

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 1215 (Hertzberg) – As Amended June 21, 2018

SENATE VOTE: 30-8

SUBJECT: Provision of sewer service: disadvantaged communities.

SUMMARY: Allows the regional water quality control boards (regional boards) to order provision of service to disadvantaged communities served by onsite wastewater treatment systems. Specifically, **this bill:**

1) Defines the following terms:

- a) “Inadequate onsite sewage treatment system” as an onsite sewage treatment system that has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state;
- b) “Affected residence” as a residence that may be subject to provision of sewer service pursuant to the program established by this bill;
- c) “Affected resident” as a resident or property owner of an affected residence;
- d) “Disadvantaged community” as a community with an annual median household income that is less than 80% of the statewide annual median household income;
- e) “Annexation” as the inclusion, attachment, or addition of territory to a city or district;
- f) “Extension of service” as having the same meaning as prescribed in local agency formation commission (LAFCO) law;
- g) “Onsite sewage treatment system” as an individual disposal system, community collection and disposal systems, and alternative collection and disposal system that use subsurface disposal that is not operated by a local agency or utility regulated by the Public Utilities Commission;
- h) “Provision of sewer service” as the provision of sewer service to a disadvantaged community by any of the following processes:
 - i) Annexation where the receiving sewer system is a special district; and,
 - ii) Extension of service where the receiving sewer system is a city or county.
- i) “Receiving water system” as the sewer system that provides service to a disadvantaged community pursuant to this bill; and,
- j) “Special district” as defined in LAFCO law.

- 2) Provides that where a disadvantaged community or residents of a disadvantaged community are served by one or more inadequate onsite sewage treatment systems, the regional board may order the provision of sewer service by a receiving sewer system to the disadvantaged community, or to all or a portion of the area within the disadvantaged community. The regional board may set timelines and performance measures to facilitate completion of the provision of sewer service.
- 3) Specifies that before ordering the provision of sewer service, the regional board shall do all of the following:
 - a) Encourage voluntary annexation or extension of service;
 - b) Consider other enforcement remedies, as specified;
 - c) Consult with, and fully consider input from, the relevant LAFCO regarding the sewer service in the affected area, the recommendations for improving service in a municipal service review, and any other relevant information;
 - d) Consult with the State Water Resources Control Board (SWRCB);
 - e) Consult with, and fully consider input from, the local government with land use planning authority and environmental health oversight over the affected area, particularly regarding information in the general plan;
 - f) Notify the potential receiving sewer system and affected residents within the disadvantaged community, and establish a reasonable deadline of no less than six months, unless a shorter period is justified, for the potential receiving sewer system and the affected property owners to negotiate annexation, extension of service, or another means of providing adequate sewage service;
 - g) During the six month negotiation period, provide technical assistance and work with the potential receiving sewer system and the affected residents to develop a financing package that benefits both the receiving sewer system and the affected residents by fully addressing the receiving sewer system's planning and capital costs and the affected residents' connection costs;
 - h) Hold at least one public meeting at the initiation of the process in a place as close as feasible to the affected areas. The regional board shall make reasonable efforts to provide a 30-day notice of the meeting to the affected residents and all affected local government agencies and sewer service providers. The meeting shall provide representatives of the affected residents and the potential receiving sewer system an opportunity to present testimony. The meeting shall provide an opportunity for public comment.
- 4) Requires the regional board to provide opportunity to submit comments by mail or electronic mail during the 30-day notice period and for at least one week after the public hearing.
- 5) Authorizes the regional board, upon a showing of good cause, to extend the six month negotiation period at the request of the potential receiving sewer system, the affected residents, or the LAFCO with jurisdiction over the sewer system.

- 6) Specifies that upon the expiration of the six month negotiation period, the regional board shall do the following:
 - a) Consult with the potential receiving sewer system and the affected residents; and,
 - b) Review both the written comments and comments received during the public meeting.
- 7) Requires that, before ordering the provision of sewer service, the regional board shall find all of the following:
 - a) One or more affected residences are served by an inadequate onsite sewage treatment system;
 - b) Reasonable efforts to negotiate voluntary annexation or extension of service were made;
 - c) The provision of sewer service is appropriate and technically and economically feasible;
 - d) There is no pending LAFCO process that is likely to resolve the problem in a reasonable amount of time;
 - e) The provision of sewer service is an effective and cost-effective means to address the inadequate onsite sewage treatment system; and,
 - f) The capacity of the proposed interconnection needed to accomplish the provision of sewer service designed to serve the disadvantaged community, as determined by the regional board.
- 8) Requires the SWRCB to, upon the issuance of a regional board's order requiring provision of sewer service, to do all of the following:
 - a) As necessary and appropriate, make funds available, upon appropriation by the Legislature, to the receiving sewer system for the costs of completing the provision of sewer service, including, but not limited to, compensation for any capacity lost as a result of the provision of sewer service, by paying the receiving sewer system's capacity connection fee at the rate it charges others, providing additional capacity is needed as a result of the provision of sewer service, and paying legal fees;
 - b) Ensure payment of standard LAFCO fees caused by the regional board's order. Additional costs or fees related to consolidation, including, but not limited to, other public works costs or upgrades, shall not be used to delay the provision of sewer service required by the order; and,
 - c) Coordinate with the appropriate LAFCO and other relevant local agencies to document the change of organization.
- 9) Specifies that if capacity beyond what is needed for consolidation is provided, the SWRCB shall retain its rights to use additional capacity without paying additional capacity charge fees for five years, unless it releases those rights in writing.

- 10) Provides that the funding is available for the general purpose of providing financial assistance for the water infrastructure needed for the provision of sewer service and does not need to be specific to each individual project.
- 11) Requires the SWRCB to provide appropriate financial assistance for the provision of sewer service. The SWRCB's existing financial assistance guidelines and policies shall be the basis for the financial assistance.
- 12) Specifies that the receiving sewer system shall not increase charges on existing customers of the receiving water system solely as a consequence of the provision of sewer service, unless the customers receive a corresponding benefit.
- 13) Prohibits the receiving sewer system from charging rates to newly absorbed customers of the receiving system that are higher than those necessary to provide the sewage service.
- 14) Specifies that LAFCO law does not apply to an action taken by the SWRCB or regional board, pursuant to this bill.
- 15) Authorizes the SWRCB to develop and adopt policy, through the adoption of a policy handbook, which provides a process by which members of a disadvantaged community may petition the regional board for consideration of provision of sewer service.

EXISTING LAW:

- 1) Existing federal law, under the Clean Water Act:
 - a) Establishes the structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.
 - b) Makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained.
 - c) Provides that the National Pollutant Discharge Elimination System (NPDES) permit program controls discharges. Point sources are discrete conveyances, such as pipes or man-made ditches. (Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.)
- 2) Authorizes states to implement and enforce the NPDES permit program as long as the state's provisions are as stringent as the federal requirements.
 - a) In California, the SWRCB is the delegate agency responsible for the NPDES permit program.
- 3) Existing state law:
 - a) Establishes, under the Porter-Cologne Water Quality Control Act (Porter-Cologne), the SWRCB and regional water quality control boards (regional boards) to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and

to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.

- b) Provides, under the California Safe Drinking Water Act, for the operation of public water systems and imposes on the SWRCB various responsibilities and duties, including authorization to:
 - i) Order consolidation with a receiving water system where a public water system or a state small water system, serving a disadvantaged community, as defined, consistently fails to provide an adequate supply of safe drinking water, as specified; and,
 - ii) Order the extension of service to an area that does not have access to an adequate supply of safe drinking water so long as the extension of service is an interim extension of service in preparation for consolidation, as specified.
- c) Enacts the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, which:
 - i) Controls how local officials change the boundaries of cities and special districts, putting LAFCOs in charge of the proceedings; and,
 - ii) Directs LAFCOs to ensure that services are effectively and efficiently delivered, and local governments can only exercise their powers and provide services where allowed to by LAFCO, including the formation of new cities and special districts, modifications of existing boundaries, and dissolutions of unsustainable special districts.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains the following:

- 1) SWRCB administrative costs of approximately \$600,000 in 2019-20 and 2020-21, and \$750,000 ongoing annually thereafter for staff to identify communities in need of service extensions and connections, facilitate negotiations for voluntary annexations or service extensions, hold public meetings, conduct implementation activities to complete the provision of service, and perform ongoing enforcement activities. (Waste Discharge Permit Fund)
- 2) Unknown major costs in the millions, and potentially over \$10 million, to provide financial assistance to pay for the infrastructure needed for the provision of sewer service, to the extent negotiations for voluntary annexations or service extensions fail and the SWRCB orders a local entity to provide sewer service. (General Fund)
- 3) Unknown reimbursable mandate costs. Staff estimates that any state reimbursements are not likely to be significant since local service providers may charge customers for the provision of sewer connections and service, and the bill requires the SWRCB to pay for infrastructure associated with service extensions, upon appropriation of funds by the

Legislature for that purpose. Any other costs subject to state reimbursement would be

dependent upon a determination by the Commission on State Mandates, to the extent a local service provider incurs costs and files a successful claim. (General Fund)

COMMENTS:

- 1) **Wastewater Treatment and Regulation.** Wastewater treatment in California centers on the collection, conveyance, treatment, reuse and disposal of wastewater. This process is conducted largely by public agencies, though there are also privatized systems in places where a treatment plant is not feasible. In California, wastewater treatment takes place through 100,000 miles of sanitary sewers and at more than 900 wastewater treatment plants that manage the roughly four billion gallons of wastewater generated in the state each day.

However, there remain parts of California that do not have access to a centralized wastewater system where septic systems treat and dispose of wastewater from residential, commercial, or industrial facilities in primarily rural areas that are not served by community sewers. Septic systems (also called “onsite wastewater treatment systems”) are underground wastewater treatment structures, commonly used in rural areas without centralized sewer systems. They use a combination of nature and proven technology to treat wastewater from household plumbing produced by bathrooms, kitchen drains, and laundry.

The SWRCB and the nine regional boards regulate water quality in the state. Porter-Cologne requires SWRCB and the regional boards to regulate discharges, including those from septic systems and sewer systems, to ensure long-term water quality protection.

- 2) **Local Government Boundaries.** The Cortese-Knox-Hertzberg Act creates a LAFCO in each county to control the boundaries of cities, county service areas, and most special districts. The courts often refer to LAFCOs as the Legislature’s watchdog over boundary changes. To plan for the future boundaries and service areas of the cities and special districts, a LAFCO must adopt a policy document for each city and district called a sphere of influence. The LAFCO’s boundary decisions must be consistent with the spheres of influence of the affected cities or districts. Spheres must be updated at least every five years.

Local governments can only exercise their powers and provide services where LAFCO allows them to: within their boundaries (which are set by LAFCO), within their spheres of influence but outside their boundaries (with authorization by LAFCO), and outside their spheres to address a major threat to public health if the extension is consistent with LAFCO’s policies. The Legislature approved AB 402 (Dodd), Chapter 431, Statutes of 2015, which established a pilot program in Napa County and San Bernardino County that allowed the extension of services outside a local agency’s sphere of influence to support existing or planned uses under specified conditions. A local government that wants to expand its territory must ask LAFCO to annex new territory into the local government’s boundaries.

To determine spheres of influence, LAFCOs must periodically conduct a “municipal service review” (MSR) to inform their decisions. Among other topics, MSRs must analyze and make determinations about whether adequate public services are available to current and future residents in the county, and whether services could be improved by governmental reorganizations.

- 3) **Addressing Service Deficiencies.** LAFCOs, along with the planning agencies of cities and counties, are supposed to ensure that services are effectively and efficiently delivered to all communities throughout the state. Nevertheless, some communities continue to lack adequate public services, including safe drinking water and functioning wastewater systems, often due to their low income status. In some cases, these disadvantaged communities are contained within a city but lack adequate water and wastewater services. In other cases, these communities are located in unincorporated areas. These “disadvantaged unincorporated communities” can be remote and far from other communities with better public services, but at other times they are adjacent to a city, special district, or county service area that provides water or wastewater services.

In recent years, the Legislature has taken several steps to try to address some of the service problems experienced by disadvantaged unincorporated communities. SB 244 (Wolk), Chapter 513, Statutes of 2011, aimed to prevent cities from carving out disadvantaged unincorporated communities by generally prohibiting annexations of small areas to a city if a disadvantaged unincorporated community is contiguous with that area. SB 244 also required LAFCOs to include in the MSR a description of the location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence and to consider the water, sewer, or fire protection needs of disadvantaged unincorporated communities within the sphere when considering updates. Finally, SB 244 required cities and counties to review the water and fire service needs of disadvantaged unincorporated communities in their general plans. SB 244 made it easier for LAFCOs to identify boundary changes and governmental reorganizations necessary to fix water and sewer service problems faced by disadvantaged communities.

- 4) **Senate Bill 88.** Subsequent legislation, SB 88 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2015, took this effort a step further by authorizing SWRCB to order a consolidation of neighboring drinking water systems where it is economically feasible in order to address public health threats. SB 88 established an elaborate process for consolidating water systems that requires multiple public hearings, as well as consultations with affected entities, such as the water system being subsumed, the receiving water system, domestic well owners, and the local government with land use authority over the area, and the LAFCO.

Before ordering consolidation or extension of service, SWRCB must also encourage voluntary consolidations or extension of service, consider other enforcement remedies, obtain written consent from any domestic well owner, and provide technical assistance to both systems. The SWRCB must also make a series of findings, including that:

- a) Consolidation or extension of service is the most effective and cost-effective means to provide an adequate supply of safe drinking water; and,
- b) The capacity of the proposed interconnection needed to accomplish the consolidation is limited to serving the current customers of the subsumed water system.

Under SB 88, SWRCB must pay the full cost of the new capacity, including replacing any capacity lost as a result of the consolidation or extension of service, providing additional capacity needed as a result of the consolidation or extension of service, and legal fees. The

SWRCB must also pay the LAFCO's costs and fees, adequately compensate the owners of any privately owned subsumed water system, and coordinate with the appropriate local agency formation commission and other relevant local agencies to facilitate the change of organization or reorganization. SB 88 also prohibited the consolidated water system from increasing charges on existing customers of the receiving water system solely as a consequence of the consolidation or extension of service, unless the customers receive a corresponding benefit. Cleanup legislation the next year added a few additional requirements to the SB 88 process, including prohibiting fees or charges on a customer of a subsumed water system from exceeding the cost of consolidating the water system with a receiving system or the extension of service to the area [SB 552 (Wolk), Chapter 773, Statutes of 2016].

To date, SWRCB has completed two mandatory consolidations and initiated an additional nine mandatory consolidations of 13 failing water systems. SWRCB has also issued 230 informal consolidation letters indicating SWRCB's intent to initiate consolidation, which have led to over 40 voluntary consolidations.

- 16) **Bill Summary.** This bill provides that where a disadvantaged community or residents of a disadvantaged community are served by one or more inadequate onsite sewage treatment systems, the regional board may order the provision of sewer service by a receiving sewer system to the disadvantaged community. The regional board may set timelines and performance measures to facilitate completion of the provision of sewer service. This bill prescribes the process the regional board must follow to mandate that sewer service be provided to a disadvantaged community, including requirements to make specific findings, consult with all affected stakeholders, allow for public engagement, and provide funding and technical assistance. This bill exempts the ordered annexation or extension of sewer services from LAFCO law. The Leadership Counsel for Justice and Accountability is the sponsor of this bill.
- 5) **Author's Statement.** According to the author, "Wastewater quality and drinking water quality are inextricably linked. The fact is that families in California – in 2018 – suffer with inadequate services because of poor government decisions made ages ago. It's time to correct this to protect public health and our drinking water supplies."
- 6) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Sure, but Will it Work?** Inadequate sewer service is undoubtedly a problem in California. However, some avenues already exist for dealing with this issue. With the passage of SB 244, the Legislature required study of the service deficiencies in disadvantaged unincorporated communities. LAFCOs are properly charged with reviewing these services; it is one of their core duties. LAFCOs can make recommendations about how to best fix those deficiencies, including through annexation or extension of service. SB 1215 says that this is not enough and establishes a new program for regional boards to bypass LAFCO to order annexations or extensions of service.
 - b) **To Annex or Not to Annex.** Annexations and extensions of service are two distinct changes of organizations that create two distinct outcomes. An extension of service is when a local agency extends the provision of services to individuals that do not reside

within the actual boundaries of that agency. An annexation is when the boundaries and jurisdiction are changed to include territory, giving the annexed residents full rights and privileges as voters. In the case of a city annexing inhabited territory, all of the services provided by the city, including, but not limited to, planning, zoning, and permitting would have to be provided to the newly annexed individuals.

There are positives and negatives to simply extending services in place of a full annexation. With an extension of service, the residents outside of the local agency's boundaries are unable to vote in elections for board or council members. Some have likened this process to taxation without representation. Additionally, annexations are not always popular. Many residents would rather live outside of city boundaries in unincorporated county territory because laws and regulations often differ. As this bill bypasses the typical LAFCO process, which includes significant opportunity for public engagement, it may be difficult to discern if an annexation or an extension of service is more appropriate.

- c) **Clarity.** SB 1215 contains a number of terms and requirements that may be difficult to implement. First, "inadequate onsite sewage treatment system" means an onsite sewage treatment system that has the *reasonable* potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, or to cause pollution, nuisance, or contamination of waters of the state. This bill does not define the term reasonable or provide a specific process for how this determination will be made.

Further, SB 1215 requires SWRCB to fully fund the new capacity and other costs of ordering provision of service. Yet it is unclear whether funds will be available for this purpose, which entity determines costs for interconnection, and whether the fees are reasonable. Concerns have been raised that there is a substantial amount of ambiguity in this bill's provisions, leaving open many questions regarding implementation. Such ambiguity could lead to significant legal challenges from the entities themselves, as well as current and future ratepayers.

- d) **Technical and Clarifying Amendments.** The Committee may wish to consider the following technical and clarifying amendments:
- i) This bill prohibits the regional board from ordering a special district to simply extend its sewer services and is limited to ordering a full annexation. The proposed amendment will give the regional board the authority to order either an extension of service or an annexation when the order involves a special district.
 - ii) This bill only applies to annexations or extensions of services outside of an agency's boundaries, but does not address the situation where a resident already lives within the jurisdiction of an agency that provides sewer service. The proposed amendment will allow for sewer service to be provided within city, county, or special district boundaries.
 - iii) This bill refers to consolidations in multiple provisions. The term consolidation refers to the merging of two or more local agencies. However, this bill is focused on onsite sewage treatment systems that are not regulated by a local agency. The

proposed amendment will strike the term consolidation and replace it with the defined term “provision of sewer service.”

iv) The proposed bill refers to LAFCO fees. To avoid confusion with the fees associated with providing sewer service, this amendment will instead refer to LAFCO costs.

- 7) **Arguments in Support.** Supporters argue that, “Inadequate and failing onsite wastewater treatment systems fail to treat and dispose of wastewater before it is discharged into the environment in hundreds of communities throughout the state. Untreated wastewater contaminates soils and drinking water sources, exposing people to nitrates and harmful pathogens including fecal coliform and salmonella. The threat of untreated wastewater is greatest in the state’s lower income, unincorporated communities and mobile home communities, but the threat exists even in incorporated areas still unserved by municipal wastewater service.

“Many of the communities most threatened by inadequate wastewater service are within a mile, a few hundred yards, or even a few yards from existing municipal wastewater service lines. While the solution is so close, it still eludes hundreds of communities and tens of thousands of families as some cities and special districts remain reluctant to extend their services to neighboring homes and communities.

“SB 1215 builds on SB 88 which granted the state board authority to incentivize and mandate regional drinking water solutions to provide a tool to address our state’s drinking water crisis. This bill would use a similar structure: it would complement available monetary incentives for consolidation by granting the state board the authority to require a municipal wastewater service provider to extend wastewater service to a community reliant on inadequate onsite wastewater treatment systems.”

- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill is scheduled to be heard in the Environmental Safety and Toxic Materials Committee on June 26, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

Leadership Counsel for Justice and Accountability [SPONSOR]
California Coastkeeper Alliance
California Environmental Justice Alliance
California Institute for Rural Studies
Carbon Cycle Institute
Center for Climate Change and Health
Center for Community Action and Environmental Justice
Center on Race, Poverty, and the Environment
Center for Sustainable Neighborhoods
Central California Asthma Collaborative
Central California Environmental Justice Network
Clean Water Action
Community Water Center
Diocese of Fresno
Environment California
Environmental Health Coalition
Plastic Pollution Coalition
RCAC
Sierra Business Council
Sierra Club California
The 5 Gyres Institute
Trust for Public Land

Opposition

None on file

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