

Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1072 (Wicks) – As Amended March 23, 2023

**SUBJECT:** Water conservation and efficiency: low-income residential customers

**SUMMARY:** Requires urban water suppliers and wholesalers to offer water conservation programs to low-income residents by January 1, 2025 and provides such programs may be offered through a residential water conservation and efficiency program so long as 40% of the funds are allocated to low-income customers and disadvantaged communities (DAC).

Specifically, **this bill:**

- 1) Declares that it is the established policy of the state that access to water conservation and efficiency programs needs to be available to all residents.
- 2) Requires urban wholesale water suppliers and urban water suppliers to offer technical and financial assistance to low-income customers for the installation of water efficient fixtures and landscaping by January 1, 2025.
- 3) Provides that technical and financial assistance may be offered through a residential water conservation and efficiency program, but requires 40% of the funds for such a program to be allocated to low-income households and disadvantaged communities (DAC) within a supplier's service area.
- 4) Provides that if a supplier demonstrates to the State Water Resources Control Board (State Water Board) that no more than 10% of its customers are low-income or DAC residents, the State Water Board may adjust the required funding allocation to 10% for such customers.
- 5) Provides that conservation technical and financial assistance may be funded by ratepayer and nonratepayer revenue or by recouping the program cost by a surcharge on a program participant's bill provided the surcharge is no greater than the bill savings generated by the conservation program.
- 6) Specifies the type of technical and financial assistance that may be offered pursuant to this bill including discounts and low- or no-cost installation of devices and landscapes.
- 7) Provides that after January 1, 2025 an urban water supplier or urban wholesale water supplier shall be ineligible to access state financial assistance, except for emergency assistance, unless it is in compliance with this bill.
- 8) Requires the State Water Board and DWR to use existing funding programs to fund the technical and financial assistance programs offered by community water systems and suppliers in compliance with this bill to the maximum extent allowable by law. Such funds include general obligation bond funds, revolving loan funds, integrated regional water management funds, General Fund allocations for water efficiency and conservation, specified federal funds, and fees assessed by groundwater sustainability agencies.

- 9) Requires the State Water Board, in cooperation with DWR, to hold at least one public workshop to solicit input on technical and financial assistance program design and implementation considerations before January 1, 2025.
- 10) Requires the State Water Board to adopt reporting requirements for this bill by July 1, 2026 and enumerates necessary aspects of these requirements.
- 11) Codifies findings that the state has made significant conservation gains but that these gains have not been realized uniformly across communities and income levels.

**EXISTING LAW:**

- 1) Permits a water supplier to adopt and enforce a water conservation program to reduce water use (Water Code § 375).
- 2) Permits a local agency to undertake water conservation and public education programs in conjunction with school districts, public libraries, or other local agencies (Water Code § 375.5).
- 3) Defines “water,” for purposes of Proposition 218 implementation, as any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source (Government Code § 53750).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “water affordability is an urgent problem in California, with water rates going up 5% in real dollars each year. California has invested heavily in rebate programs, incentivizing homeowners to make their homes more environmentally and fiscally efficient. But these programs only reach households with cash on hand. As a result, low-income families are more likely to live in homes with out-of-date plumbing fixtures and leaks and neighborhoods with fewer green spaces and less tree cover. [This bill] will encourage more efficient coordination and offer more opportunities for low-income individuals to conserve water in their homes. Along with that, [this bill] looks to strengthen and create new partnerships with local entities to streamline the coordination and completion of water projects for our low-income residents. Equity will always remain crucial, especially around water efforts here in the state.”
- 2) **Background.** Analysis of water sector finance by the Public Policy Institute of California (PPIC) finds that local water agencies account for approximately 84% of the funds spent on water in California (PPIC, 2021). Local agencies can face impediments, however, in trying to pay for certain services: “Propositions 218 and 26 impose strict cost-recovery requirements on water rates, making it challenging for public water agencies to implement conservation-oriented rates and user fees” (PPIC, 2021). This bill identifies ratepayer revenue and water bill surcharges as options to fund the programs it requires. Rates are subject to, and surcharges may be subject to, the requirements of Proposition 218 and Proposition 26.

*Proposition 218.* Enacted in November 1996, Proposition 218 amended the California

Constitution by placing restrictions on how local agencies use fees, charges, or special assessments (“property-related services”) to cover the cost of providing services, including for water service. In order to assess a fee, water agencies must ensure it meets five standards under Proposition 218: that a fee or charge (1) not exceed the cost of providing the service for which it is charged or (2) be used for any purpose other than that for which it is charged; (3) that a fee not exceed the proportional cost of providing a service to an individual property; (4) that no fee be imposed for a service unless that service is actually used by or available to a property owner; and (5) that no fee or charge may be imposed for general governmental services that are available to the public in the same manner as it is to property owners. To comply with Proposition 218, water agencies have to undertake a detailed cost study to establish the basis upon which the amount of a proposed fee or charge is calculated, notify customers of a proposed fee or charge, and hold a public hearing on the proposed fee or charge. If a majority of the property owners that will be subject to the proposed fee or charge protest the fee or charge, a local agency may not impose the fee or charge.

*Proposition 26.* Enacted in November 2010, Proposition 26 places additional burdens on local agencies by attempting to broaden the definition of “tax” as “any levy, charge, or exaction of any kind” except for charges imposed to confer a specific benefit or service to the payer. It also places the burden of proof on a local agency to demonstrate that a charge is not greater than the cost of providing the service for which it is charged in the event of a challenge. The provisions of Proposition 26, at a minimum, set a higher bar on a local agency that uses ratepayer funds or surcharges to fund the programs required by this bill.

- 3) **Policy consideration.** A key policy issue raised by this bill is how to pay for the water conservation services it requires. This bill requires urban water agencies and water wholesalers to offer water conservation services to their low-income residential customers and indicates that these agencies may use ratepayer or non-ratepayer revenue, surcharges, or various state funding sources to cover the cost of providing these services. However, the use of ratepayer revenue for the purposes of this bill require compliance with Proposition 218.

If a water agency has an existing water conservation program, compliance with this bill may be less fraught than for an agency that does not have an existing program; however, there is still potential legal exposure under Proposition 218 if a water agency with an existing program uses ratepayer revenue. It depends on the extent to which the cost study used to establish a rate structure or surcharge in the first place accounted for offering conservation services to its customers; “[public retail water agencies] will have to justify water service charges that pay for water management activities that may not directly benefit some individual customers, but that provide indirect benefits to all customers by reducing either aggregate demand for freshwater supplies or the aggregate cost of providing water service.”<sup>1</sup>

For a water agency that does not have an existing water conservation program, compliance with this bill may be more challenging as it is very likely programs could not use existing ratepayer revenue or surcharges because the cost study to establish these sources would not have contemplated funding a water conservation program. As such, these water agencies would either have to go through a new Proposition 218 process to change their rate structures

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<sup>1</sup> Caitrin Chappelle et al., *Paying for Water in California, Technical Appendix A: The Legal Framework*. (San Francisco: PPIC, 2014), 16.

or assess surcharges or use non-ratepayer revenue and/or state funding to cover the costs of such a program. Should this bill move out of this Committee, the author may wish to further clarify how water agencies can use the funding sources identified to provide the conservation services required by this bill.

- 4) **Suggested committee amendments.** The broad policy directive in this bill, while laudable, is redundant and could cause confusion. To address this, the Committee may wish to ask the author to amend this bill as follows:

**Amendment 1** – Amend Water Code Section 106.1 as follows:

106.1 It is hereby declared to be the established policy of the state that *all residents have* access to water conservation and efficiency programs ~~*needs to be available to all residents.*~~

This bill identifies various existing state funding sources to provide water conservation services to community water systems with fewer than 3,000 connections and to urban water agencies that develop the water conservation program required by this bill. Some of the state funding sources identified by this bill, nevertheless, cannot be used to implement this bill. For example, this bill indicates “grant funds authorized by general obligation bonds” could be used to implement this bill, but this is only the case where bond funds are authorized for water conservation or efficiency programs. Proposition 1, passed in 2014, is a good illustration of this; it allocates \$100 million for water conservation and water efficiency programs that could be directed to the purposes of this bill; however, the \$2.7 billion for water storage projects could not. Additionally, this bill references fees collected by groundwater sustainability agencies (GSA) to achieve sustainable groundwater management as a potential revenue source that could be used by state agencies to implement this bill, but this is inappropriate and unworkable given that state agencies do not collect these fees and GSAs have a very different mandate than urban water suppliers. A similar issue applies to the reference to funds allocated for integrated regional water management planning. To eliminate confusion or ambiguity, the Committee may wish to request that the author amend this bill as follows:

**Amendment 2** – Amend Water Code Section 375.7 (f) as follows:

(f) (1) The department and the board shall, to the maximum extent allowable by law, utilize existing funding programs to provide technical assistance and financial incentives for water conservation and efficiency to community water systems with fewer than 3,000 service connections serving disadvantaged communities, and to urban wholesale water suppliers and urban water suppliers that meet the requirements of this section.

(2) Existing funding programs ~~*shall*~~ *may* include, but are not limited to, all of the following:

(A) Grant funds ~~*for water efficiency and conservation*~~ authorized by general obligation bonds.

(B) The revolving loan funds for drinking water and clean water administered by the board.

(C) ~~*The integrated regional water management program administered by the department.*~~

~~(D)~~ General fund allocations for water efficiency and conservation to either the department or the board.

~~(E)~~ (D) Federal funds administered by the department or the board for environmental justice, water supply, and water efficiency.

~~(F) Fees collected pursuant to implementation of the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6).~~

- 5) **Arguments in support.** San Francisco Bay Area Planning & Urban Research Association (SPUR) is the sponsor of this bill and argues that it is necessary to ensure that all Californians have access to water conservation and efficiency programs as such services help make communities more resilient to climate change and save water and money. SPUR states “research and evaluations of conservation programs have shown that commonly used financial incentives, such as rebates, are used disproportionately by upper income households that have capital on hand to pay for upfront costs. Moreover, many lower-income neighborhoods lack adequate shade and suffer from the urban heat island effect. [This bill] would begin to address these impacts by applying an equity lens to water conservation programs.”
- 6) **Oppose unless amended.** The Association of California Water Agencies (ACWA) has taken an “oppose unless amended” position on this bill arguing that the approach taken in this bill “is not workable as it potentially violates Proposition 218 requirements and directs inappropriate state funding for these purposes.” ACWA asserts that the requirement that water agencies direct 40% of the funds for a water conservation and efficiency program to one class of customers opens water agencies up to legal challenge under Proposition 218 because it is “legally challenging to allocate funding unequally among their ratepayers.” In addition, ACWA expresses concern that this bill enumerates various state funding sources that are intended to fund other priorities in the water sector that are also meritorious and maintains that “dedicating these broad funding categories for this one purpose is inappropriate.” Finally, ACWA notes that the use of surcharges to fund the services this bill requires could be challenging as many low-income populations are renters and do not directly receive a water bill.

## REGISTERED SUPPORT / OPPOSITION:

### Support

San Francisco Bay Area Planning & Urban Research Association (Sponsor)  
 California Coastkeeper Alliance  
 Clean Water Action  
 Community Water Center  
 LA Alliance for A New Economy  
 Leadership Counsel for Justice and Accountability  
 Mono Lake Committee  
 Natural Resources Defense Council  
 Plumbing Manufacturers International  
 Rising Sun Center for Opportunity

**Opposition Unless Amended**

Association of California Water Agencies

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