

- **Board of Directors**
Communications, Outreach and Legislation Committee

March 12, 2002 Board Meeting

9-9

Subject

Express support for AB 1778 (Nakano), if amended: Drinking Water and Water Treatment Plant Security (background screening)

Description

Assemblyman George Nakano from Torrance has introduced Assembly Bill No. 1778 (AB 1778) ([Attachment 1](#)), which seeks to improve water treatment plant security through increased screening of employees. AB 1778 requires water districts with water treatment plants to conduct an investigation into the background, including a criminal history, of applicants for employment in specified positions to determine whether such applicants would pose a threat to the security of the plant.

A workgroup comprised of Metropolitan and other water agencies is working on amendments for Assemblyman Nakano's consideration which attempt to clarify provisions in the bill while furthering the purpose and intent of the author without undue burdens on water agencies. The amendments will seek to define the circumstances that warrant a background check and criteria for rejection of applicants. Without such guidance in the bill, it would be difficult for an agency to determine whether it had complied with the bill, and there would be a lack of consistency across the state as each implementing agency would establish its own criteria. Under the bill, an investigation could be a simple criminal records search or as comprehensive as investigations of applicants for classified federal employment.

The bill also conflicts with current law that limits access to criminal records and the use of such records in a hiring process. The proposed process in AB 1778 creates the potential for litigation regarding the wrongful denial of public employment.

The workgroup will recommend modifications to the bill to require that the background screening be done by the state as part of the licensing of water treatment plant operators. There is already a licensing system in place for water treatment operators. Mechanisms at the state level are also in place for background checks and criminal screening of license applicants for a number of employment groups such as locksmiths, school bus drivers, escrow agents and a variety of other occupations. Imposing regulation at the state level would eliminate many of the legal issues, provide for consistency in application of the criteria and eliminate the potential for liability of individual water agencies.

Policy

None.

California Environmental Quality Act (CEQA)

CEQA determinations for Options #1 and #2:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination for Options #1 and #2 is: Determine that the proposed action is not subject to the provisions of CEQA per Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determinations and support AB 1778 (Nakano) if amended to either transfer investigation to the state or to otherwise address problems with the current language of AB 1778.

Fiscal Impact: None

Option #2

Adopt the CEQA determinations and support AB 1778 (Nakano) without amendment.

Fiscal Impact: None

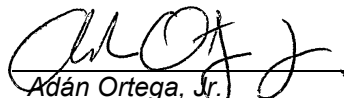
Option #3

Take no position on AB 1778.

Fiscal Impact: None

Staff Recommendation

Option #1


Adán Ortega, Jr.
Vice President, External Affairs

3/5/2002
Date


Ronald R. Gastelum
Chief Executive Officer

3/6/2002
Date

Attachment 1 – Bill Number: AB 1778 Introduced by Assembly Member Nakano

**BILL NUMBER: AB 1778 INTRODUCED
BILL TEXT**

INTRODUCED BY Assembly Member Nakano

JANUARY 10, 2002

An act to amend Section 106876 of, and to add Chapter 6 (commencing with Section 116900) to Part 12 of Division 104 of, the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1778, as introduced, Nakano. Drinking water: water treatment plant security.

(1) Existing law regulates public water systems for the purpose of protecting the quality and safety of drinking water. Water treatment plants are facilities that treat, blend, or condition the water supply of a public water system for the purpose of meeting drinking water standards. Existing law prohibits tampering with public water systems.

This bill would require that water treatment plants conduct an investigation into the background of applicants for employment to determine whether applicants are a threat to the security of the plant or present a risk of tampering with the plant. The investigation would include whether the applicant has a criminal background, whether the applicant has tampered with a public water system, whether the applicant has ever been determined to be a risk to national security or been disqualified or suspended from employment by the federal government or any agency of the federal government on grounds of national security and verification of the applicant's social security number, employment background and experience and educational background and experience. The bill would make it a condition of employment at a water treatment plant, to submit to an investigation and truthfully and completely respond to requests for information, concerning whether the applicant is a threat to the security of the plant or presents a risk of tampering with the plant.

(2) Existing law requires all persons responsible for the supervision or operation of water treatment plants to be certified by the State Department of Health Services. The department is authorized to suspend, revoke, or refuse to grant or renew any operator or operator-in-training certificate to operate or supervise the operation of a water treatment plant and place on probation or reprimand a certificate holder upon any reasonable grounds, including certain designated grounds.

This bill would include in the designated grounds, willfully or negligently violating or causing or allowing the violation of the requirements for background security investigations of employees of water treatment plants.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 106876 of the Health and Safety Code is amended to read:

106876. (a) The department may suspend, revoke, or refuse to grant or renew any water treatment operator certificate or water treatment operator-in-training certificate to operate or supervise the operation of a water treatment plant or may place on probation or reprimand the certificate holder upon any reasonable grounds, including, but not limited to, any of the following:

(1) The submission of false or misleading information on an application for a certificate or engaging in dishonest conduct during an examination.

(2) The use of fraud or deception in the course of operating or supervising the operation of a water treatment plant or a water recycling treatment plant.

(3) The failure to use reasonable care or judgment in the operation or supervision of the operation of a water treatment plant or a water recycling treatment plant.

(4) The inability to perform operating duties properly in a water treatment plant or a water recycling treatment plant.

(5) The failure to meet all requirements for certificate renewal.

(6) The conduct of willful or negligent acts that cause or allow the violation of the Safe Drinking Water Act (Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code) or the regulations and standards adopted pursuant to that act.

(7) Willfully or negligently violating or causing or allowing the violation of waste discharge requirements or permits issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) while operating a water recycling treatment plant.

(8) *Willfully or negligently violating or causing or allowing the violation of the requirements for background security investigations of employees of water treatment plants pursuant to Sections 116900 and 116901.*

(b) The department may suspend, revoke, or refuse to grant or renew any water distribution operator certificate to operate or supervise the operation of a water distribution system or may place on probation or reprimand the certificate holder upon any reasonable grounds, including, but not limited to, any of the following:

(1) The submission of false or misleading information on an application for a certificate or engaging in dishonest conduct during an examination.

(2) The use of fraud or deception in the course of operating or supervising the operation of a water distribution system.

(3) The failure to use reasonable care of judgment in the operation or supervision of the operation of a water distribution system.

(4) The inability to perform operating duties properly in a water distribution system.

(5) The failure to meet all requirements for certificate renewal.

(6) The conduct of willful or negligent acts that cause or allow the violation of the federal Safe Drinking Water Act (Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code) or the regulations and standards adopted pursuant to that act.

(c) Prior to revocation of a valid operator certificate, the department shall provide the certificate holder with an opportunity for a hearing before the department.

(d) For purposes of this section, "water recycling treatment plant" means a treatment plant that receives and further treats secondary and/or tertiary effluent from a wastewater treatment plant.

SEC. 2. Chapter 6 (commencing with Section 116900) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

CHAPTER 6. WATER TREATMENT PLANT SECURITY

116900. (a) A water treatment plant, as defined in subdivision (x) of Section 116275, shall conduct an investigation into the background of applicants for employment at the plant, sufficient to determine whether they are a threat to the security of the plant or present a risk of tampering with the plant, that includes all of the following:

(1) Whether the applicant has any arrests pending adjudication for, has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a felony or a misdemeanor relevant to whether the applicant would be a threat to the security of the plant or present a risk of tampering with the plant, regardless of whether the conviction has been expunged.

(2) Whether the applicant has ever tampered with a public water system in violation of Section 116750 or Section 300i-1 of Title 42 of the United States Code.

(3) Whether the applicant has ever been determined to be a risk to national security or been disqualified or suspended from employment by the federal government or any agency of the federal government on the grounds of national security.

(4) Verification of the applicant's social security number.

(5) Verification of the applicant's prior employment background and experience, if applicable.

(6) Verification of the applicant's educational background and experience.

(b) This section does not limit the discretion that a water treatment plant may exercise in weighing the information obtained in the investigation into the background of applicants, when determining if the applicant presents a threat to the security of, or presents a risk of tampering with, the water treatment plant.

(c) The owner of the public water system that receives water supplied by the water treatment plant shall bear the reasonable expenses incurred in conducting the investigation into the background of applicants under this section.

116901. It is a condition of applying for or continued employment at a water treatment plant, as defined in subdivision (x) of Section 116275, that the employee submit to an investigation and truthfully and completely respond to requests for information, relative to whether the applicant is a threat to the security of the plant or presents a risk of tampering with the plant, including:

(1) Whether the applicant has any arrests pending adjudication for, has entered a plea of guilty or nolo contendere to, or been found guilty or convicted of, a felony or a misdemeanor relevant to whether the applicant would be a threat to the security of the plant or present a risk of tampering with with the plant, regardless of whether the conviction has been expunged.

(2) Whether the applicant has ever tampered with a public water system in violation of Section 116750 or Section 300i-1 of Title 42 of the United States Code.

(3) Whether the applicant has ever been determined to be a risk to national security or been disqualified or suspended from employment by the federal government or any agency of the federal government on grounds of national security.

(4) The applicant's social security number.

(5) The applicant's prior employment background and experience, if applicable.

(6) The applicant's educational background and experience.