
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator BenHueso , Chair
2021 - 2022 Regular

Bill No: SB 222 **Hearing Date:** 4/12/2021
Author: Dodd
Version: 4/5/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Water Rate Assistance Program

DIGEST: This bill would establish the Water Rate Assistance Program, with an unknown source of funding, administered by the Department of Community Services and Development (CSD), in consultation with the State Water Resources Control Board (SWRCB), to help provide water affordability assistance, for both drinking water and wastewater services, to low-income ratepayers and ratepayers experiencing economic hardship in California.

ANALYSIS:

Existing law:

- 1) Establishes the California Safe Drinking Water Act, requires the SWRCB to administer provisions relating to the regulation of drinking water to protect public health. Declares it 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. (Health and Safety Code §116270 – 116755)
- 2) Requires the SWRCB, 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, by February 1, 2018, 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. (Water Code §189.5)
- 3) Establishes the California Public Utilities Commission (CPUC) regulatory authority over privately-owned utilities, including water corporations. (California Constitution Article XII)
- 4) Establishes the CSD as a department within the California Health and Human Services Agency, and tasks CSD with implementing several types of federal

assistance to help low-income households meet their energy needs.
(Government Code §§12085-12091 and 16366.1-16367.8)

- 5) Requires the CPUC to consider programs to provide rate relief for low-income ratepayers of water corporations. (Public Utilities Code §739.8)

This bill:

- 1) Establishes the Water Rate Assistance Fund in the State Treasury to help provide water affordability assistance, for both drinking water and wastewater services, to low-income ratepayers and ratepayers experiencing economic hardship in California.
- 2) Requires the CSD to develop and administer the program.
- 3) Makes monies in the fund available upon appropriation by the Legislature to CSD to provide, in consultation with the SWRCB, as part of the Water Rate Assistance Program established by this bill, direct water bill assistance, water bill credits, water crisis assistance, affordability assistance, and short-term technical assistance to small public water systems.
- 4) Authorizes CSD, in consultation with the SWRCB, upon appropriation by the Legislature, to expend moneys to identify and contract with a third-party fund administrator.
- 5) Imposes requirements on CSD, in consultation the SWRCB, in connection with the program, including, among others, developing guidelines and fund oversight procedures for implementation of the program by January 1, 2023, consulting with an advisory group, and adopting an annual fund expenditure plan.
- 6) Requires, by July 1, 2022, the CPUC to establish a mechanism for electrical corporations and gas corporations to, and would authorize CSD to require local publicly owned electric utilities and local publicly owned gas utilities to, regularly share specified customer data with CSD, subject to certain confidentiality protections. To the extent this provision would impose new requirements on local publicly owned electric utilities and local publicly owned gas utilities, this bill would impose a state-mandated local program.

Background

Water utilities. California residents are served by various types of water utilities or water systems, including publicly owned utilities (POU), investor-owned utilities (IOU), small community water systems.

- *Publicly owned water utilities.* The majority of California's residential water customers are served by cities, special districts, and mutual water companies. These utilities are not regulated by the CPUC, but are instead governed by the city council, or other local governing body, which set their own water rates. As established by Proposition 218 (1996), the majority of these utilities are subject to state constitutional and statutory requirements that ensure water rates are restricted to cost-of-service. As a result, these entities have limitations, not imposed on the CPUC-regulated utilities, that may hinder their ability to increase rates to fund programs or provide rate relief to customers.
- *CPUC-regulated water utilities.* The CPUC has jurisdiction over water companies that provide water service to about 16 percent of California's residents with annual water and wastewater revenues totaling about \$1.4 billion. Approximately 95 percent of those residents are served by nine large water utilities, each serving more than 10,000 service connections. Combined, the nine largest utilities serve approximately 1.175 million customers. However, 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.

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 from privately-owned utilities, including water companies. 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.

SB 401 (Dodd, Chapter 662, Statutes of 2015) required the SWRCB, in collaboration with the State Board of Equalization and stakeholders, to develop a plan for the funding and implementation of a new program to provide water rate relief for low-income ratepayers by January 1, 2018 and provide a corresponding report to the Legislature by February 1, 2018. On February 25, 2020, the SWRCB

released its final recommendations to implement a statewide low-income water rate assistance program. The SWRCB recommends the creation of a statewide water rate assistance program funded through taxes on personal income, business income, and bottled water, as most water systems are not able to fund low-income assistance programs. For qualifying customers, the program recommended by the SWRCB 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. The SWRCB estimates the first-year cost for the recommended program, including administrative costs, at \$606 million.

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 California Alternate Rates for Energy (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.

Proposition 218. As noted above, non-CPUC regulated water utilities are subject to differing constraints on their ability to collect rates for rate relief from one customer to another. Specifically, as acknowledged by the SB 401 (Dodd, Chapter 662, Statutes of 2015) report:

Funding individual W-LIRA [water low-income rate assistance] programs at the system level without violating constitutional restrictions would likely be infeasible for publicly owned water systems. Systems could impose special taxes, but those measures would need to be submitted to the local electorates and approved by a two-thirds majority. Among systems with high eligibility burdens, there may be significant local resistance to approving such taxes. Alternatively, systems would almost certainly face legal challenges to recovering W-LIRA expenses from water rates and charges.

Article XIID of the California Constitution, added by Proposition 218 in 1996, 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. Most importantly for purposes of W-LIRA funding, Proposition 218 also requires that property related fees and charges not exceed the proportional cost of service attributable to the property. In addition, the service for which a fee or charge is imposed must be immediately available to the property owner, rather than for future or potential use. The systems bear the burden of proving compliance with these cost-of-service requirements. Proposition 26, adopted in 2010, places the burden on local governments for proving 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.”

These substantive restrictions on ratemaking by publicly owned water systems prevent subsidization of one customer’s water rates by another and would pose serious, if not fatal, obstacles to publicly owned water systems funding individual W-LIRA programs from water rates and charges. As a result, publicly owned water systems 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.

CSD energy assistance programs. CSD administers three low-income energy assistance programs: the federal Low-Income Home Energy Assistance Program (LIHEAP) and Weatherization Assistance Program, and the state-funded Low-Income Weatherization Program (LIWP). Each of the three weatherization programs administered by CSD provides energy efficiency services to eligible low-income households, both homeowners and renters, by installing a range of weatherization upgrades to reduce energy usage, improve resident comfort and provide monetary savings to the residents. Residents are also educated on basic energy efficiency practices and on the proper use and maintenance of the appliances and measures installed. In addition, the CSD-administered, Greenhouse Gas Reduction Fund (GGRF)-funded LIWP funds the installation of rooftop solar photovoltaic systems and solar water heaters in low-income single-family and multi-family households located within disadvantaged communities. In the case of LIHEAP, CSD provides one-time energy utility bill assistance for low-income customers in need of crisis support. CSD reports that it contracts with a network of private, nonprofit, and local government community-based organizations to

provide for the local administration of grant programs and delivery of service to eligible low-income households.

COVID-19 crisis prompts statewide moratorium on suspension of utility service due to nonpayment. On March 16, 2020, Governor Newsom issued Executive Order N-28-20 requesting the CPUC monitor measures undertaken by public and private utilities to implement customer service protections in response to COVID-19 pandemic. On March 17, 2020, the CPUC's Executive Director issued a letter to Class A & B water utilities (the largest) ordering immediate protections for water utility customers, including a moratorium on disconnections. The CPUC subsequently ratified that order through Resolution M-4842. Utilities were required to extend protections to customers affected by the COVID-19 pandemic, particularly the suspension of disconnections of delinquent accounts and to provide reasonable payment options. On April 2, 2020, Governor Newsom issued Executive Order N-42-20 affirming the CPUC's moratorium on water disconnections and additional customer protections. The CPUC has since extended the moratorium on suspension of discontinuation of service due to nonpayment through June 30, 2021, with the option to continue to extend the moratorium.

SWRCB Survey. SWRCB estimates \$1 billion in household debt across the state as of January 2021. All of the debt is from non-payment of water bills. However, some water systems collect charges for other services, such as wastewater, stormwater, and energy on the water bill. SWRCB's estimate of drinking-water specific debt is between \$600 and \$700 million. The top 10 Zip Codes with the highest levels of water debt are in Los Angeles, Santa Maria, Rancho Cordova, Colton, Bell Gardens, Norwalk, and Cypress. The water-debt crisis is most acute in Southern California, particularly in Los Angeles. Given the moratorium is currently still in place, it is unclear what portion of the debt is from customers who are financially unable to pay. However, in light of the economic impacts from the pandemic, it is reasonable to assume that the majority of the debt may be from customers financially unable to pay their debt.

Utility assistance available in other programs. Several safety-net programs provide assistance to help offset utility bills. Recent Rental Assistance enacted by the Legislature in response to COVID-19 crisis provides flexibility to apply assistance towards both rent and utilities. However, it seems reasonable to assume that given the arrears on rent and the desire to prevent evictions, most eligible renters will apply the majority (if not all) of the rental assistance towards the debt owed on their rent. However, actual numbers are not, yet, available as the program is currently being implemented across the state. Additionally, CalFresh participants, funded via the federal Supplemental Nutrition Assistance Program (SNAP) are also eligible for utility assistance allowance that can range from \$130

to over \$400, according to the program's website. This assistance can be used towards any utility service: water, energy, sewer, etc.

Federal funding to offset water utility debt and customer assistance. In December 2020, Congress passed and the President signed the COVID relief bill which provides limited one-time relief for water utilities and ratepayers. \$638 million was appropriated nationwide for emergency low-income drinking and wastewater assistance. California may likely expect to receive approximately \$60-70 million given the state's share of the national population, although no final allocation has been set, yet. In recent weeks, CSD was named the administering agency for the California funds by the Governor's Administration to the federal government. There remain active discussions at the federal level regarding additional water affordability relief, as the initial funding may not address all the need

SB 222. This bill would establish the Water Rate Assistance Program, with an unknown source of funding, administered by the CSD in consultation with the SWRCB, to help provide water affordability assistance, for both drinking water and wastewater services, to low-income ratepayers and ratepayers experiencing economic hardship in California. Specifically, the bill proposes the program to fund:

- (1) Direct water bill assistance.
- (2) Water bill credits to renters and individuals or households that pay other amounts, fees, or charges related to residential water or wastewater service.
- (3) Water crisis assistance.
- (4) Affordability assistance to low-income households served by domestic wells.
- (5) Water efficiency measures for low-income households.
- (6) Technical assistance for small public water systems.

This bill requires CSD to work with an advisory board, and in consultation with SWRCB, to adopt an annual fund expenditure plan, from an unidentified source(s) of funding, with specified requirements. This bill also requires the collection of water rate data from each public water system. This bill would require that by July 1, 2022, the CPUC would establish a mechanism for electrical and gas corporations to regularly share data with CSD regarding utility customers enrolled in rate assistance programs and authorizes CSD to enter into agreements for data sharing with local publicly-owned electric and gas utilities. Other provisions of the bill include authorization for up to 10 of unknown amount of monies towards administrative purposes and emergency regulations to implement the program.

What's the priority? Emergency assistance or ongoing assistance for customers or utilities? This bill seeks to address several issues with an unknown source of funding. In light of the COVID-19 crisis and the pending federal funding, one path would be to help structure the state efforts around the one-time water crisis funding. CSD has much experience working with local community action organizations to serve as safety net. However, the author's office has stated their priority is establishing a long-term, sustainable low-income rate assistance program. It is unclear that either CDS or SWRCB would be able to easily provide direct bill assistance, as related programs in the energy space are administered by individual utilities as part of the billing. Nonetheless, given the author's priority, it would be helpful to the bill to narrow the provisions Article 1 to have the bill better reflect the priority. *With this in mind, and given the SB 401 recommendations for structuring a low-income rate assistance program, the author and committee may wish to narrow the scope of this bill to the priority needs.*

Where's the funding? As noted by the author and sponsors, this bill does not identify a specific source of funding for the ambitious goals of this program. Nonetheless, the author and sponsors would like the opportunity to continue to craft the program in the hopes that funding source(s) may materialize. As noted in the SB 401 report, a low-income rate assistance program, itself, would require roughly \$600 million annually, plus the added features of the other activities this bill proposes to fund. The report also recommended taxes as a source of sustainable funding.

Protect customers of investor-owned water utilities. California Water Association expresses concerns that this bill provides unequal treatment to CPUC-regulated water utilities in regards to the potential to create increased costs for these customers. The language in this bill to transition the CPUC-authorized low-income rate assistance programs to the new program, should one be created, merits some tightening to prevent water (IOU) customers from paying into a fund twice. *The author and committee may wish to amend this bill to provide a stronger trigger for transitioning CPUC-regulated utilities to the new program and protect against customers being charged more than their share to support the program.*

Is water rate data necessary? This bill proposes the collection of water rate data from POU's who argue that setting water rates is the domain of their respective governing boards, akin to publicly-owned energy utilities. The Association of California Water Agencies (ACWA) expresses concerns that collection of such data is unnecessary. ACWA argues that establishing a rate assistance program can be done via formula with no need for the administrative hurdles and collecting water data. Should this bill move forward, the author may wish to consider the

purpose of the collection of this data and whether it is necessary in achieving his intended goal for rate assistance.

Prior/Related Legislation

SB 91 (Committee on Budget, Chapter 2, Statutes of 2021) this trailer bill would extend the moratorium on evictions for non-payment of rent due to COVID-19 financial hardship, subject to numerous conditions from January 31, 2021, to June 30, 2021. This trailer bill also contains an appropriation of federal funds and statutory changes necessary to implement a rental assistance program as part of the 2020 Budget Act.

AB 3088 (Chiu, Chapter 37, Statutes of 2020), a set of temporary measures designed to prevent widespread loss of housing through evictions and foreclosures resulting from the economic impacts of the COVID-19 pandemic. These provisions are set to expire on January 31, 2021.

Enacted December 27, 2020, the federal Consolidated Appropriations Act, 2021 (Public Law 116-260), included \$25 billion for rental assistance programs, allocated to the states. California is expected to receive roughly \$2.6 billion of this amount. \$1.1 billion is to be allocated directly to local jurisdictions with populations above 200,000, with the balance allocated to the state for administration.

SB 998 (Dodd, Chapter 891, Statutes of 2018) 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 cap the reconnection fees for restoring water service.

SB 401 (Dodd, Chapter 662, Statutes of 2015) required the SWRCB, in collaboration with the State Board of Equalization and stakeholders, to develop a plan for the funding and implementation of a new program to provide water rate relief for low-income ratepayers by January 1, 2018 and provide a corresponding report to the Legislature by February 1, 2018.

SB 200 (Monning, Chapter 120, Statutes of 2019) established the Safe and Affordable Drinking Water Fund (SADWF) to help water systems provide an adequate and affordable supply of safe drinking water in both the near and the long term. Beginning in fiscal year 2020-21 and until June 30, 2030, it annually transfers to the SADWF five percent of the proceeds of the GGRF up to \$130

million. It further requires the SWRCB to adopt a fund implementation plan and requires expenditures of the fund to be consistent with the plan.

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

SUPPORT:

Clean Water Action, Co-sponsor
Community Water Center, Co-sponsor
Leadership Counsel for Justice and Accountability, Co-sponsor
Alliance of Nurses for Healthy Environments
Asian Americans Advancing Justice – California
Association of People United for Water
California Catholic Conference
California Coastkeeper Alliance
California League of Conservation Voters
Campesinos Unidos Inc.
Central California Environmental Justice Network
Central Coast Energy Services
Center for Community Action and Environmental Justice
Ceres
Coachella Valley Waterkeeper
CommUnify
Community Action Marin
Community Action Partnership – Long Beach
Community Action Partnership – San Bernardino
Community Resource Project Inc.
Courage California
Defenders of Wildlife
Del Norte Senior Center Inc.
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Environmental Defense Fund
Environmental Working Group
Friends Committee on Legislation of California
Humboldt Baykeeper
Inland Empire Waterkeeper
Los Angeles Alliance for a New Economy
Los Angeles Waterkeeper
Monterey Coastkeeper
Natural Resources Defense Council

NextGen California
Orange County Waterkeeper
Physicians for Social Responsibility, Los Angeles
Planning and Conservation League
PolicyLink
Redwood Community Action Agency
Russian Riverkeeper
San Diego Coastkeeper
San Diego County Water Authority, if amended
San Francisco Public Utilities Commission
Santa Barbara Channelkeeper
Sierra Club California
Spectrum Community Services Inc.
The Nature Conservancy
Union of Concerned Scientists
Western Center on law and Poverty
Yuba River Waterkeeper

OPPOSITION, unless amended:

Association of California Water Agencies
California Municipal Utilities Association
California Special Districts Association
City of Roseville
City of Shasta Lake
Community Water Systems Alliance
Cucamonga Valley Water District
East Valley Water 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
Olivenhain Municipal Water District
Padre Dam Municipal Water District
Palmdale Water District
Panoche Water District
Rancho California Water District
Regional Water Authority
San Juan Water District
Santa Margarita Water District

Scotts Valley Water District
Tahoe City Public Utility District
Tuolumne Utilities District
Vista Irrigation District
Walnut Valley Water District

ARGUMENTS IN SUPPORT: According to the author:

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.

ARGUMENTS IN OPPOSITION: In opposition to the bill, ACWA and others state that the bill is overly broad in its focus. Additionally, ACWA takes issue with the collection of rate data from thousands of public water systems which will create administrative hurdles and costs to establishing a program. ACWA also opposes the sharing and use of energy rate assistance customer data for the purposes of this program. Lastly, ACWA and its members oppose the use of a SB 200 style expenditure plan. Instead, ACWA proposes a formulaic approach to provide low-income rate assistance.

-- END --