system consolidations that involve IOU water utilities. This review is consistent with the CPUC's role as a rate regulator of IOU water utilities and ensures rates and costs are just and reasonable. The CPUC utilizes two approaches to review water consolidations involving IOU water utilities applications and advice letters. Applications are submitted by the CPUC-regulated utility. These applications undergo a formal CPUC proceeding involving an administrative law judge, other parties, and can take about 18 months. Advice letters, on the other hand, are documents prepared by a utility to request action by the CPUC, including: approval, authorization, or other relief. Statute has largely deferred to the CPUC to adopt rules and procedures for addressing advice letters. Advice letters are

intended to address issues that are not expected to be controversial or raise important policy questions. As such, advice letters are procedurally less formal than other proceedings at the CPUC that require more judicial-type elements of an evidentiary hearing. Advice letters are classified into three tiers, ranging from Tier 1 to Tier 3. Tier 1 advice letters generally become effective upon filing of the letter. However, Tier 3 advice letters require commissioners to hear the item and take a vote of a resolution of the item at a publicly noticed meeting. In the case of water consolidations, these are often Tier 3 advice letters that can be processed and approved by the CPUC in less time than a formal proceeding of an application – sometimes in fewer than four months.

Need for consolidation. According to the CPUC, the majority of troubled water systems have fewer than 500 service connections. These water systems are generally, but not always, publicly-owned systems or mutual water companies, which often lack the rate base to fund the necessary infrastructure improvements to provide clean drinking water. In recent years, there has been a push by the state to encourage consolidation of these smaller water systems as an approach to provide a larger rate base to fund the necessary improvements. The need to consolidate can provide benefits to the residents served by the failing water system, but also likely comes at increased costs to the systems (and corresponding ratepayers) subsuming the failing system. As such, it seems appropriate to ensure there is adequate review of implications of the costs associated with the consolidation. In the case of water IOUs, the costs associated with consolidation are largely borne by the ratepayers of the utility, not the shareholders/owners. For this reason, the CPUC review can be beneficial to ensure all ratepayers are protected against unreasonable costs.

Consolidation of small water systems with health and safety violations. Current statute provides a process to help expedite the consolidation of small water utilities that have failing water systems, referred to as “Inadequately Maintained and Operated Small Water Systems (IMOSWS).” Per CPUC decision to implement the Public Water System Investment and Consolidation Act of 1997, an advice letter process can be used to transfer assets of IMOSWS. The IMOSWS is defined as any water system serving fewer than 2,000 customers that is subject to compliance order or citation related to drinking water standards. Per the CPUC, this process has been utilized as recently as this year with the consolidation of the Rolling Hills Water System with the Bakman Water Company in Madera.

Comments

AB 1250. This bill would establish timelines for the CPUC to act and authorize the broader use of the advice letter process in relation to water system consolidations,

specifically eight months for an application, as specified, and four months for an advice letter, as specified.

AB 1250 seeks to address delays in the processing of consolidations of water systems involving CPUC-regulated water utilities. The author and sponsor notes the desire to speed up the process in order to provide residents with the clean and safe drinking water they deserve. In this regard, it seems reasonable for the state to ensure that residents who are served by failing water systems receive resolution to a consolidation request within a reasonable timeframe. However, as noted above, these cases can at times involve increased costs to ratepayers, which warrant a thorough review. Additionally, as noted by the Public Advocates Office (formerly Office of Ratepayer Advocates), consolidations can be complex matters involving legal questions and require more time to inspect systems and ensure their valuation is accurate. *In order to balance the need to help expedite review of consolidations for water systems that are failing and ensure that ratepayer costs are just and reasonable, the author and committee may wish to amend this bill to narrow its application to those systems that have been found to be failing by an order of the SWRCB, expand the timeframes proposed in this bill by when the CPUC must act (12 months for an application and 180 days for an advice letter), and limit the advice letters to only those that are uncontested.*

Prior/Related Legislation

SB 1096 (Caballero, 2020) contained similar provisions as this bill. The bill was never heard due to the COVID-19 pandemic Legislative delays.

AB 1751 (Chui, 2019) would have establish timeframes by when the CPUC is required to take action on a request for water system consolidation. The bill was held in the Senate Committee on Appropriations.

SB 1280 (Monning, 2020) creates a new definition of an “at-risk” water system and creates a process for residents in communities served by “at-risk” water systems to petition the State Water Board for consolidation. The bill was never heard due to the COVID-19 pandemic Legislative delays.

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the SWRCB, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged voluntary

consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate.

SB 552 (Wolk, Chapter 773, Statutes of 2016) expanded the SWRCB's authority by enabling it to, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, contract with a competent administrator to provide managerial and technical expertise to that system, if sufficient funding is available. SB 552 also authorizes the SWRCB to order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the SWRCB.

AB 2339 (Gipson, Chapter 866, Statutes of 2018) authorized the City of El Monte, the City of Montebello, and the City of Willows to sell its public water utility through an alternative simplified procedure for the purpose of consolidating with another public water system.

AB 2501 (Chu, Chapter 871, Statutes of 2018) provided additional authority to the SWRCB to both order consolidations and appoint administrators and include domestic wells. Specific to the CPUC, the bill requires the CPUC upon issuance of a consolidation order, to open a proceeding to determine cost allocation, ratemaking, and CPUC public participation requirements for the consolidation process.

AB 508 (Chu, 2019) further implement the provisions from AB 2501 regarding domestic wells and fees imposed on new and existing customers for increase groundwater use following a consolidation or extension of service. The bill is pending consideration before the fill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

California Water Association (Sponsor)
Association of California Water Agencies
Public Advocates Office, if amended

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

AB 1250 dictates the timelines for small water system consolidations, when approval by the California Public Utilities Commission (CPUC) is needed. Currently, many smaller water systems in our state cannot afford, or are unable to raise rates sufficiently, to make the improvements necessary to provide clean drinking water to residents. These systems may decide to sell their system, customer owners of a mutual water company vote to sell their system, or after residents in a municipality vote to have their system consolidated into another water utility. Unfortunately, some consolidation applicants have experienced CPUC approval backlogs, waiting as long as 24 months before they can provide clean water to a community. This bill will set deadlines for the completion of small water system consolidations, requiring CPUC consolidation approval or denial within 8 months for applications and 4 months for advice letters.

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