

Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 755 (Papan) – As Amended March 16, 2023

**SUBJECT:** Water: public entity: cost-of-service analysis

**SUMMARY:** Requires urban water agencies, when conducting a cost-of-service analysis, to analyze the incremental costs of providing water service to residential customers that are “major water users” and estimate potential savings if those users were to implement efficiency measures. Specifically, **this bill:**

- 1) Requires a public entity (e.g., local agency) to identify the following information when conducting a cost-of-service analysis:
  - a) The incremental costs incurred by major water users in the single-family residential class (this information shall be made public); and
  - b) The incremental costs that would be avoided if major water users conserved water by meeting a specified goal.
- 2) Defines the following terms for the purpose of this bill:
  - a) “Cost-of-service analysis” as the analysis conducted to determine water usage patterns and demands placed on the system by various customer classes;
  - b) “Efficiency goal” as the standards for outdoor residential use, outdoor CII (commercial, industrial, and institutional) use, and water loss volume adopted by the State Water Resources Control Board (State Water Board);
  - c) “Incremental costs” as the costs of water service that a public entity incurs as a result of the use of water by the systems’ major water users, including specified examples;
  - d) “Major water user” as the top 10% of water users in a given customer class since the last cost-of-service analysis; and
  - e) “Public entity” as a local agency including a special district, authority, municipal public corporation or district, or any other public agency that provides retail water service and that is an urban water supplier.
- 3) Finds and declares that water conservation is a matter of statewide concern and is not a municipal affair as defined in the California Constitution so that this bill applies to all cities, including charter cities.
- 4) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

**EXISTING LAW:**

- 1) Provides that revenues derived from allocation-based conservation water pricing shall not exceed the reasonable cost of water service including base costs and incremental costs (Water Code § 373).
- 2) Permits a water supplier to adopt and enforce a water conservation program to reduce water use (Water Code § 375).
- 3) Requires the State Water Board, in coordination with DWR, to adopt long-term standards for outdoor residential use, outdoor commercial, industrial, and institutional (CII) water use, and water loss volume by June 30, 2022 (Water Code § 10609.2).
- 4) Requires urban retail water suppliers to calculate their urban water use objectives no later than January 1, 2024 and by January 1 every year thereafter. The urban water use objective shall be the sum of the following: (a) aggregate estimated efficient indoor residential water use; (b) aggregate estimated efficient outdoor residential water use; (c) aggregate estimated efficient outdoor CII water use; (d) aggregate estimated efficient water losses; (e) aggregate estimated water use with variances, as appropriate; and (f) bonus incentives for potable reuse (Water Code §10609.20).
- 5) Defines “urban retail water supplier” as either a public or private water supplier that provides water for municipal purposes to more than 3,000 customers or that supplies more than 3,000 acre-feet annually, including water wholesalers (Water Code § 10617).

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “All too often, the maximum demand for water is driven by the customers that use the most, and the affluent single family residences are notorious for using excessive amounts of water for outdoor irrigation. Considering that the system needs to satisfy the highest possible demand on any given day, the largest water users are a driving force behind the public utility’s need for larger supply, increased infrastructure, and efforts to conserve the system’s water. These investments increase the public water utility’s overall costs and can raise the rates for all customers. In drought, these issues are especially exacerbated, as the temporary additional water supplies and conservation programs can be costly. For people who conserve water and keep demand low, many of the public utilities costly investments are unnecessary.”

The author maintains that “as system expenses continue to increase to meet the demands of the major water users, public utilities must charge water rates to recoup their overall system costs. As a result, customers who conserve may be required to subsidize rising costs for those who use the most. In addition, for affluent households, higher water rates do not always effectively incentivize conservation. And customers are often unaware of how the major water users in a system can drive system costs for everyone.” For this reason, the author argues this bill is necessary to determine how high water users are driving up costs and to increase transparency. The author asserts “the analysis required by [this bill] will serve as a necessary foundation for a more fair and equitable rate structure.”

- 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 requires water agencies to analyze specific costs when conducting a rate study to change or increase its water rate structure.

*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.

- 3) **Arguments in support.** This bill is sponsored by California Coastkeeper Alliance (Coastkeeper) who note that water affordability remains a statewide issue that is exacerbated by climate change. Coastkeeper argues this bill will “ensure Californians pay a fair price for water” by requiring water utilities to determine how the heaviest water users in their service area drive up cost. Water rate increases have outpaced inflation and Coastkeeper points to analysis that indicate larger lot single family residences that are found in more affluent neighborhoods are typically the highest water users. Coastkeeper asserts that water utilities must invest in infrastructure to meet the highest level of demand on a given day and that “the greater the demand customers place on the system, the greater these investments must be, and the greater the investments, the higher customer bills climb.”
- 4) **Arguments in opposition.** The Association of California Water Agencies (ACWA) opposes this bill contending that it imposes significant challenges on water agencies in determining what water rate to charge different classes of customers. ACWA argues that this bill “would force agencies to incorporate hypotheticals into their cost-of-service analysis. The inherent uncertainty of this analysis could expose agencies to liability.” Finally, ACWA maintains that this “bill assumes that customers with large properties are water wasters. Water agencies

have the ability to address water wasters, but this is not done based on the size of the property.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Coastkeeper Alliance (sponsor)  
Coachella Valley Waterkeeper  
Community Water Center  
Humboldt Baykeeper  
Inland Empire Waterkeeper  
laane (Los Angeles Alliance for A New Economy)  
Mono Lake Committee  
Monterey Waterkeeper  
Orange County Coastkeeper  
River in Action  
Russian Riverkeeper  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
Save the Sonoma Coast  
SEE (Social Eco Education)  
Somos Familia Valle  
South Yuba River Citizens League  
Western Center on Law & Poverty  
Yuba River Waterkeeper

**Opposition**

Association of California Water Agencies  
California Municipal Utilities Association  
Irvine Ranch Water District

**Analysis Prepared by:** Pablo Garza / W., P., & W. / (916) 319-2096