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

Bill No: SB 223 **Hearing Date:** 4/12/2021
Author: Dodd
Version: 4/5/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Discontinuation of residential water service

DIGEST: This bill makes numerous changes to expand provisions related to prohibiting discontinuation of residential water service due to nonpayment. These provisions include: applying these provisions to very small community water systems, as specified; expanding the conditions that must be met to discontinue water service (such as expanding the duration of delinquency); and requiring arrearage management plans with debt forgiveness for water corporations and evaluation by other water service providers.

ANALYSIS:

Existing law:

- 1) Establishes the California Public Utilities Commission (CPUC) regulatory authority over public utilities, including water corporations. (California Constitution Article XII)
- 2) Establishes the State Water Resources Control Board (SWRCB) and requires the SWRCB to administer provisions relating to the regulation of drinking water to protect public health, including, but not limited to, conducting research, studies, and demonstration programs relating to the provision of a dependable, safe supply of drinking water, enforcing the Federal Safe Drinking Water Act, adoption of enforcement regulations, and conducting studies and investigations to assess the quality of water in domestic water supplies. (Water Code §174 et seq. and Health and Safety Code §116271)
- 3) Prohibits an urban and community water system, defined as a public water system that supplies water to more than 200 service connections, from discontinuing residential water service for nonpayment until a payment by a customer has been delinquent for at least 60 days. Existing law requires an urban and community water system to have a written policy on discontinuation of residential service for nonpayment, including, among other things, specified

options for addressing the nonpayment. Existing law requires an urban and community water system to provide notice of that policy to customers, as provided. (Health and Safety Code §116908)

- 4) Prohibits an urban and community water system from discontinuing residential service for nonpayment if certain conditions are met, including that the customer or a tenant submits certification that discontinuation of residential service will be life-threatening to, or pose a serious threat to the health and safety of, a resident of the premises. (Health and Safety Code §116910)
- 5) Requires an urban and community water system to impose specified fees for reconnection of service for customers with a household income below 200 percent of the federal poverty line. (Health and Safety Code §116914)
- 6) Authorizes the Attorney General to enforce the requirements imposed on urban and community water systems in connection with discontinuing residential service for nonpayment by seeking an injunction, as specified. (Health and Safety Code §116920)
- 7) Requires an urban and community water system or very small community water system to report annually the number of discontinuations of residential service for inability to pay, as specified, on the water system's internet website, if an internet website exists, and to the SWRCB. (Health and Safety Code §116918)
- 8) Requires the CPUC to consider programs to provide rate relief for low-income ratepayers of water corporations. (Public Utilities Code §739.8)
- 9) Provides that a fee encompasses any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service. (California Constitution Article XIII D)

This bill:

- 1) Applies existing provisions related to prohibiting discontinuing residential water service for nonpayment, on and after July 1, 2022, to a very small community water system, defined as a public water system that supplies water to 200 or fewer service connections used by yearlong residents.
- 2) Requires the written policy on discontinuation of residential service for nonpayment to include an arrearage management plan, as specified, and, for those systems that provide water use audits or have the capacity to do so, to

include a water use audit offered at no additional charge to low-income households.

- 3) Requires the SWRCB to provide technical assistance to very small community water systems, as appropriate, to assist with compliance with these requirements and to establish a bridge loan program to assist very small community water systems that may suffer revenue loss or delayed collection while complying with these requirements. Additionally, requires the SWRCB to develop a template for a written policy on discontinuation of residential service for nonpayment, on or before September 1, 2022, to aid very small community water systems in complying with the requirement to have a written policy on discontinuation of residential service for nonpayment.
- 4) Revises the conditions under which urban and community water systems and very small community water systems are prohibited from discontinuing residential service for nonpayment, including:
 - a) Until a payment by a customer has been delinquent for at least 90, rather than 60, days or the total amount of the delinquency, exclusive of late charges and interest, is at least \$250.
 - b) If a residential water customer who pays a water bill that is combined with billing for other services, including but not limited to, sewer service or electricity service, paid an amount equal to or greater than the monthly charge for water service.
 - c) To a master-metered multifamily residence with at least 4 units or to a master-metered mobilehome park.
 - d) If a residential customer, or tenant of the customer, self-certifies in writing, under penalty of perjury, that they do not have a primary care provider and that discontinuation of residential service will be life-threatening to, or pose a serious threat to, a resident of the premises, including the presence of a resident younger than 18 year of age.
 - e) During a state or local emergency when the area of the declared state or local emergency encompasses the customer's residence, unless the entity declaring the emergency finds that the emergency will not impact the customers' ability to pay for residential service.
- 5) Requires an urban and community water system and very small community water system to waive fees for disconnection and reconnection of service for low-income customers, as specified.
- 6) Requires the CPUC, by January 1, 2023, to establish an arrearage management plan program and eligibility criteria and conditions for arrearage management plans to be offered by urban and community water systems regulated by the CPUC.

- 7) Requires an urban and community water system not regulated by the CPUC to, by January 1, 2023, or during its next rate study, whichever comes first, evaluate the extent to that it can offer an arrearage management plan to aid low-income residential customers with household income below 200 percent of the federal poverty line with high arrearages for water or wastewater service without using ratepayer funds from customers who are not enrolled in the arrearage management plan, and to consider specified criteria if it can offer an arrearage management plan. Requires specified actions if an urban and community water system, based on the required evaluation, finds that it cannot offer an arrearage management plan.
- 8) Authorizes the SWRCB to issue an order to an urban and community water system or very small community water system to enforce these requirements, or to seek an injunction, as specified.
- 9) Requires an urban and community water system to report certain information to the SWRCB during the reporting year that it completes a specified evaluation. This bill would require, by January 1, 2024, the SWRCB to complete a report to the Legislature on arrearage management plans that includes whether and to what extent urban and community water systems have offered arrearage management plans, any identified barriers, any identified alternatives, and all available information regarding reduction in shutoffs and revenue impacts.

Background

Water utilities. California residents are served by various types of water utilities or water systems, including publicly owned utilities, investor-owned utilities, 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 investor-owned utilities, 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 998 (Dodd, Chapter 891, Statutes of 2018). SB 998 made numerous changes to the policies to discontinue residential water service due to nonpayment. Specifically, the SB 998 requires all public water systems (with more than 200 service connections) to have a written policy on discontinuation of residential water service due to nonpayment, provides that policy in multiple languages, include provisions for not shutting off water for certain customers that meet specified criteria, prohibits the shutoff of water service until the residential water bill has been delinquent for 60 days, and cap the reconnection fees for restoring water service. SB 998 required that CPUC-regulated water utilities comply with these policies by February 1, 2020 and other water providers by April 1, 2020.

COVID-19 crisis prompts statewide moratorium. 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.

Proposition 218. As noted above, publicly-owned 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:

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... 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. These substantive restrictions on ratemaking by publicly owned water systems prevent subsidization of one customer's water rates by another...

Arrearage Management Plan (AMP). The CPUC recently added AMP as a new tool to help customers of CPUC-regulated energy utilities in order to reduce discontinuation of service due to nonpayment. In June 2020, the CPUC adopted an AMP for energy customers that will only be open to qualifying low-income customers (identified as California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) customers) that have \$500 in arrears which are at least 90 days old, have been a customer for at least six months and have had at least one on-time payment. If a customer is a gas only CARE customer then they shall be eligible for the AMP if they have \$250 in arrears which are at least 90 days old, have been a customer for at least six months and have had at least one on-time payment. If a CARE and FERA customer is currently on a payment plan to pay off their arrearages and they become eligible for the AMP program, they may voluntarily switch to the AMP program. The AMP provides customers with debt-relief (1/12 of their arrears for every monthly payment made on their current bill over 12 months). AMPs are intended to help maintain service for customers, help reduce debt, and continue to collect revenues for utilities. With its nascent use, the CPUC will sunset the AMP provisions in four years, if they do not reauthorize AMPs in a proposed three year review.

SB 223. As noted above, this bill expands numerous provisions related to discontinuation of water service due to nonpayment. Most significantly, this bill expands provisions from SB 998 to very small community water systems (those with fewer than 200 service connections), expands the conditions prohibiting

discontinuation of residential water service, and requires the CPUC to establish arrearage management plans for CPUC-regulated water utilities and requires an evaluation showing.

Author's purpose. “Access to safe and affordable drinking water and sanitation is a human right and essential to public health. (AB 685, 2012.) The COVID-19 pandemic has provided additional clear evidence of a basic fact — that access to safe tap water for drinking, washing hands, and basic sanitation is critical to health and preventing the spread of disease. However, water systems shut off water for nonpayment far too often in California, a practice that disproportionately impacts Black, Indigineous and people of color (BIPOC) households.”

Prevalence of water shutoffs prior to COVID-19 moratorium. According to the Pacific Institute April 2020 report, in 2018, at least 196,800 single-family households had their water shut off for nonpayment, impacting an estimated 583,000 Californians. According to data self-reported to the SWRCB, in 2019, similar number of households experienced loss of water service. The SWRCB also estimated that California's water rates rose more than 45 percent on average between 2007 and 2015. According to the SWRCB Affordability threshold, water is deemed unaffordable if it exceeds 1.5 percent of household income. According to the Office of Environmental Health Hazard Assessment, based on a January 2021 report, “water bills exceeded 1.5 percent of poverty-level incomes in the county where the system is based” in a majority of water systems.

SB 998 has not been lived. The timing of the COVID-19 crisis and subsequent moratorium on suspension of discontinuation of residential water service enacted in March 2020 and still in existence today, means that the provisions adopted in SB 998 have not been lived by residential customers or water service providers. The CPUC-regulated water utilities had only recently enacted the provisions (February 1, 2020) and the other water service providers had, yet, to do so (April 1, 2020), before the current moratorium was adopted in March 2020. As such, water utilities' and CPUC's disconnection moratoriums appear to have temporarily shielded customers from losing water service during the pandemic, while also suspended the need and lived experience of SB 998.

COVID-19 pandemic and moratorium. As noted above, the moratorium on discontinuation of service in response to the COVID-19 pandemic is shielding customers from the loss of water (and other utility) service due to nonpayment. Nonetheless, some, perhaps most, of the customers who continue to receive service have growing debt from unpaid water bills (and likely other utility bills). The 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. The 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.

Efforts to address growing undercollection and debt due to nonpayment. There are several efforts to help address the growing debt from unpaid utility bills. Most significantly, due to recent federal legislation, California, along with other states, expect to receive one-time funding to help customers with water crisis funding to alleviate debt, and help utilities with undercollections. Additionally, water agencies and advocates continue to push for more federal funding as the anticipated allocation may fall short of the full need. The CPUC is also actively considering policy changes to address water utility customer debt, including exploring a similar arrearage management plan as that adopted for energy utilities. However, the proceeding remains open and active with stakeholders submitting responses to help shape the CPUC proposals. Based on the various comments submitted, there is a wide-range of views and concerns about adopting AMP for water utilities, as there is for this bill.

Should the legislature require AMPs of water utilities? This bill would require CPUC-regulated water utilities to adopt AMPs and require non-CPUC regulated water utilities to explain in specified detail via a public vetting how they are not able to provide AMPs. Given that the energy investor-owned utilities (IOUs) are only now piloting AMPs, it may be premature to require such a tool is adopted for water utilities, particularly given that water utility service territories, in general, tend to be much smaller and, therefore, may have less ability to absorb the debt-relief provided by the AMP. Therefore, the author and committee may wish to allow for a fuller vetting of the nuances of AMPs. As such, *the author and committee may wish to amend this bill to require the CPUC to consider AMPs and to have those considerations reflect many of the requirements of the AMPs for energy utilities (applicability to qualified low-income customers, duration of arrearage, minimum customer duration, sunset, and evaluation).* In the case of non-CPUC-regulated water utilities, the author, sponsors, and opponents all acknowledge some of the challenges with instituting an AMP due to Proposition 218 cost-of-service limitations. *As such, the author and committee may wish to amend this bill to clarify that non-CPUC-regulated water utilities shall determine whether an AMP is appropriate for their given service territory while ensuring AMP is not automatically prioritized over other needs (such as water quality improvements and infrastructure upgrades).*

Mobile-home parks. As noted by California Water Association (CWA), existing Public Utilities Code §12822 allows residents of multifamily units and mobile home parks to take over a utility service account when the account is in arrears by the owner and pending termination. CWA states that given this existing statute, Section 116916 (b) of SB 223 is unnecessary because a pathway already exists in statute to allow renters to continue utility service. Should this bill move forward, the author should address this concern and delete or clarify the language proposed in his bill.

Need for additional clarifying amendments. *The author and committee may wish to provide additional clarifying amendments to ensure consist application of very small water community system and eliminate the reference to FERA program.*

Prior/Related Legislation

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 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 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 Safe and Affordable Drinking Water Fund five percent of the proceeds of the Greenhouse Gas Reduction Fund 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: No

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 Coastkeeper Alliance
California League of Conservation Voters
Central California Environmental Justice Network
Central Coast Energy Services
Center for Community Action and Environmental Justice
Ceres
Coachella Valley Waterkeeper
Courage California
Defenders of Wildlife
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
Russian Riverkeeper
San Diego Coastkeeper
Santa Barbara Channelkeeper
Sierra Club California
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
Municipal Water District of Orange County
North Coast County Water District
Olivenhain Municipal Water District
Padre Dam Municipal Water District
Palmdale Water District
Panoche Water District
Public Water Agencies Group
Rancho California Water District
Regional Water Authority
San Diego County Water Authority
San Juan Water District
Santa Margarita Water District
Scotts Valley Water District
Southwest California Legislative Council
Tahoe City Public Utility District
Tuolumne Utilities District
Vista Irrigation District
Walnut Valley Water District

ARGUMENTS IN SUPPORT: According to the author:

Access to an adequate supply of safe tap water is a human right, and no California family should lose access to drinking water due to inability to pay. SB 223 strengthens and extends existing statutorily-required protocols and procedures to protect low-income households that face or have already experienced water service disconnections due to the inability to pay their

water bill. The bill builds on SB 998 (2018) by extending protections to very small community water systems with fewer than 200 connections, and strengthening existing law to ensure that water shutoffs are used only as a last resort after efforts to work with the customer have failed.

ARGUMENTS IN OPPOSITION: In opposition to this bill, ACWA states:

SB 223 is a fundamentally flawed long-term policy bill that would force water agencies to prioritize debt forgiveness to customers over all other agency needs. The bill would limit the discretion locally elected officials have over agency finances and leave less money for safe drinking water, compliance with regulatory mandates, investment in aging infrastructure and more. Sacrificing the long-term health of water systems will only exacerbate the problems facing California today. Further, the bill would rewrite the State's new discontinuation of residential water service law (SB 998, Dodd, 2018) when full implementation of that new law not even occurred.

In opposition to this bill, the Community Water System Alliance states:

SB 223 should be amended to alleviate its impacts on the finances and operation of systems subjected to its provisions. Many small water systems face the same problems as their customers, namely they exist on extremely limited resources, with only one or two people to operate the system (often as volunteers) and few financial reserves for capital improvements. Many of these systems keep water rates low, precisely to remain affordable to their customers with low or reduced income. In our experience, these systems already work with customers in arrears in paying their water bills. However, SB 223 would put these small systems at risk by diverting precious resources to complicated administrative procedures, or in a worst-case scenario to penalties that will cause even more financial jeopardy.

-- END --