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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 1250

**Author:** Calderon

**Version:** 7/5/2021

**Hearing Date:** 7/7/2021

**Urgency:** No

**Fiscal:** Yes

**Consultant:** Gabrielle Meindl

**SUBJECT:** Water and sewer system corporations: consolidation of service

**DIGEST:** This bill establishes timeframes by which the Public Utilities Commission (PUC) is required to take action on a request for water system consolidation.

**ANALYSIS:**

Existing law:

- 1) Requires the State Water Resources Control Board (State Water Board), in administering Safe Drinking Water Act (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. (Health & Safety Code (HSC) § 116326)
- 2) 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. (HSC § 116682 (a))
- 3) Prohibits any public utility from selling, leasing, assigning, mortgaging, or otherwise disposing of, or encumbering specified property necessary or useful in the performance of the public utility's duties to the public without first, for qualified transactions valued above \$5,000,000 securing an order from the PUC authorizing it to do so, or for qualified transactions valued at \$5,000,000 or less, filing an advice letter and obtaining approval from the Commission. (PUC § 851)

- 4) Requires the PUC to determine the types of transactions valued at \$5,000,000 or less that qualify for advice letter handling. Authorizes, for a qualified transaction valued at \$5,000,000 or less, the PUC to designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. (PUC § 851 (a))
- 5) Requires, absent protest or incomplete documentation, the PUC to approve or deny the advice letter within 120 days of its filing by the applicant public utility. (PUC § 851 (a))
- 6) Requires the PUC, in a ratesetting case (which includes acquisitions), to resolve the issues raised in the scoping memo within 18 months of the date the proceeding is initiated, unless the PUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. (PUC § 1701.5 (a))
- 7) Authorizes the PUC to specify in a scoping memo a resolution date later than 18 months from the date the proceeding is initiated, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date. (PUC § 1701.5 (b))
- 8) Defines "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. (HSC § 116275 (h))
- 9) Defines "state small water system" as a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. (HSC 116275 § (n))

This bill:

- 1) Makes legislative findings about small water system compliance with drinking water standards and about the merit of water system consolidations.
- 2) Provides that it is the intent of the Legislature to promote timely consolidation of water systems to provide an adequate supply of safe drinking water for all residents of California.

- 3) Authorizes a water or sewer system corporation to file an application and obtain approval from the PUC through an order authorizing the water or sewer system corporation to consolidate with a small community water system or state small water system identified as failing or at-risk of failing by the State Water Board.
- 4) Requires the PUC to approve or deny the application within 12 months, unless the PUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline by up to four months. Authorizes the PUC to grant additional extensions of four months or less.
- 5) Authorizes a water or sewer system corporation, for a consolidation valued at \$5,000,000 or less, to file an advice letter and obtain approval from the PUC through a resolution authorizing the water or sewer system corporation to consolidate with a small community water system or state small water system identified as failing or at-risk of failing by the State Water Board.
- 6) Authorizes the executive director of the PUC or the director of the division of the PUC having regulatory jurisdiction over the water or sewer system corporation to approve an advice letter, and would require the PUC to approve or deny an advice letter within 180 days, provided the advice letter is not contested and unless the executive director makes a written determination that the deadline cannot be met and issues a response extending the deadline by up to 60 days. Authorizes the executive director to grant additional extensions of 60 days.
- 7) Authorizes the PUC, for a consolidation valued at \$5,000,000 or less, to designate a different procedure if it determines that the consolidation warrants a more comprehensive review than the advice letter procedure provides.
- 8) Requires the PUC, for purposes of a consolidation valued at \$5,000,000 or less, to prioritize cases in which a water or sewer system corporation consolidates with a small community water system or state small water system that is subject to a citation or a compliance order for failure to meet primary or secondary drinking water standards.
- 9) Establishes the Consolidation for Safe Drinking Water Fund and requires that moneys in the fund are available, upon appropriation by the Legislature, to the PUC to be used only for the purpose of processing applications, as specified.

- 10) Requires a water or sewer system corporation to submit a fee of \$10,000 when filing an application for authority to complete a consolidation, as specified. Requires that all moneys collected be deposited into the Consolidation for Safe Drinking Water Fund.

## Background

- 1) *Human right to water.* With the enactment of AB 685 (Eng, Chapter 524, Statutes of 2012), California became the first state with a Human Right to Water law. AB 685 established state policy that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation. Water supply issues, contaminants, costs of treatment and distribution systems, climate change, the number and nature of small public water systems, especially in disadvantaged communities, and many other factors continue to challenge progress in implementing the Human Right to Water.
- 2) *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 rural disadvantaged communities 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 disadvantaged unincorporated communities or 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."

While public attention over the past decades has keenly focused on drinking water issues facing rural disadvantaged communities, urban disadvantaged communities also face challenges with access to safe, reliable, affordable drinking water, especially when serviced by small water systems. A 2021

UCLA Water Resources Group report, *The Human Right to Water in Poor Communities of Color*, identifies 64 community water systems in Los Angeles County alone that serve disadvantaged or severely disadvantaged populations. These 64 water systems have 281,000 connections and serve approximately one million people, nearly 10% of the population of Los Angeles County in 2019. The report notes that 29 of these systems serve disadvantaged communities of color in Southern Los Angeles County.

- 3) *Oversight of California's drinking water systems.* The State Water Board has general authority over the water quality and drinking water functions of the state government. Under the federal and California Safe Drinking Water Acts, the State Water Board administers provisions relating to public water systems and regulates drinking water to protect public health, including, among other things, adopting primary drinking water standards and permitting public water systems. The State Water Board is responsible for the regulatory oversight of ~7,500 public water systems.

The PUC is responsible for ensuring that California's investor-owned water utilities deliver clean, safe, and reliable water to their customers at reasonable rates. The PUC's Water Division regulates about 100 investor-owned water and sewer utilities under the PUC's jurisdiction providing water service to about 16 percent of California's residents.

- 4) *Consolidation of Public Water Systems.* Approximately 92 percent of public water systems serve less than 1,000 connections. Small public water systems are often less resilient to natural disasters, such as drought and fire, have more difficulty adjusting to regulatory changes, and may struggle to fund infrastructure maintenance and replacement due to poor economies of scale and lack of staff. As a result, the State Water Board supports water partnerships whenever feasible. Water partnerships can take many forms, including: local resource sharing, physical consolidation, managerial consolidation, and full regionalization. In 2015, SB 88 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to require that system to consolidate with, or receive an extension of service from, a compliant public water system.

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.

- 5) *Public Water System and Consolidation Act of 1997*. As it relates to public water utilities, state law requires these systems to obtain PUC approval to merge with or buy another public utility or to sell useful utility property. Water system consolidations under the jurisdiction of the PUC are semantically considered acquisitions and mergers, and the approval of those transactions differ from those at the State Water Board.

The Legislature enacted the Public Water System Investment and Consolidation Act of 1997 (Act) to provide water corporations with an incentive to acquire public water systems needing improved infrastructure to meet increasingly stringent safe drinking water laws and regulations. The Act does this by requiring the PUC to use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation, and to use this value for rate setting.

The PUC conducts proceedings to consider applications for authority to merge with or acquire another public utility or to sell a public utility water system, to operate an acquired water system, to include acquired water systems in rate base, to establish tariffs for an acquired water system, and to make other related requests.

- 6) *Applications versus advice letters*. The PUC uses two methods for approving PUC-regulated water system consolidations: application and advice letter.

Acquisitions through application undergo a formal legal process overseen by an administrative law judge (ALJ). These formal proceedings take a considerable amount of time because they usually involve complex issues that require analysis, they provide an opportunity for public meetings and public participation workshops, and they consider recommendations by affected parties through the judicial process. Statute requires the PUC in a ratesetting case (which includes acquisitions), to resolve the issues raised in the application within 18 months of the date the proceeding is initiated, unless the PUC makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. Statute also authorizes the PUC to specify a resolution date later than 18 months from the date the proceeding is initiated, if that application includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date.

Acquisitions through advice letter generally involve small, non-controversial, unprotested transactions where rates for existing and acquired customers will not be adversely impacted. Advice letters do not provide an opportunity for public meetings or public workshops, and the time frame to protest an advice letter is shorter than it is for an application. Statute requires the PUC to determine the types of transactions valued at \$5,000,000 or less that qualify for advice letter handling, and authorizes, for a qualified transaction valued at \$5,000,000 or less, the PUC to designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Statute requires, absent protest or incomplete documentation, the PUC to approve or deny the advice letter within 120 days of its filing by the applicant public utility.

- 7) *Consolidation of small water systems with health and safety violations.* Current statute provides a process to help expedite the consolidation of small water utilities that have failing water systems, referred to as “Inadequately Maintained and Operated Small Water Systems (IMOSWS).” Per a PUC decision to implement the Public Water System Investment and Consolidation Act of 1997, an advice letter process can be used to transfer assets of IMOSWS. The IMOSWS is defined as any water system serving fewer than 2,000 customers that is subject to compliance order or citation related to drinking water standards.
- 8) *The California Public Advocates Office.* The California Public Advocates Office (CalPA) is an independent organization within the PUC that advocates on behalf of utility ratepayers to achieve safe and reliable water service at the least possible cost. The CalPA often is the only party in water acquisition proceedings other than the acquiring investor-owned water utility and the owner of the water system being sold.

The CalPA conducts a thorough public interest review of investor-owned water utility applications seeking approval to acquire other water systems. Staff from the CalPA spend an average of 985 person-hours per year evaluating proposed acquisitions to determine whether they are in the public interest and in the interest of utility ratepayers.

- 9) *Other delays in approval.* The average length of time for the PUC to approve water system acquisitions over the last five years appears to be around 400 days; however, two acquisitions over the last five years have stretched to over 500 days and two other to more than 700 days. Many factors are impeding faster approval times, including the volume of work on the PUC, limited staff

resources dedicated to water utility issues, the workload of the ALJs, public meetings, public participation, and other requirements involved in contested proceedings, as well as the nuances of individual acquisition cases. In addition, the parties in the proceeding, usually the purchasing utility and the CalPA, discuss at length the purchase price, as it is the CalPA's charge to scrutinize transactions to protect ratepayer dollars. Under an expedited advice letter process, the CalPA and PUC staff would have less time to evaluate consolidation transactions.

In order to balance the need to help expedite review of consolidations for water systems that are failing and ensure that ratepayer costs are just and reasonable, the Senate Utilities and Commerce Committee amended the bill to: narrow its application to those systems that have been identified as failing or at-risk of failing by the Water Board; adjust the timeframe by which PUC must act (12 months for an application and 180 days for an advice letter); and limit the expedited timeframe for PUC decisions on advice letters to only those that are uncontested.

### Comments

- 1) *Purpose of Bill.* According to the author, "AB 1250 dictates the timelines for small water system consolidations, when approval by the California Public Utilities Commission (PUC) is needed. Currently, many smaller water systems in our state cannot afford, or are unable to raise rates sufficiently, to make the improvements necessary to provide clean drinking water to residents. These systems may decide to sell their system, customer owners of a mutual water company vote to sell their system, or after residents in a municipality vote to have their system consolidated into another water utility. Unfortunately, some consolidation applicants have experienced PUC approval backlogs, waiting as long as 24 months before they can provide clean water to a community. This bill will set deadlines for the completion of small water system consolidations, requiring PUC consolidation approval or denial within 8 months for applications and 4 months for advice letters."
- 2) *Expedited, but reasonable timeframes.* The PUC's process for reviewing voluntary system consolidations is often time consuming. It is not unusual for the approval process to take as long as 24-months. As mentioned above, many factors are impeding faster approval times. The volume of work at the PUC, limited staff resources dedicated to water utility issues, the workload of the ALJs, as well as the nuances of individual consolidation cases, can impact approval time.



AB 1250 will shorten the timeframe, from 18 to 12 months, by which the PUC must approve or deny applications for acquisition, and will make it easier for investor owned utilities to process water consolidation transactions with smaller systems through the advice letter process instead of the more lengthy application process provided the advice letter is uncontested. The bill also includes safeguards if the timeframes do not suffice by allowing time extensions at the discretion of the overseeing judge or executive director. AB 1250 provides timeframes and flexibility for the state to ensure residents in disadvantaged communities who are served by failing water systems receive resolution to a consolidation request in a more timely manner.

### **Related/Prior Legislation**

SB 1096 (Caballero, 2020) contained similar provisions as this bill. The bill was never heard due to the COVID-19 pandemic Legislative delays.

SB 1280 (Monning, 2020) creates a new definition of an “at-risk” water system and creates a process for residents in communities served by “at-risk” water systems to petition the State Water Board for consolidation. The bill was never heard due to the COVID-19 pandemic Legislative delays.

AB 1751 (Chui, 2019) would have establish timeframes by when the PUC is required to take action on a request for water system consolidation. The bill was held in the Senate Committee on Appropriations.

AB 2339 (Gipson, Chapter 866, Statutes of 2018) authorized the City of El Monte, the City of Montebello, and the City of Willows to sell its public water utility through an alternative simplified procedure for the purpose of consolidating with another public water system.

AB 2501 (Chu, Chapter 871, Statutes of 2018) provided additional authority to the State Water Board to both order consolidations and appoint administrators and include domestic wells. Specific to the PUC, the bill requires the PUC upon issuance of a consolidation order, to open a proceeding to determine cost allocation, ratemaking, and PUC public participation requirements for the consolidation process.

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the State Water Board, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a

subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system).

**SOURCE:** California Water Association

**SUPPORT:**

Association of California Water Agencies (ACWA)  
California American Water, a Wholly Owned Subsidiary of American Water Works  
California Water Association  
California Water Service  
Great Oaks Water Company  
Liberty Utilities  
Regional Water Authority  
San Gabriel Valley Water Company

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to the California Water Association, the sponsor of the bill, “AB 1250 dictates the timelines for small water system consolidations, when approval by the California Public Utilities Commission (PUC) is needed. Currently, many smaller water systems in our state cannot afford, or are unable to raise rates sufficiently, to make the improvements necessary to provide clean drinking water to residents. These systems may decide to sell their system, customer owners of a mutual water company vote to sell their system, or after residents in a municipality vote to have their system consolidated into another water utility. Unfortunately, some consolidation applicants have experienced PUC approval backlogs, waiting as long as 24 months before they can provide clean water to a community. This bill will set deadlines for the completion of small water system consolidations, requiring PUC consolidation approval or denial within 8 months for applications and 4 months for advice letters.”

**-- END --**