

Date of Hearing: June 9, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 273 (Hertzberg) – As Introduced January 29, 2021

SENATE VOTE: 38-0

SUBJECT: Water quality: municipal wastewater agencies.

SUMMARY: Authorizes a municipal wastewater agency to enter into agreements with entities responsible for stormwater management for the purpose of managing stormwater and dry weather runoff. Specifically, **this bill:**

- 1) Allows a municipal wastewater agency to enter into agreement with entities responsible for stormwater management, including, but not limited to, municipal, industrial, and commercial stormwater dischargers, for the purpose of managing stormwater and dry weather runoff.
- 2) Specifies that a municipal wastewater agency may acquire, construct, expand, operate, maintain, and provide facilities for any of the following purposes:
 - a) The diversion of stormwater and dry weather runoff from the stormwater system to the wastewater collection or treatment system.
 - b) The management and treatment of stormwater and dry weather runoff.
 - c) The discharge of treated urban runoff and stormwater to the stormwater drainage system or receiving waters.
 - d) The beneficial reuse of captured runoff and stormwater.
- 3) Authorizes a municipal wastewater agency to do any of the following:
 - a) To the extent permitted by federal law, authorize the discharge of stormwater or dry weather runoff captured at industrial and commercial sites to the wastewater collection or treatment system subject to any requirements that may be imposed by the municipal wastewater agency or public agency that owns and operate the tributary collection system.
 - b) In order to carry out the powers granted, and the purposes established, under this bill, exercise any of the powers granted to it by law, including, but not limited to, enforcing compliance with local, state, and federal water quality requirements through the implementation of the municipal wastewater agency's industrial pretreatment programs and ensuring that the project or program is consistent with local watershed priorities, obligations, and circumstances.
 - c) Levy taxes, fees, and charges consistent with the municipal wastewater agency's existing authority in order to fund specified projects.
- 4) Provides that the exercise of any new authority granted by this measure is subject to and shall comply with Local Agency Formation Commission (LAFCO) Law.

- 5) Specifies that an agreement, project, or use of authority shall be completely voluntary for all participating entities.
- 6) Provides that nothing in this measure shall be construed to interfere with any existing programs or projects, authorities, or obligations for municipal wastewater agencies or stormwater dischargers.
- 7) States that it is the intent of the Legislature in enacting this measure merely to allow local agencies interested in pursuing the types of projects described in this bill to proceed without additional legislative changes to their authorizing statutes.
- 8) Provides that nothing in this bill shall be construed to alter or interfere with any of the following:
 - a) Existing water rights to water from any source, including any adjudicated rights allocated by a court judgement or order, including any physical solution, rights issued by the state or a state agency, and rights acquired pursuant to any federal or state statute.
 - b) Existing water rights law.
 - c) Any rights, remedies, or obligation pursuant to specified sections of the Water Code and the Public Utilities Code.
- 9) Defines the following terms for the purposes of this bill:
 - a) “Local agency” to include, but not be limited to, a city, county, special district, joint powers authority, sanitary district, sanitation district, county sanitation district, community services district, and municipal utility district.
 - b) “Municipal wastewater agency” as a local agency that chooses to exercise any authority granted under this measure.
- 10) Contains findings and declarations to support its purposes.
- 11) Declares that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

EXISTING LAW:

- 1) Provides the State Water Resources Control Board (State Water Board) authority over state water rights and water quality policy and establishes eight regional water quality control boards (regional boards) to oversee water quality at the local/regional level, under the California Porter-Cologne Water Quality Control Act.
- 2) Requires the state to, under the auspices of the United States Environmental Protection Agency (US EPA), State Water Board and nine regional boards, grant National Pollutant Discharge Elimination System (NPDES) permits, for certain point-source discharges.
- 3) Authorizes specified sanitation districts in Los Angeles County to divert, manage, treat, and discharge stormwater and dry weather runoff, as well as make beneficial use of the water.

- 4) Authorizes the Irvine Ranch Water District and Santa Margarita Water District to acquire, plan, construct, maintain, improve, and operate the necessary works for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes, and any related drainage or reclamation works.
- 5) Authorizes the Orange County Sanitation District to acquire, operate, maintain, and furnish facilities for the diversion of urban runoff from drainage courses within the district, the treatment of the urban runoff, the return of the water to the drainage courses, or the beneficial use of the water.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Stormwater.** Stormwater is defined by the US EPA as the runoff generated when precipitation flows over land of impervious surfaces such as paved streets, parking lots, and building rooftops, without percolating into the ground. Water runoff from cities, highways, industrial facilities, and construction sites can carry pollutants, such as oil, pesticides, herbicides, sediment, trash, bacteria, and metals that harm water quality and impair the beneficial uses of California waters. The State Water Board and US EPA regulate the runoff and treatment of stormwater in industrial, municipal, and residential areas of California.

To curb the harmful effects of pollution from stormwater runoff, federal law requires states to set restrictions on the pollutants that can be discharged into water bodies and requires local jurisdictions, including cities, counties, and other public entities, to obtain storm sewer permits. The federal Clean Water Act (CWA) provides the State and Regional Water Boards with the authority and framework for regulating stormwater discharges under the NPDES Permitting Program. The US EPA delegates its NPDES Permitting Program to the State of California. Cities and local jurisdictions that operate municipal stormwater systems must obtain NPDES permit coverage for discharges of municipal stormwater to waters of the United States. Similarly, industry owners must have NPDES permit coverage for stormwater from their industrial activity sites, and construction contractors must have NPDES permit coverage for storm water from constructions sites that disturb more than an acre of land. Therefore, the NPDES stormwater program regulates stormwater discharges from three potential sources: (1) municipal separate storm sewer systems (MS4s), (2) construction activities, and (3) industrial activities.

While stormwater is a major source of contaminants in bodies of water, when properly treated it can become a valuable locally-generated water supply. Thus, capturing stormwater can provide multiple benefits, including to improve water quality, boosting water availability, and to lessen dependence on water imported from other parts of California. In July 2020, the Newsom administration adopted a “water resilience portfolio” that lays out a strategy to meet multiple water-related goals and increase the state’s resilience. The portfolio includes policies to diversify water supplies, protect natural ecosystems, build connections between water systems, and prepare for weather extremes and other water system stressors. Among these recommended policies is to provide statewide authority for wastewater facilities to accept stormwater and encourage stormwater permittees to divert captured stormwater at times when wastewater facilities can accept it.

- 2) **Financing Stormwater Infrastructure.** Local governments face several barriers to funding for stormwater and dry weather runoff projects due to the constitutional requirements for special taxes, benefit assessments, and property-related fees. Many of the local governments that operate MS4 systems differ from water and wastewater utilities that existed prior to the passage of Proposition 218, which have in place service fees. On the other hand, many stormwater programs in cities and counties are funded by the general fund, primarily through property and local sales taxes. As regulatory burdens continue to increase, financially strapped local governments are forced to examine alternative funding mechanisms and regional strategies to address MS4 costs.
- 3) **Bill Summary and Author’s Statement.** This bill authorizes a municipal wastewater agency to enter into agreements with entities responsible for stormwater management for the purpose of managing stormwater and dry weather runoff, to acquire, construct, expand, operate, maintain, and provide facilities to manage the runoff. This bill also requires the municipal wastewater agency to comply with LAFCO law for the exercise of any new authority granted under this bill. This bill is sponsored by the California Association of Sanitation Agencies and the California Coastkeeper Alliance.

According to the author, “The historic 2012-2016 drought provided a glimpse into the looming challenges facing California’s water sector. It is clear that as climate change creates hotter and drier conditions, a diversified and flexible water portfolio is essential. Stormwater is a highly valuable and underutilized resource that, if carefully managed, can augment state and local water supply. Our current drought conditions make it clear creative solutions are needed now more than ever.

“Obtained through piecemeal legislation, only a handful of municipal wastewater agencies are granted the explicit authority to capture and treat stormwater under existing law. SB 273 cuts the red tape and authorizes all municipal wastewater agencies to enter into voluntary agreements with entities responsible for stormwater management. Permitting wastewater agencies to perform stormwater capture and treatment diverts polluted stormwater and urban runoff from entering our natural lands, while also providing the co-benefits of increasing the state’s water supply and reducing flood risk.”

- 4) **Previous Legislation.** This bill would allow municipal wastewater agencies to more easily proceed with stormwater management projects. It would not affect regulations that are currently in place to protect water quality. This bill is modeled after a series of bills, SB 485 (Hernández), Chapter 678, Statutes of 2015, AB 1892 (Harman), Chapter 79, Statutes of 2002, and AB 810 (Campbell), Chapter 209, Statutes of 2001, which gave explicit authority to specific special sanitation districts to divert, manage, treat, and discharge stormwater and dry weather runoff.
- 5) **Amendments.** Due to compressed committee referral deadlines, the author was unable to adopt author’s amendments prior to the Committee deadline. The Committee may wish to incorporate the following amendments proposed by the author. Specifically, the author would like to amend the bill as follows:

Water Code Section 13912

(c) (1) If, after January 1, 2022, a municipal wastewater agency enters into a new agreement or amends an agreement pursuant to this chapter, the agency shall, within 30 days after the

effective date of the new agreement or amendment, file a copy of the agreement or amendment with the local agency formation commission in each county where any part of the municipal wastewater agency's territory is located.

(2) The local agency formation commission's approval of an agreement or an amendment to an agreement as described in paragraph (1) shall not be required, except as required by subdivision (b).

- 6) **Arguments in Support.** The California Association of Sanitation Agencies, among a coalition of other stakeholders, argue, "As California's demand for potable water continues to increase, so too does the desire to offset the use of potable water with other sources of underutilized supply, such as stormwater and recycled water. Additionally, there has been a significant regulatory focus in recent years on the water quality implications associated with stormwater discharges, and accordingly, regulatory requirements have evolved to limit the introduction of pollutants from stormwater into receiving waters. Compliance with the regulatory requirements for stormwater discharges, which falls on industrial sites and local governments, can be quite burdensome.

"At the same time, many communities are beginning to embrace the 'one-water' approach to water management and are considering their best options for optimizing water quality and supply in their watersheds. In recent years, some municipalities with stormwater management responsibility have turned to their wastewater treatment providers to assist with stormwater discharge obligations given their existing treatment systems and expertise. Where projects like these are viable, local control and voluntary agreements can provide mutually beneficial arrangements to jointly achieve local water quality objectives, and in the right circumstances, can supplement local recycled water supply.

"However, some types of special districts are arguably limited in their authorizing acts to providing only wastewater treatment and disposal and could be precluded from entering into projects involving the diversion and treatment of stormwater or dry weather runoff. While this limitation has never prompted a legal challenge, it has resulted in several wastewater districts seeking explicit legislative approval to enter into projects of this nature...Notably, the Governor's Water Resilience Portfolio explicitly proposes the approach outlined in this bill as a priority action for supporting cities and counties to make stormwater a growing share of their supply (Proposal 5.4).

"SB 273 would extend the authority to voluntarily enter into projects involving the diversion and treatment of stormwater or dry weather runoff to all wastewater providers in California. Furthermore, it would ensure that exercise of this authority requires full voluntary agreement between all of the governmental entities involved in a proposed project, and affords the protocols and protections required by existing law for these kinds of projects (including existing ratepayer processes). Together, we believe this legislation promotes regional water management innovation and creates an additional tool for local control."

- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill is double-referred to the Environmental Safety and Toxic Materials Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Sanitation Agencies [SPONSOR]
California Coastkeeper Alliance [SPONSOR]
Association of California Water Agencies
California Association of LAFCOs
California Municipal Utilities Association
California Special Districts Association
California Stormwater Quality Association
City of Roseville
City of Thousand Oaks
Inland Empire Utilities Agency
Orange County LAFCO
Orange County Water District
Southern California Water Coalition
Upper San Gabriel Valley Municipal Water District

Support if Amended

Howard Jarvis Taxpayers Association

Opposition

None on file

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