

## FACT SHEET

### TRAILER BILL LANGUAGE: PROPOSED TRANSFER OF DRINKING WATER PROGRAM

Governor Brown's 2014-15 Budget proposes<sup>1</sup>, with the Legislature's approval, to transfer the Drinking Water Program (Program)<sup>2</sup> from the Department of Public Health (Department) to the State Water Resources Control Board (State Water Board) on July 1, 2014. In March 2014, after a three-month Task Force / stakeholder process<sup>3</sup>, Health and Human Services Secretary Diana Dooley and Secretary for Environmental Protection Matt Rodriguez published a [Drinking Water Reorganization Transition Plan](#)<sup>4</sup> (Transition Plan) to accomplish this reorganization. In May 2014, the Administration released proposed Trailer Bill Language<sup>5</sup> (TBL) consistent with the Transition Plan.

#### OVERVIEW

As outlined in the Transition Plan, the proposed TBL effectuates statutory changes to transfer the Drinking Water Program from the Department to the State Water Board. This reorganization will align the state's drinking water and water quality programs in an integrated organizational structure that will best position the state to respond to existing and future water quality challenges while continuing to protect public health.

Under the proposed TBL, the Division of Drinking Water would be overseen by a Deputy Director reporting directly to the Executive Director of the State Water Board (Sec. 2(k)(1)), providing a high level of access and prominence for the Program. In addition, the Deputy Director would be required to have public health expertise (*ibid.*), to ensure that the public health focus of the program is maintained. The Deputy Director would have the authority to grant or deny water system permit applications. (Sec. 2(k)(2).) These decisions would not be subject to Board review. Enforcement decisions would be subject to Board review. The Regional Water Boards would not implement any transferred Program functions. (Sec. 2(k)(3).) The State Board would be given concurrent authority with the Regional Water Boards to issue water reclamation requirements. (Sec. 73.)

The TBL preserves agreements in place before the transfer, such as agreements between the Local Primacy Agencies and the Program, which would continue in effect. (Sec. 2(i).)

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<sup>1</sup> The Governor's Budget can be found here:

[http://www.dof.ca.gov/documents/FullBudgetSummary\\_2014.pdf#page=115](http://www.dof.ca.gov/documents/FullBudgetSummary_2014.pdf#page=115).

<sup>2</sup> The Drinking Water Program consists of the Drinking Water Technical Programs Branch, the Northern and Southern California Drinking Water Field Operations Branches, the Environmental Laboratory Accreditation Program (ELAP), and part of the Resource Management Section (which includes Drinking Water Operator Certification).

<sup>3</sup> A summary of the Drinking Water Reorganization Task Force's input can be found here:

[http://www.WaterBoards.ca.gov/drinkingwater/docs/taskforce/task\\_force\\_summary.pdf](http://www.WaterBoards.ca.gov/drinkingwater/docs/taskforce/task_force_summary.pdf).

<sup>4</sup> The Drinking Water Reorganization Transition Plan can be found here:

[http://www.WaterBoards.ca.gov/drinkingwater/docs/transition\\_plan\\_fullversion.pdf](http://www.WaterBoards.ca.gov/drinkingwater/docs/transition_plan_fullversion.pdf).

<sup>5</sup> The most recent Trailer Bill Language is posted on the Department of Finance's web page.

The TBL also proposes legislative changes to better align the Safe Drinking Water State Revolving Fund (SRF) with the Clean Water SRF. (Secs. 3-72.) This would provide greater administrative flexibility to the Drinking Water SRF program – in line with the existing statutory flexibility of the Clean Water SRF – to facilitate the disbursement of financial assistance. This approach received a positive reception by Task Force members. The TBL would allow the State Water Board to set the requirements for the Safe Drinking Water SRF, a voluntary financial assistance program, through its policy handbook process rather than through the formal rulemaking process. (Sec. 17.) State Water Board staff plan to propose moving the current regulatory requirements into a policy handbook but will later fully evaluate the requirements. The policy handbook process, which is used by the State Water Board for the Clean Water SRF, involves public review and comment, culminating in adoption of the handbook by the Board at a duly noticed meeting. The TBL also proposes a three-step approach to align the Safe Drinking Water SRF with the Clean Water SRF: upon signing, the TBL adds an “inoperative as of” date to the existing Safe Drinking Water SRF statutes; next, on July 1st, the TBL transfers the Safe Drinking Water SRF to the State Water Board and effectuates immediate changes to the Safe Drinking Water SRF – some interim until adoption of the policy handbook and some ongoing; finally, upon adoption of the policy handbook, the TBL more comprehensively eliminates or reduces many of the statutory requirements that restrict the use of Safe Drinking Water SRF funds, enabling the State Water Board to move those requirements into its policy handbook, effective on the following January 1st. Over time, the State Water Board will be able to fully evaluate the utility of the requirements in light of the state and federal goals for the Safe Drinking Water SRF program and adapt as necessary. As a whole, these changes will allow the State Water Board greater flexibility to address communities’ and public drinking water systems’ needs, market conditions, and new and different elements set forth in each year’s federal capitalization grant.

The TBL also removes certain statutory elements that are already required under federal law (passed through to the state through the capitalization grant agreements and the state’s Operating Agreement with USEPA), for example restrictions on using Safe Drinking Water SRF funding for any project the primary purpose of which is to supply or attract growth. (Sec. 4.) Eliminating these requirements in no way diminishes the obligation to comply with federal law; however, removing these requirements from state law ensures that, should the federal requirements change, the State Water Board will not be bound to incompatible state law.

Some of the Transition Plan proposals are not reflected in the TBL because they will be implemented administratively to maximize Program flexibility and responsiveness to state and local conditions. Following current practice, the Deputy Director would have the discretion to delegate permitting and enforcement authorities to field district office staff. In addition, the State Water Board will implement interagency agreements with the Department as needed. Finally, as recommended by Task Force members, the State Water Board plans to convene a Transition Advisory Group to meet regularly to advise the State Board on the Transition. The Transition Advisory Group would consist of representatives of water agency organizations, environmental justice organizations, disadvantaged communities, local health and environmental health officers, and other key stakeholders. After two years, the State Water Board will evaluate whether there is a continuing need for the Transition Advisory Group.

## SUMMARY OF KEY ELEMENTS

### Section 1

- Establishes legislative intent to retain primacy under federal Safe Drinking Water Act
- Establishes legislative intent for liberal construction

### Section 2

- New HSC 116271 operative 7/1/14
- Transfers from the Department to the State Water Board:
  - ELAP (HSC § 100825 *et seq.*)
  - Operator certification (HSC § 106875 *et seq.*)
  - Recreational use of reservoirs (HSC § 115825 *et seq.*)
  - State Safe Drinking Water Act regulatory function (HSC § 116270 *et seq.*)
  - State Safe Drinking Water Act Revolving Fund Law of 1997 implementation (HSC § 116760 *et seq.*)
  - Cross-connection control (HSC § 116800 *et seq.*)
  - Water treatment devices (HSC § 116825 *et seq.*)
  - Lead materials (HSC § 116875 *et seq.*)
  - Surface water, livestock, and dead animal regulatory function (HSC § 116975 *et seq.*)
  - Proposition 84 programs (PRC § 75001 *et seq.*)
  - Water reclamation (Wat. § 13500 *et seq.*)
  - Direct and indirect potable reuse (Wat. § 13560 *et seq.*)
  - 1976 bond act committee (Wat. § 13850 *et seq.*)
  - Wholesale Regional Water System Security and Reliability Act (Wat. § 73500 *et seq.*)
  - Proposition 50 programs (Wat. § 79500 *et seq.*)
- Substitutes references to "the department" with "the board"
- Transfers pending and open federal DWSRF capitalization grants
- Does not impair Local Health Officer enforcement authority
- Maintains existing regulations, orders, etc. until changed by State Water Board
- Continues regulation adoption process for regulations currently in process until changed by State Water Board
- Continues effectiveness of any other administrative action until changed by State Water Board
- Continues effectiveness of permits, licenses, accreditations, certificates, and other formal approvals and authorizations
- Transfers relevant litigation and administrative proceedings from the Department to State Water Board
- Transfers unexpended funds associated with transferred functions to State Water Board
- Transfers relevant books, docs, data, records to State Water Board
- Does not transfer the Richmond lab to State Water Board
- Continues contracts, leases, licenses, bonds, and other agreements with State Water Board as successor
- Creates Deputy Director with public health expertise to oversee, among other things, issuance and enforcement of PWS permits
- Delegates certain functions to Deputy Director:

- Public notification requirements (HSC § 116450) – no petition to State Water Board available
- PWS permitting (HSC § 116525) – no petition to State Water Board available
- Suspension & revocation of PWS permits (HSC § 116625) – petition to State Water Board available
- Issuance of citations, penalty assessment, or order issuance (HSC § 116650) – petition to State Water Board available
- Does not limit the State Water Board’s existing authority to delegate other powers and duties
- Prevents the State Water Board from delegating transferred functions to the Regional Water Boards

**Sections 3 and 4**

- New HSC § 116760.10 operative 7/1/14
- Establishes legislative intent mirroring existing Clean Water SRF legislative intent
- Adds language to Safe Drinking Water SRF legislative intent allowing greater flexibility
- Removes restrictive language from the Safe Drinking Water SRF intent section for greater flexibility
- Removes operative clauses from intent language
- Removes language that duplicates or is otherwise unnecessary in light of federal requirements

**Sections 5 – 7**

- Changes “Department” to “Board”
- Adds definition for “small community water system”
- Conforms definitions of “acceptable result,” “cost-effective,” “financing,” and “project.”
- Removes definition of “reasonable amount of growth.”

**Sections 8 and 9**

- New HSC § 116760.30 operative 7/1/14
- Conforms Safe Drinking Water SRF fund establishment language to better align with Clean Water SRF program for greater flexibility
- Changes biennial Safe Drinking Water SRF reporting requirement to biennial web-posting requirement
- Removes authorization for Controller to borrow Safe Drinking Water SRF moneys for loans to the General Fund

**Sections 10 and 11**

- New HSC § 116760.39 operative 7/1/14
- “Department” to “board”

**Sections 12 and 13**

- New HSC § 116760.40 operative 7/1/14
- Removes reference to use of repaid Safe Drinking Water SRF money
- Simplifies account names within the Safe Drinking Water SRF – makes parallel with Clean Water SRF

- For enhanced ability to liquidate obligate federal capitalization grants, authorizes transfer of capitalization grants between Safe Drinking Water SRF and Clean Water SRF within federal limits
- For optimal financial ratings of potential Safe Drinking Water SRF revenue bonds, authorizes cross-collateralization of Safe Drinking Water SRF and Clean Water SRF revenue bonds within federal limits

#### **Sections 14 and 15**

- New HSC § 116760.42 operative 7/1/14
- Removes limit on state's ability to receive federal Safe Drinking Water SRF capitalization grants

#### **Sections 16 and 17**

- New HSC § 116760.43 operative 7/1/14
- Replace emergency Safe Drinking Water SRF regulation authority with Safe Drinking Water SRF policy handbook authority
- Repeal Safe Drinking Water SRF regulations on January 1<sup>st</sup> following adoption of Safe Drinking Water SRF policy handbook
- Require State Water Board to post policy handbook on website

#### **Sections 18 and 19**

- New HSC § 116760.44 operative 7/1/14
- Removes reference to particular accounts

#### **Sections 20 and 21**

- New HSC § 116760.46 operative 7/1/14
- Removes cap on total amount deposited in Safe Drinking Water Small Community Emergency Grant Fund, mirroring the State Water Pollution Control Fund Small Community Grant Fund for the Clean Water SRF and allowing the Safe Drinking Water Small Community Emergency Grant Fund to continue in perpetuity
- Allows State Water Board to stop charging the fee that is paid into the grant fund under certain conditions
- Requires State Water Board to charge interest in lieu of the fee upon cessation of the fee
- Authorizes use of grant funds for projects that serve disadvantaged and severely disadvantaged communities or address emergencies experienced by small community water systems
- Clarifies reference to federal limitation on use of fees charged on Safe Drinking Water SRF-funded projects

#### **Sections 22 - 24**

- New HSC § 116760.50 operative 7/1/14 until January 1<sup>st</sup> following policy handbook adoption, then replaced by subsequent 116760.50
- Clarifies Safe Drinking Water SRF eligibility criteria language

## **Sections 25 -26**

- New HSC § 116760.55 operative 7/1/14 until January 1<sup>st</sup> following policy handbook adoption, then repealed altogether

## **Section 27**

- Strikes requirement that suppliers receive notification of existence of Safe Drinking Water SRF program

## **Sections 28 and 29**

- New HSC § 116760.70 operative 7/1/14 until January 1<sup>st</sup> following policy handbook adoption, then repealed altogether
- Changes Safe Drinking Water SRF priority setting and IUP to more closely mirror Board's Clean Water SRF priority setting and Intended Use Plan (IUP) processes

## **Sections 30, 31, 32, 33, 34, 35, 36, 37**

- Nonsubstantive changes
- Repealed on January 1<sup>st</sup> following adoption of policy handbook

## **Sections 38 and 39**

- New HSC § 116761.20 operative 7/1/14
- Nonsubstantive changes

## **Sections 40 and 41**

- Remove superfluous or otherwise unnecessary references to federal law

## **Sections 42 and 43**

- Repeal HSC § 116761.23 on January 1<sup>st</sup> following adoption of policy handbook

## **Section 44**

- Deletes HSC § 116761.24, which section is unnecessary in light of federal requirements

## **Sections 45 and 46**

- Reflects availability of expanded Safe Drinking Water SRF financing vehicles

## **Sections 47 - 49**

- Clarify Safe Drinking Water SRF eligibility requirements
- Repealed on January 1<sup>st</sup> following adoption of policy handbook

## **Sections 50 and 51**

- Nonsubstantive changes
- Repealed on January 1<sup>st</sup> following adoption of policy handbook

#### **Sections 52 and 53**

- Nonsubstantive changes

#### **Sections 54 - 56**

- Increase flexibility on Safe Drinking Water SRF interest rates

#### **Section 57 - 59**

- Removes language regarding AG payment with Safe Drinking Water SRF monies, to mirror Clean Water SRF statutes

#### **Sections 60 and 61**

- Remove language regarding use of Safe Drinking Water SRF repayment monies

#### **Sections 62-64**

- Make conforming changes to reporting on source water program

#### **Sections 65-66**

- Remove drinking water from the functions of the Department of Public Health (Department)

#### **Sections 67-68**

- Add drinking water to the functions of the State Water Board and clarifies existing functions mirroring the three budget categories of the State Water Board (water quality, water rights, and drinking water)

#### **Sections 69-72**

- Establish in the Clean Water SRF parallel changes as in Sections 13 and 17 for Safe Drinking Water SRF, authorizing cross-collateralization, transfer, and policy handbook in Clean Water SRF program

#### **Section 73**

- Gives the State Water Board the same authority currently held by the Regional Water Boards over recycled water; specifically, allows the State Water Board to issue water reclamation requirements