

Date of Hearing: July 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 414 (Caballero) – As Amended June 25, 2019

SENATE VOTE: 37-0

SUBJECT: Small System Water Authority Act of 2019.

SUMMARY: Establishes the Small System Water Authority Act of 2019, which authorizes the creation of a small system water authority (authority) that will have powers to absorb, improve, and operate noncompliant public water systems. Specifically, **this bill:**

1) Defines the following terms:

- a) “Authority” as a small system water authority;
- b) “Affected county” as any county in which the land of a proposed authority is situated;
- c) “Board” as the board of directors of an authority;
- d) “Board of Supervisors” as the board of supervisors of the principal county;
- e) “City” as any chartered or general law city;
- f) “County clerk” as the county clerk of the principal county;
- g) “Local agency formation commission” (LAFCO) as the LAFCO of the principal county in which the proposed authority is located;
- h) “President” as the president of the board of an authority;
- i) “Principal county” as the county in which the greater portion of the land of a proposed authority is situated;
- j) “Private corporation” as any private corporation organized under the law of the United States or of this or any other state;
- k) “Public agency” as the state or any department or agency thereof, and a county, city, public corporation, or public district of the state, including an authority formed pursuant to this Act;
- l) “Public water system” as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year;
- m) “Secretary” as the secretary of an authority;
- n) “State board” as the State Water Resources Control Board (State Water Board);

- o) “Water” to include potable and nonpotable water; and,
 - p) “Water corporation” to include every corporation or person owning, controlling, operating, or managing any water system for compensation within this state.
- 2) Provides that the area proposed to be served by a proposed authority may consist of the service areas of one or more public agencies, private water companies, or mutual water companies that do not need to be contiguous. The area proposed to be served by an authority may also include one or more parcels that need not be contiguous, either with each other or with the service areas of the public agencies, private water companies, or mutual water companies that will be served through the proposed authority.
 - 3) Requires the State Water Board, no later than March 1, 2020, to provide written notice to cure (Notice) to all public agencies, private water companies, or mutual water companies that meet both of the following criteria:
 - a) Operate a public water system that has either less than 3,000 service connections or that serves less than 10,000 people; and,
 - b) Are not in compliance with one or more state or federal primary drinking water standard maximum contaminant levels based on a running average for the period from July 1, 2018, through December 31, 2019.
 - 4) Specifies that in the case of a water corporation, the State Water Board shall provide a copy of the Notice to the Public Utilities Commission (PUC) and the PUC shall be responsible with the State Water Board for ensuring compliance.
 - 5) Requires an entity receiving a Notice to respond to the State Water Board or the PUC within 60 days of receiving the Notice as to whether the violations of drinking water standards are remedied and the basis for that conclusion.
 - 6) Gives the entity receiving the Notice 180 days, from the date of the response filed with the State Water Board, to prepare and submit a plan to the State Water Board to permanently remedy a violation of drinking water standards within a reasonable time that is not later than January 1, 2025.
 - 7) Requires the State Water Board to review the plan, and within 60 days of receipt of the plan, to accept, accept with reasonable conditions, or reject the plan.
 - 8) Specifies that the State Water Board shall not accept the plan with reasonable conditions or reject the plan without meeting with the entity at least 15 days before acceptance with reasonable conditions or rejection of the plan.
 - 9) Authorizes the State Water Board to extend the 60-day period by no more than 180 days in order to allow for full consultation and collaboration between the State Water Board and the entity, with the goal of that full consultation and collaboration being a mutually agreeable plan to remedy the violations of drinking water standards in a timely manner.

- 10) Specifies that if an entity receiving a Notice has begun a remediation plan under the authority of the State Water Board, a California regional water quality control board, the PUC, or a LAFCO, the State Water Board shall deem the remediation plan acceptable without additional conditions.
- 11) Requires an entity where the State Water Board has accepted the plan or accepted the plan with conditions, to provide quarterly reports to the State Water Board on progress towards a permanent remedy for the violations of drinking water standards and requires the State Water Board to hold an annual public hearing to consider whether progress is satisfactory.
- 12) Requires the State Water Board, if it rejects the plan or if a plan is not filed by the deadline, to initiate action to do one of the following within 30 days:
 - a) Cause the formation of an authority by the applicable LAFCO;
 - b) Exercise its authority to promptly cause the consolidation of the entity with a public water system or take other actions to remedy the failure to meet applicable drinking water standards. Provides that consolidation or other action taken shall bring the water delivered to customers of the public water system into full compliance with all applicable water quality standards within two years of the date on which the State Water Board rejects the plan or the date; or,
 - c) Use existing funding sources and existing legal authority to remedy the failure to meet applicable drinking water standards.
- 13) Requires the State Water Board to make specified findings before initiating action.
- 14) Specifies that before causing the formation of an authority by the applicable LAFCO, the State Water Board shall provide the entity with a period of 15 business days from the date on which the State Water Board issues a written determination rejecting the plan to file a petition for reconsideration. The State Water Board shall, if so requested by the entity, hold an evidentiary hearing under the provisions of the Administrative Procedures Act that shall commence within 90 days of the date on which the petition for reconsideration is filed. The State Water Board shall issue a final order not later than 60 days after the close of the hearing. If the entity does not request a hearing, the State Water Board shall issue a final order not later than 60 days after the date on which the entity files its petition for reconsideration.
- 15) Provides that if the State Water Board and the PUC reject the plan of a water corporation regulated by the PUC, the PUC shall proceed with the consolidation or receivership, or both, under the PUC's existing programs, or, in consultation with the State Water Board, the PUC shall cause dissolution and transfer of assets of the water corporation into an authority.
- 16) Requires the State Water Board, no later than July 1, 2021, to provide written notice to each county, city, or water district, private water company, or mutual water company located within a county where an entity receiving a Notice is located stating that the State Water Board may consider the formation of an authority within that county and inviting other public water suppliers to consider consolidating with the authority that may be formed.

- 17) Requires an entity wishing to consolidate into a proposed authority to provide a written statement opting into an authority on or before December 31, 2021.
- 18) Authorizes the customers of an entity to petition the State Water Board to include their public water system in a proposed authority using procedures adopted by the State Water Board.
- 19) Specifies that on or before November 1, 2021, a county or city receiving notice from the State Water Board shall determine whether any county service areas, county waterworks districts, or other dependent special districts providing water service or water and sewer service located within the county that provide water service or water and sewer service only in the proposed area of the authority should be included within the proposed authority.
- 20) Provides that if the governing body of the county or city determines that the dependent special district should be included within the proposed authority, the county or city shall provide a written statement opting into an authority on or before December 1, 2021. After the formation of an authority, a county or city that concludes that a dependent special district should be consolidated into an authority shall make a proposal to the LAFCO.
- 21) Specifies that no later than November 1, 2021, the independent administrator (administrator) for an authority shall consult with all entities to provide advice as to the advantages and disadvantages of opting into being included in the authority.
- 22) Requires the State Water Board, no later than 30 days after determining that an authority shall be formed, to notify a LAFCO of a county where the public water system that submitted the plan is located, and, if appropriate the PUC, that it had determined that the public water system shall be consolidated into an authority.
- 23) Requires the State Water Board, no later than 60 days after determining that an authority shall be formed, to do both of the following:
 - a) Notify the appropriate state agency of the public water systems that will be consolidated into an authority; and,
 - b) Appoint an administrator for each proposed authority who shall be responsible for the preparation of a plan or service an interim administration and management of the authority.
- 24) Requires that, on or before March 1, 2022, the administrator, after consultation with the executive officer of the LAFCO, shall submit to the State Water Board a conceptual formation plan that includes the following:
 - a) The public water system service areas to be served by the authority;
 - b) The population to be served by the authority;
 - c) The available infrastructure to be used by the authority and any known deficiencies;
 - d) The recorded violations of drinking water standards and the nature of the threat to public health and safety;
 - e) Financial and operational provisions to be addressed in the plan for service; and,

- f) A plan for the provision of safe and clean water supplies to the customers of the public water system.
- 25) Specifies that the State Water Board shall provide comments on the conceptual formation plan to the administrator and applicable LAFCO within 60 days of its receipt.
- 26) Provides that on or before March 1, 2021, the State Water Board shall establish and publish a list of individuals who meet the qualifications to serve as administrators and requires the State Water Board to bear the cost of the administrator.
- 27) Specifies that no sooner than 30 days after the appointment of a general manager by the board of the authority, the services of the administrator shall be terminated.
- 28) Requires the PUC, no later than 240 days after the State Water Board issues a notice, to order the dissolution of the public water system that is being consolidated and the transfer of all assets of the water corporation to the authority formed by LAFCO.
- 29) Requires the State Water Board to petition a court of competent jurisdiction for an order dissolving any mutual water company, water corporation, or private corporation, no later than 240 days after the State Water Board issues a notice and they will be consolidated into an authority, and transfer all assets of the water system to the authority formed by LAFCO.
- 30) Provides a compensation and appeal process for the owner or shareholder of a water corporation or a mutual water company that is consolidated into an authority.
- 31) Requires the administrator, within 180 days after the State Water Board provides comments on the draft conceptual formation plan, to submit an application for the dissolution and formation and proposed plan for service to the LAFCO for review and potential approval. An application to form an authority shall include at least five public water systems, unless the administrator determines that the authority would be financially and operationally viable with fewer than five public water systems, as specified.
- 32) Specifies what information a proposed plan for service needs to include.
- 33) Provides that if the administrator determines that a formation of an authority would be infeasible for financial, technical, or operational reasons, or would not provide the necessary economies of scale or operating benefits, the administrator may set forth those conclusions in a report to the State Water Board in lieu of submitting a plan for service to the LAFCO. Requires the State Water Board to take specified steps if the formation of an authority is deemed infeasible.
- 34) Requires the authority, if the LAFCO approves the plan and the formation of the authority, to take the appropriate actions to comply with the plan.
- 35) Exempts the formation of an authority and the dissolution of a public water system from the requirements of the California Environmental Quality Act.
- 36) Requires an authority for the first three years after the date of its formation to file a report with the LAFCO containing specified information.

- 37) Requires a LAFCO to hold a public hearing within 90 days of the receipt of the report to review the authority's performance. If the report states the authority has failed to comply with any conditions imposed by the LAFCO, the State Water Board can order the authority to remedy the violations and, if necessary, impose a civil penalty not to exceed \$500 per day for each violation and not to exceed \$10,000 per year for each particular violation.
- 38) Specifies that the State Controller's Office (SCO) shall perform an audit of the fiscal and operational health of each authority and submit the results to the Legislature, no later than January 1, 2026.
- 39) Requires the State Water Board, no later than January 1, 2026, to submit to the Legislature a report specifying the number of public water systems that, at any time between January 1, 2018, and January 1, 2025, were out of compliance with one or more state or federal primary drinking water standards on a running annual average and other specified information.
- 40) Provides that during a public hearing, the LAFCO shall approve a plan, approve a plan with modifications, or disapprove a plan and request resubmittal by the administrator.
- 41) Provides specified criteria and requirements for the following:
- a) The establishment of the authority's board;
 - b) Elections of the board, filling vacancies, and compensation limits;
 - c) Appointment of officers and employees of the authority; and,
 - d) The powers, duties, and financial provisions of the authority.
- 42) Authorizes an authority to issue revenue bonds without voter approval.
- 43) Requires the State Water Board to, upon appropriation by the Legislature from the General Fund, or, to the extent funds are available from bond revenues or other sources, including federal, state, academic, or other public or private entities, provide funding for an administrator, and for formation and start-up costs of an authority for up to three fiscal years after formation of the authority, as follows:
- a) Up to \$10,650,000 to LAFCOs for authority formations;
 - b) Up to \$14,250,000 to pay for the administrator and other consulting services;
 - c) Up to \$31,200,000 to assist authorities during the first three years following formation. For each authority, the amount cannot exceed 20% of the authority's annual projected rate revenue in the first fiscal year, 10% of an authority's projected rate revenue in the second fiscal year, and 5% of an authority's projected rate revenue in the third fiscal year;
 - d) Up to \$9,200,000 to assist authorities in the first fiscal year equivalent to 25% of an authority's projected rate revenue to function as a working capital reserve fund;
 - e) Up to \$15,500,000 for the State Water Board for the dissolution of specified public water systems;

- f) Up to \$7,200,00 for the State Water Board to prepare distressed business valuation to determine the net fair market value of water corporations or mutual water companies; and,
 - g) Up to \$1,150,000 to the PUC to prepare order dissolutions for water corporations.
- 44) Specifies that if moneys are not sufficient to meet the statewide needs of the authorities, funding shall be made available upon appropriation from the Safe Drinking Water State Revolving Fund (DWSRF) as follows, to the extent permitted by federal law:
- a) Grants or loans, as applicable, for capital improvements shall be deemed within the highest funding priority within the DWSRF. Loans shall, until January 1, 2030, be awarded to an authority without interest. On and after January 1, 2030, the interest on loans shall be at the lowest possible rate then available; and,
 - b) Grants or loans, as applicable, for the technical assistance, planning, or other nonconstruction-related matters other than staffing or the operation and maintenance of facilities shall, until January 1, 2030, be deemed to be within the highest priority with the DWSRF and, on January 1, 2030, shall be deemed within the second-highest priority with the DWSRF.
- 45) Contains findings and declarations to support its purposes.
- 46) Provides that if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.

EXISTING LAW:

- 1) Vests the State Water Board with all of the authority, duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Public Health and its predecessor to enforce the State Drinking Water Act (SDWA).
- 2) Defines a "public water system" as a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.
- 3) Requires the State Water Board, in administering SDWA programs, to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities, and prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system.
- 4) Authorizes the State Water Board, where a public water system or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, to order consolidation with a receiving water system. Provides that the consolidation may be physical or operational.

- 5) Limits the liability of a consolidated water system, wholesaler, or any other agency in the chain of distribution that delivers water to a consolidated water system, as specified.
- 6) Declares 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.
- 7) Enacts the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), which:
 - a) Controls how local officials change the boundaries of cities and special districts, putting LAFCOs in charge of the proceedings; and,
 - b) 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:

- 1) The State Water Board estimates costs of over \$200 million over six years as follows: initial costs of \$14.6 million in 2020-21 and 2021-22, increasing to \$44.3 million in 2022-23 and \$48.6 million annually from 2023-24 through 2025-26. These costs include, among other things, \$17.8 million per year in annual support to fund operations of new small system authorities over three years, \$32.2 million in costs for appointed administrators to prepare applications and plans for new authorities, costs of preparing distressed business valuations, preparations for court petitions and PUC proceedings for dissolution of small private water systems, reimbursement of costs associated with local agency formation commission activities, and preparation of required reports. (General Fund, bond funds)
- 2) Unknown, potentially major additional costs for system improvements to bring small water systems into compliance with drinking water standards. (General Fund)
- 3) The PUC estimates costs of approximately \$420,000 annually for two years for hearings by an Administrative Law Judge (2 PY) when the PUC is required to order a dissolution of a water system, oversee distressed valuation compensation, and transfers of assets to an authority. (PUC Utilities Reimbursement Account)
- 4) Unknown significant SCO costs to perform fiscal and operational audits of each authority formed as a result of the bill. Total costs are unknown and depend upon how many are formed. The SCO indicates it would incur costs of approximately \$90,000 for each audit. For illustrative purposes, if 20 authorities are created as a result of this bill, costs related to the report would be approximately \$1.8 million (General Fund). These costs would be reimbursed by the authorities. Costs to compile and submit audit reports to the Legislature by January 1, 2026, would be minor.

COMMENTS:

- 1) **Bill Summary.** This bill creates the Small System Water Authority Act of 2019, which authorizes the creation of authorities that will have powers to absorb, improve, and competently operate noncompliant public water systems. This bill requires the State Water Board, no later than March 1, 2020, to provide Notice to all public agencies, private water companies, or mutual water companies of a specified size and that are in violation of certain drinking water standards. If the water systems are unable to remedy the compliance violations, the State Water Board is required to cause the formation of an authority, order consolidation with another existing public water system, or use existing funding to remedy the failure to meet applicable drinking water standards. This bill also requires the SCO to perform fiscal and operational audits of each authority and requires the authorities to reimburse any costs incurred by the SCO. Lastly, SB 414 establishes a governance structure, provides for the election of board members and appointment of employees, and authorizes specified powers, duties, and financing mechanisms for the delivery of water to residents. This bill is co-sponsored by the Eastern Municipal Water District and the California Municipal Utilities Association.

- 2) **Author's Statement.** According to the author, "The State Water Board has identified 264 (as of February 6, 2019) water systems statewide that chronically serve contaminated drinking water that is in violation of state and federal primary drinking water quality laws or cannot provide reliable water service due to unsound infrastructure or because they lack the local financial, managerial, and technical resources to do so. The vast majority of these systems are small, rural systems within disadvantaged communities, and they typically serve less than 10,000 people. A sustainable solution is necessary to address this drastic health and safety crisis. SB 414 proposes to merge noncompliant water systems into a single larger and more robust public water system that can take advantage of improved economies of scale, streamlined managerial functions, enhanced financial capacity, and is structured to advance public transparency and accountability of both the process and the newly formed system.

"The laws that have been passed to-date address various elements of the water accessibility issue, including voluntary and forced consolidations, supplying resources and technical support, and limiting the development of new unsustainable water systems. While these efforts have created a portfolio of options to address the critical issue of water accessibility in California, immediate and lasting changes to the underlying governance structure of chronically noncompliant small systems is still needed to protect public health and safety. SB 414 does not preclude voluntary or mandated consolidations; instead, this bill seeks to complement existing consolidation laws. However, traditional consolidations are complex to execute and each consolidation must rely on a larger host agency to facilitate the consolidation. SB 414 establishes a roadmap for the consolidation of multiple systems and does not rely on a larger host agency – which is important as many of these systems are located in rural communities that may not be adjacent to a larger potential host system."

- 3) **California's Drinking Water Program.** SB 861 (Committee on Budget and Fiscal Review), Chapter 35, Statutes of 2014, transferred the Drinking Water Program from the Department of Public Health (DPH) to the Water Board effective July 1, 2014, creating the new Division of Drinking Water within the Water Board, and made other statutory changes to create efficiencies and adoption and administration of the Drinking Water Program.

The Water Board directly enforces the SDWA for all large water systems (those with 200 or more service connections). For small water systems (those with less than 200 connections), local health departments can be delegated to have regulatory authority as the local primacy agency.

- 4) **Human Right to Water.** In 2012, California became the first state to enact a Human Right to Water law [AB 685 (Eng), Chapter 524, Statutes of 2012]. Public policy continues to be focused on the right of every human being to have safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply, contaminants, costs of treatment and distribution systems, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors will continue to challenge progress in addressing the Human Right to Water.
- 5) **Drinking Water Contamination in Disadvantaged Communities.** The February 2018, University of California (UC) Davis report, "*The Struggle for Water Justice in California's San Joaquin Valley: A Focus on Disadvantaged Unincorporated Communities*," summarizes drinking water issues facing disadvantaged communities in California, as follows:

"In California, lack of access to clean, safe, and affordable water is a threat to public health and well-being, and violates the state's newly codified Human Right to Water. In low-income communities located outside city boundaries (known as DUCs), drinking water is often unsafe to drink. In many such localities, drinking water is contaminated by industrial by-products (usually associated with agriculture, oil and gas production, transportation, and manufacturing) and compromised by inadequate wastewater treatment and disposal systems, as well as naturally occurring toxic substances like arsenic and uranium. Many DUC residents in the San Joaquin Valley pay a triple penalty to obtain safe water: they bear the health costs of unsafe drinking water; they purchase that unsafe water at high costs; and, they must also purchase 'substitute' water – typically expensive bottled water – for drinking and cooking.

"Lack of access to clean, safe and affordable drinking water has a racial and ethnic component: the vast majority of DUC residents are people of color who also face cumulative impacts from environmental contamination brought on by proximity to air pollution, pesticides, toxic facilities and waste disposal. Without city governments to directly represent their interests and provide essential services, residents of DUCs have been systematically deprived of access to important means of democratic governance."

While the 2018 UC Davis report focuses on DUCs in the San Joaquin Valley, the findings are consistent with a more expansive 2013 SWRCB report and 2012 UC Davis report that found that drinking water contamination in California disproportionately affects small, rural, and low-income communities that depend mostly on groundwater as their drinking water source. The 2013 SWRCB report found that 682 community public water systems in California, which serve nearly 21 million people, rely on contaminated groundwater as a primary source of drinking water. It also found that 265 community public water systems, which serve a little more than two million people, had received at least one drinking water quality violation within the last compliance cycle. The report points out that an additional two million Californians rely on groundwater from a private domestic well or a smaller groundwater-reliant system that is not regulated by the state. The SWRCB reports that

currently approximately 330 drinking water systems are not in compliance with drinking water standards.

The 2018 UC Davis report also found that a significant number of DUC residents live close to an existing, and water quality compliant, community water system that could provide them with clean drinking water.

- 6) **Addressing Service Deficiencies.** LAFCOs, along with the planning agencies of cities and counties, are charged with ensuring 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 DUCs 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 DUCs. SB 244 (Wolk), Chapter 513, Statutes of 2011, aimed to prevent cities from carving out DUCs by generally prohibiting annexations of small areas to a city if a DUC is contiguous with that area. SB 244 also required LAFCOs to include in the municipal service review (MSR) a description of the location and characteristics of any DUCs within or contiguous to the sphere of influence and to consider the water, sewer, or fire protection needs of DUCs within the sphere when considering updates. Finally, SB 244 required cities and counties to review the water and fire service needs of DUCs 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.

- 7) **Consolidations.** 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 LAFCO 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].

- 8) **How Does Consolidation of a Public Water System Work?** Consolidating public water systems and extending service from existing public water systems to communities and areas, which currently rely on under-performing or failing small water systems, as well as private wells, reduces costs and improves reliability. Consolidating or extending service from a public water system to a community otherwise served by unreliable systems or unregulated private wells advances the goal of a reliable, accessible supply of safe drinking water for all California residents.

Public water systems experiencing chronic water quality failures or unreliable supplies are first provided technical assistance to analyze the problem and recommend a course of action. Enforcement may also be necessary to achieve compliance with SDWA requirements. Lacking progress, the SWRCB may initiate discussions with the system and neighboring/ adjacent public water systems regarding consolidation. Consolidation may involve the actual physical consolidation of the participating water systems (physical consolidation), just the management of the participating water system (managerial consolidation), or both. If voluntary consolidation cannot be negotiated in a reasonable time period, the SWRCB may commence proceedings for direct mandatory consolidation or a mandatory extension of service. In this case, consolidation letters will be sent to the consistently failing water system (subsumed system) and to the receiving system notifying them that they have six months to develop a plan for voluntarily consolidation. If the two systems have not developed a plan for consolidation within six months of the letters being issued, the SWRCB may then order the two systems to consolidate.

The SWRCB will provide funding, as necessary, and appropriate from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1, 2014), the DWSRF, and monies made available from the emergency drought relief package, for consolidation or extension of service, including infrastructure improvements. SB 88 added a provision to the law limiting the liability of water systems, wholesalers, or any other agencies that deliver water to consolidated water systems. This liability relief is available regardless of whether the consolidation occurs through the mandatory consolidation process or through a voluntary act. These new liability relief provisions protect water systems involved in consolidations and remove a barrier that previously limited voluntary consolidations.

- 9) **Progress on Providing Clean Drinking Water.** The State Water Board currently posts information on its website about ordered consolidations. It also tracks and has information on voluntary consolidations. Under the State Water Board’s authority, there have been three mandatory consolidations ordered, and there have been more than 100 voluntary consolidations in that time period. Within those, the State Water Board has had varying levels of participation. Some were consolidations the State Water Board helped to fund, some to which the State Water Board provided guidance, and others for which the State Water Board just issued a permit.
- 10) **Prior Legislation.** AB 2050 (Caballero, 2018), similar to this bill, was vetoed by Governor Brown with the following veto message: “This bill establishes the Small System Water Authority Act of 2018, which authorizes the creation of small system water authorities to operate small public water systems that can’t afford to serve safe drinking water. While I appreciate the author’s intent, this bill creates an expensive, bureaucratic process and does not address the most significant problem with providing safe drinking water - a stable funding source to pay for ongoing operations and maintenance costs. My administration remains committed to a comprehensive solution to address safe drinking water issues based on shared responsibility between water users and water providers that will not result in ongoing costs to the General Fund. I urge the Legislature and stakeholders to work towards a stable funding solution in 2019.”
- 11) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Where Does the Money Come From?** SB 414 seeks to solve a large-scale problem that includes 330 systems across 44 counties, meaning implementation of the provisions of SB 414 will likely be expensive. The bill currently contains language that requires the State Water Board to provide funding for an authority’s administrator, formation of the authority, and three years of start-up costs, among other costs. While this bill is clear that the State Water Board is responsible for providing funding for the formation of an authority and its associated costs, it is unclear which funds are to be used. Different types of funding have different limitations on their use. Some funds for drinking water are currently available from recent water bonds, and SB 414 redirects funding from the DWSRF if need be, but these funds are best used to support capital assets because of their one-time nature and not to support the administration of programs. Another source of funding is the state’s General Fund, which is only available upon appropriation by the Legislature. Such an appropriation is not guaranteed in the future. The Committee may wish to consider the impact this bill may have in light of the uncertainty of an ongoing, long-term funding source.
 - b) **Liability.** Taking on liabilities of failing systems is often a concern in consolidation efforts. The Legislature has granted limited immunity from liability to address those concerns on two occasions in recent years. SB 1130 (Roth), Chapter 173, Statutes of 2014, protected several water systems from liability for claims from customers of a failing system that those agencies absorbed. Subsequently, SB 88 also provided liability protection to any receiving water system that has a failing system consolidated into it. These liability protections are important to ensure that the customers of a functional system do not have to share in the risk of being liable for claims that they had no part in. However, SB 414 does not give authorities the same liability protections. This transfer of liability may limit the effectiveness of the bill for two reasons: The potential liability

may discourage functional systems from voluntarily joining an authority, and, if the authority is found liable based on the actions of one systems, the other systems that merged into the authority would be on the hook for payment of claims. Given that these systems were in a fragile state to begin with, this liability may push not just the responsible system but the other participating systems further into financial unsustainability. The Committee may wish to consider if liability protections should be included in this bill.

- c) **Revenue Bonds.** This bill allows an authority to issue revenue bonds backed by the fees and charges collected from its ratepayers. The Revenue Bond Law of 1941 was intended for enterprise projects that, once completed, generate revenue to pay off the bonds. This bill exempts the issuance of revenue bonds from the typical 50% voter approval requirement. This is not unique to agencies that provide water services. However, the Committee may wish to consider if the voter approval exemption is appropriate for these authorities.
- 12) **Arguments in Support.** The sponsors argue, “SB 414 seeks to implement a fair and reasonable approach to addressing water quality and accessibility concerns by first providing failing systems with a means to develop a plan to self-correct. If self-correction is not viable, the bill requires systems with chronic water quality violations to either consolidate with an adjacent compliant water system, or dissolve and be reconstituted along with other similarly situated systems into regional authorities. These newly formed regional authorities will improve and competently operate currently non-compliant public water systems by providing technical, financial and managerial competencies along with larger rate bases and economies of scale.”
- 13) **Arguments in Opposition.** The opponents argue that “SB 414 creates a definition for out-of-compliance water systems that differs from the SDWA, requiring the State Water Board to separately identify systems that must comply with the requirement to develop a plan for returning to compliance; creates a different and more complicated process for working with LAFCO than is required by the State Water Board consolidation authority granted in SB 88; and contains deadlines that may be unachievable while diverting resources from other much-needed projects and assistance. The authority as created by this legislation will be saddled with considerable fiscal challenges; unlike the State Water Board’s consolidation authority, this legislation does not provide limited liability relief for the new system; instead, it specifically requires the liabilities of the original system to be conveyed to the new authority. The authority also has requirements for professional staff and board member pay that, while desirable, may not be economically feasible. The result of these issues is to make the regional authority option less cost-effective – and less effective overall – while still diverting attention and resources from more optimal processes and solutions for the many Californians without safe drinking water today.”
- 14) **Double-referral.** This bill was heard by the Environmental Safety and Toxics Committee on July 2, 2019, and passed with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association [CO-SPONSOR]
Eastern Municipal Water District [CO-SPONSOR]
Association of California Water Agencies
California Association of Mutual Water Companies
California Special Districts Association
Calleguas Municipal Water District
City of Riverside
City of Roseville
Cucamonga Valley Water District
Independent Special Districts of Orange County
Inland Empire Utilities Agency
Irvine Ranch Water District
Las Virgenes Municipal Water District
Mesa Water District
Metropolitan Water District of Southern California
Norther California Water Association
Orange County Water District
Rural County Representative of California
San Bernardino Valley Municipal Water District
San Diego County Water Authority
San Francisco Public Utilities Commission
San Gabriel Valley Council of Governments
San Gabriel Valley of Economic Partnership
Santa Ana Watershed Project Authority
Santa Clara Valley Water District
Southwest California Legislative Council
Three Valleys Municipal Water District
Upper San Gabriel Valley Municipal Water District
Western Municipal Water District

Opposition

Clean Water Action
Community Water Center
Leadership Counsel for Justice and Accountability
Rural Communities Assistance Corporation
Self-Help Enterprises

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958