

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

April 10, 2007 Board Meeting

8-14

Subject

Express support for SB 1029 (Ducheny, D-Chula Vista) regarding drinking water regulations

Description

Current state law requires the California Department of Public Health (CDPH), previously known as the Department of Health Services, to develop a new regulatory package for every federal drinking water regulation that is adopted by the United States Environmental Protection Agency (EPA). This package then undergoes a duplicative state review process after the EPA has already completed a thorough and detailed analysis of the proposed regulation.

Because of staffing and resources restrictions within CDPH and because of the lengthy state review process, this re-evaluation has caused substantial delays in implementing federal regulations. These delays have resulted in operational uncertainties for many water utilities with respect to compliance and enforcement requirements.

SB 1029 (Attachment 1) by State Senator Denise Ducheny is an effort to allow CDPH to adopt federal rules and regulations by reference rather than delaying implementation because of lengthy and duplicative reviews. SB 1029 would not apply to the adoption or development of primary or secondary drinking water standards. The bill provides that the proposed regulation be posted for a 45-day period prior to adoption. Attachment 2 reflects the amendments that will be incorporated into the bill.

The Association of California Water Agencies (ACWA) is the sponsor of SB 1029. The concept for the legislation originated from ACWA's Safe Drinking Water Subcommittee of which Metropolitan and CDPH are participants.

Passage of SB 1029, as proposed to be amended, would provide much needed certainty for many water systems through the expeditious adoption of federal regulations. It also would help relieve the burden of the Office of Administrative Law and the Department of Finance in having to review the proposed regulations while still providing public oversight prior to adoption.

Policy

Drinking Water Quality, M.I. 46191- April 12, 2005

California Environmental Quality Act (CEQA)

CEQA determination 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).

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and express support for SB 1029 as proposed to be amended.

Fiscal Impact: None

Option #2

Adopt the CEQA determination and express support for SB 1029 with specific revisions.

Fiscal Impact: None

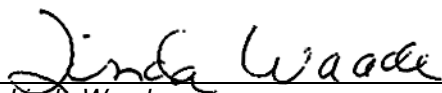
Option #3

Take no action.

Fiscal Impact: None

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

4/4/2007

Date


Jeffrey Kightlinger
General Manager

4/4/2007

Date

Attachment 1 – Senate Bill 1029

Attachment 2 – Senate Bill 1029 (with proposed amendments)

BLA #5354

Introduced by Senator DuchenyFebruary 23, 2007

An act to add Section 116365.1 to the Health and Safety Code, relating to drinking water standards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1029, as introduced, Ducheny. Drinking water standards.

Existing law, the Administrative Procedure Act, contains various provisions governing the conduct of administrative adjudication and rulemaking proceedings of state agencies.

Existing law, the Calderon-Sher Safe Drinking Water Act of 1996, requires the State Department of Health Services to, among other things, adopt regulations relating to primary and secondary drinking water standards for contaminants in drinking water, which are based upon specified criteria.

Effective July 1, 2007, responsibility for the administration of the above-mentioned provisions will be transferred to the State Department of Public Health.

This bill would require that any regulation adopted by the department in relation to primary and secondary drinking water standards shall, notwithstanding any other provision of law, including the Administrative Procedure Act, become enforceable and take effect not later than 60 days from the date of its adoption by the department, subject to certain limitations.

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

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

1 SECTION 1. The Legislature finds and declares that it is
2 essential for the protection of public health that primary and
3 secondary drinking water standards, as defined in subdivisions (c)
4 and (d) of Section 116275 of the Health and Safety Code, adopted
5 by the State Department of Public Health become effective and
6 enforceable, and are implemented by public water systems, by the
7 earliest feasible date after their adoption.

8 SEC. 2. Section 116365.1 is added to the Health and Safety
9 Code, to read:

10 116365.1. (a) Notwithstanding any other provision of law or
11 regulation, including Chapter 3.5 (commencing with Section
12 11340) of Part 1 of Division 3 of Title 2, and Part 3 (commencing
13 with Section 13000) of the Government Code, and except as
14 provided in subdivision (b), any regulation adopted by the
15 department pursuant to this chapter related to primary and
16 secondary drinking water standards, as defined in subdivisions (c)
17 and (d) of Section 116275, shall become enforceable and take
18 effect not later than 60 days from the date of adoption by the
19 department.

20 (b) Subdivision (a) shall not apply to any regulation adopted by
21 the department that reduces, weakens, lessens, or otherwise
22 undermines any requirement established pursuant to this chapter
23 for the protection of public health.

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AMENDMENTS TO SENATE BILL NO. 1029

Amendment 1

On page 2, line 10, after "(a)" insert:

(1)

Amendment 2

On page 2, strike out lines 14 to 19, inclusive, and insert:

provided in subdivision (b), for any proposed regulation that relates to the maximum contaminant levels for primary and secondary drinking water standards, as defined in subdivisions (c) and (d) of Section 116275, that is submitted by the department to the Office of Administrative Law for review, pursuant to Section 11349.1 of the Government Code, the Department of Finance shall take no longer than 60 days to do any of the following:

Amendment 3

On page 2, between lines 19 and 20, insert:

- (A) Review any estimate pursuant to subdivision (c) of Section 11357 of the Government Code.
- (B) Provide a letter or documentation, if required, pursuant to Section 11349.1 of the Government Code.
- (C) Complete any other function in connection with the adoption of proposed regulations that relates to the maximum contaminant levels for primary and secondary drinking water standards, as required pursuant to any provision of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the Department of Finance takes longer than 60 days to complete any of the functions set forth in subparagraphs (A) to (C), inclusive, of paragraph (1), the proposed regulations shall be exempt from any provision of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that requires the involvement of the Department of Finance, and the department and the Office of Administrative Law shall proceed with all other applicable procedures in connection with the adoption of proposed regulations.

Amendment 4

On page 2, line 23, after the period, insert:

(c) (1) The department may adopt by reference any rules and regulations promulgated pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et



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seq.), other than those federal rules and regulations that establish maximum contaminant levels for primary and secondary drinking water standards.

(2) Each proposal to adopt by reference a federal rule or regulation pursuant to this subdivision shall be made available to the public for review and comment no later than 45 calendar days prior to adoption.

(3) Rules and regulations adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.