

Senate Bill No. 27

CHAPTER 25

An act to add Section 116760.45 to the Health and Safety Code, and to amend Sections 10631.5, 13476, and 13480 of the Water Code, relating to drinking water, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 27, 2009. Filed with
Secretary of State March 27, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 27, Negrete McLeod. Drinking water: federal stimulus funding.

Existing law establishes the Safe Drinking Water State Revolving Fund in the State Treasury to be administered by the State Department of Public Health. Under existing law, the fund is continuously appropriated for the purpose of providing grants or revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards.

This bill would allow the department to expend federal moneys in the fund that are received from the American Recovery and Reinvestment Act of 2009 in accordance with the guidelines of that act. The bill would provide that the maximum amount of a grant is \$10,000,000 per project.

Because this bill would provide for the expenditure of moneys from a continuously appropriated fund it would constitute an appropriation.

Existing law requires every urban water supplier to prepare and adopt an urban water management plan, in accordance with specified requirements, for submission to the Department of Water Resources and other entities.

Existing law creates a grant and loan program for urban water suppliers, to fund programs or projects for surface water and groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation, subject to specified conditions.

This bill would exempt projects funded by the American Recovery and Reinvestment Act of 2009 from those conditions.

Existing law establishes the continuously appropriated State Water Pollution Control Revolving Fund, administered by the State Water Resources Control Board, to provide financial assistance, as defined, for various purposes allowed by the federal Clean Water Act.

This bill would include specified grants for projects funded by the federal American Recovery and Reinvestment Act of 2009 in the definition of financial assistance and would allow the funds in the fund to be used for those grants. The bill would also allow for loan forgiveness to the extent authorized by that act.

Because the bill would expand the purposes for which continuously appropriated funds may be used, the bill would constitute an appropriation.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 116760.45 is added to the Health and Safety Code, to read:

116760.45. (a) For purposes of this section “act” means the American Recovery and Reinvestment Act of 2009.

(b) Notwithstanding any other provision of this chapter or any regulations adopted pursuant to this chapter, the department may expend moneys in the fund, received from the federal government pursuant to the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), in accordance with the provisions of the act and federal guidelines implementing the act. To the extent that any law or regulation of the state is in conflict with the provisions and requirements of the act, to the extent that the conflict impairs the expenditure of federal moneys received, the provisions and requirements of the act shall prevail.

(c) The department may develop criteria necessary to implement the act. These criteria shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The department shall publish the criteria on its Internet Web site and shall provide opportunity for public review and comment, to include at least one public hearing conducted upon not less than 20 days’ notice.

(d) For the implementation of the act, the maximum amount of a grant to an applicant under this chapter is ten million dollars (\$10,000,000) per project.

SEC. 2. Section 10631.5 of the Water Code is amended to read:

10631.5. (a) (1) Beginning January 1, 2009, the terms of, and eligibility for, a water management grant or loan made to an urban water supplier and awarded or administered by the department, state board, or California Bay-Delta Authority or its successor agency shall be conditioned on the implementation of the water demand management measures described in Section 10631, as determined by the department pursuant to subdivision (b).

(2) For the purposes of this section, water management grants and loans include funding for programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. This section does not apply to water management projects funded by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(3) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if the urban water supplier has submitted to the department for approval a schedule, financing plan, and budget, to be included in the grant or loan agreement, for implementation of the water demand management measures. The supplier may request grant or loan funds to implement the water demand management measures to the extent the request is consistent with the eligibility requirements applicable to the water management funds.

(4) (A) Notwithstanding paragraph (1), the department shall determine that an urban water supplier is eligible for a water management grant or loan even though the supplier is not implementing all of the water demand management measures described in Section 10631, if an urban water supplier submits to the department for approval documentation demonstrating that a water demand management measure is not locally cost effective. If the department determines that the documentation submitted by the urban water supplier fails to demonstrate that a water demand management measure is not locally cost effective, the department shall notify the urban water supplier and the agency administering the grant or loan program within 120 days that the documentation does not satisfy the requirements for an exemption, and include in that notification a detailed statement to support the determination.

(B) For purposes of this paragraph, “not locally cost effective” means that the present value of the local benefits of implementing a water demand management measure is less than the present value of the local costs of implementing that measure.

(b) (1) The department, in consultation with the state board and the California Bay-Delta Authority or its successor agency, and after soliciting public comment regarding eligibility requirements, shall develop eligibility requirements to implement the requirement of paragraph (1) of subdivision (a). In establishing these eligibility requirements, the department shall do both of the following:

(A) Consider the conservation measures described in the Memorandum of Understanding Regarding Urban Water Conservation in California, and alternative conservation approaches that provide equal or greater water savings.

(B) Recognize the different legal, technical, fiscal, and practical roles and responsibilities of wholesale water suppliers and retail water suppliers.

(2) (A) For the purposes of this section, the department shall determine whether an urban water supplier is implementing all of the water demand

management measures described in Section 10631 based on either, or a combination, of the following:

(i) Compliance on an individual basis.

(ii) Compliance on a regional basis. Regional compliance shall require participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and the department with data to demonstrate that the regional program is consistent with this clause. The department shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements.

(B) The department may require additional information for any determination pursuant to this section.

(3) The department shall not deny eligibility to an urban water supplier in compliance with the requirements of this section that is participating in a multiagency water project, or an integrated regional water management plan, developed pursuant to Section 75026 of the Public Resources Code, solely on the basis that one or more of the agencies participating in the project or plan is not implementing all of the water demand management measures described in Section 10631.

(c) In establishing guidelines pursuant to the specific funding authorization for any water management grant or loan program subject to this section, the agency administering the grant or loan program shall include in the guidelines the eligibility requirements developed by the department pursuant to subdivision (b).

(d) Upon receipt of a water management grant or loan application by an agency administering a grant and loan program subject to this section, the agency shall request an eligibility determination from the department with respect to the requirements of this section. The department shall respond to the request within 60 days of the request.

(e) The urban water supplier may submit to the department copies of its annual reports and other relevant documents to assist the department in determining whether the urban water supplier is implementing or scheduling the implementation of water demand management activities. In addition, for urban water suppliers that are signatories to the Memorandum of Understanding Regarding Urban Water Conservation in California and submit biennial reports to the California Urban Water Conservation Council in accordance with the memorandum, the department may use these reports to assist in tracking the implementation of water demand management measures.

SEC. 3. Section 13476 of the Water Code is amended to read:

13476. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) “Administration fund” means the State Water Pollution Control Revolving Fund Administration Fund.

(b) “Board” means the State Water Resources Control Board.

(c) “Federal Clean Water Act” or “federal act” means the Clean Water Act (33 U.S.C. Sec. 1251 et seq.) and acts amendatory thereof or supplemental thereto.

(d) “Financial assistance” means assistance authorized under Section 13480. Financial assistance includes loans, refinancing, installment sales agreements, purchase of debt, and loan guarantees for municipal revolving funds, but excludes grants. Financial assistance may include grants for projects authorized pursuant to Section 13480 to the extent that grants for those projects are funded by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(e) “Fund” means the State Water Pollution Control Revolving Fund.

(f) “Grant fund” means the State Water Pollution Control Revolving Fund Small Community Grant Fund.

(g) “Matching funds” means money that equals that percentage of federal contributions required by the federal act to be matched with state funds.

(h) “Municipality” has the same meaning and construction as in the federal act and also includes all state, interstate, and intermunicipal agencies.

(i) “Publicly owned” means owned by a municipality.

SEC. 4. Section 13480 of the Water Code is amended to read:

13480. (a) Moneys in the fund shall be used only for the permissible purposes allowed by the federal act, including providing financial assistance for the following purposes:

(1) The construction of publicly owned treatment works, as defined by Section 212 of the federal act (33 U.S.C. Sec. 1292), by any municipality.

(2) Implementation of a management program pursuant to Section 319 of the federal act (33 U.S.C. Sec. 1329).

(3) Development and implementation of a conservation and management plan under Section 320 of the federal act (33 U.S.C. Sec. 1330).

(4) Financial assistance, other than a loan, toward the nonfederal share of costs of any grant-funded treatment works project, but only if that assistance is necessary to permit the project to proceed.

(5) Financial assistance provided under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) for projects authorized pursuant to this subdivision.

(b) Consistent with expenditure for authorized purposes, moneys in the fund may be used for the following purposes:

(1) Loans that meet all of the following requirements:

(A) Are made at or below market interest rates.

(B) Require annual payments of principal and any interest, with repayment commencing not later than one year after completion of the project for which the loan is made and full amortization not later than 20 years after project completion unless otherwise authorized under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) for projects authorized pursuant to subdivision (a) and to the extent funded by

that act. Loan forgiveness is permissible to the extent permitted by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) for projects authorized pursuant to subdivision (a) and to the extent funded by that act.

(C) Require the loan recipient to establish an acceptable dedicated source of revenue for repayment of a loan.

(D) (i) Contain other terms and conditions required by the board or the federal act or applicable rules, regulations, guidelines, and policies. To the extent permitted by federal law, the combined interest and loan service rate shall be set at a rate that does not exceed 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds and the combined interest and loan service rate shall be computed according to the true interest cost method. If the combined interest and loan service rate so determined is not a multiple of one-tenth of 1 percent, the combined interest and loan service rate shall be set at the multiple of one-tenth of 1 percent next above the combined interest and loan service rate so determined. A loan from the fund used to finance costs of facilities planning, or the preparation of plans, specifications, or estimates for construction of publicly owned treatment works shall comply with Section 603(e) of the federal act (33 U.S.C. Sec. 1383(e)).

(ii) Notwithstanding clause (i), if the loan applicant is a municipality, an applicant for a loan for the implementation of a management program pursuant to Section 319 of the federal Clean Water Act (33 U.S.C. Sec. 1329), or an applicant for a loan for nonpoint source or estuary enhancement pursuant to Section 320 of the federal Clean Water Act (33 U.S.C. Sec. 1330), and the applicant provides matching funds, the combined interest and loan service rate on the loan shall be 0 percent. A loan recipient that returns to the fund an amount of money equal to 20 percent of the remaining unpaid federal balance of an existing loan shall have the remaining unpaid loan balance refinanced at a combined interest and loan service rate of 0 percent over the time remaining in the original loan contract.

(2) To buy or refinance the debt obligations of municipalities within the state at or below market rates if those debt obligations were incurred after March 7, 1985.

(3) To guarantee, or purchase insurance for, local obligations where that action would improve credit market access or reduce interest rates.

(4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of the sale of those bonds will be deposited in the fund.

(5) To establish loan guarantees for similar revolving funds established by municipalities.

(6) To earn interest.

(7) For payment of the reasonable costs of administering the fund and conducting activities under Title VI (commencing with Section 601) of the federal act (33 U.S.C. Sec. 1381 et seq.). Those costs shall not exceed 4 percent of all federal contributions to the fund, except that if permitted by federal and state law, interest repayments into the fund and other moneys

in the fund may be used to defray additional administrative and activity costs to the extent permitted by the federal government and approved by the Legislature in the Budget Act.

(8) For financial assistance toward the nonfederal share of the costs of grant-funded treatment works projects to the extent permitted by the federal act.

(9) Grants and any other type of, or variation on the above types of, assistance authorized by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) for projects authorized pursuant to subdivision (a) and to the extent funded by that act.

SEC. 5. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to properly implement the federal stimulus program, it is necessary that this act go into immediate effect.

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