

AMENDED IN ASSEMBLY AUGUST 21, 2017

AMENDED IN ASSEMBLY JULY 3, 2017

AMENDED IN ASSEMBLY JUNE 26, 2017

AMENDED IN SENATE APRIL 26, 2017

AMENDED IN SENATE MARCH 30, 2017

SENATE BILL

No. 623

Introduced by Senator Monning
(Principal coauthors: Senators De León and Hertzberg)
(~~Coauthors: Senators Stone and Hernandez~~)
(Coauthors: Senators Dodd, Hernandez, Stone, and Vidak)
(Coauthor: Assembly Member Bloom)

February 17, 2017

An act to ~~amend Section 116395 of, and add Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of, to add Article 14.5 (commencing with Section 62215) to Chapter 2 of Part 3 of Division 21 of, and to repeal Sections 14616 and 62216 of, the Food and Agricultural Code, to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104-~~of,~~ of the Health and Safety Code, and to amend Section 13050 of, and to add Article 4.5 (commencing with Section 13278)-~~of to~~ Chapter 4 of Division 7 of, the Water Code, relating to water, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Water quality: Safe and Affordable Drinking Water Fund.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions

relating to the regulation of drinking water to protect public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services. Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the ~~office~~ *state board*. The bill would require the board to administer the fund to ~~assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards, as specified~~ *secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure*. The bill would authorize the *state board* to provide for the deposit *into the fund* of federal ~~contributions and contributions~~, voluntary contributions, gifts, grants, ~~or bequests~~ *bequests, and settlements from parties responsible for contamination of drinking water supplies*. The bill would require the *state board* to expend moneys in the fund for grants, loans, contracts, or services to assist ~~those communities and individual domestic well owners that rely on contaminated drinking water to have access to~~ *eligible applicants with projects relating to the provision of safe and affordable drinking water consistent with a fund implementation plan adopted annually by the state board, as prescribed*. The bill would require the *state board* annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an ~~assessment of funding needed to ensure all Californians have access to safe drinking water~~ *assessment of funding need that estimates the anticipated funding needed for the next fiscal year to achieve the purposes of the fund*. The bill would require, by January 1, 2019, the *state board*, in consultation with local health officers and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants. For purposes of the map, the bill would require local health officers and other relevant local agencies to provide all results of, and data associated with, water

quality testing performed by certified laboratories to the board, as specified. By imposing additional duties on local health officers and local agencies, the bill would impose a state-mandated local program. By creating a new continuously appropriated fund, this bill would make an appropriation.

~~The bill would state the intent of the Legislature to subsequently amend the bill to seek specific funding from agricultural operations to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic well users whose wells are located in agricultural areas.~~

~~(2) The act provides for the operation of public water systems and imposes on the state board various duties and responsibilities for the regulation and control of drinking water in the state. The act generally does not apply to state small water systems, except that the act requires the board to adopt regulations specifying minimum requirements for operation of a state small water system, which are authorized to be less stringent than the requirements for public water systems, requires the enforcement of these requirements, and authorizes the reasonable costs of the local health officer to be recovered. The act, within 3 years after September 19, 1985, required the State Department of Public Health to, among other things, conduct training workshops to assist health officers in evaluation of small public water systems, as defined, for organic chemical contamination, and in sampling and testing procedures and required the local health officer, in consultation with the department, to conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals and to develop a sampling plan for each system within their jurisdiction. The act provided that these provisions were operative during any fiscal year only if the Legislature appropriated sufficient funds to pay for all state-mandated costs to be incurred by local agencies during that year due to these provisions.~~

~~This bill would require the state board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The bill would require testing to be prioritized based on local water quality conditions and would require the state board to review these regulations at least every 5 years. The bill would exempt these provisions from the above-described inoperative provision.~~

(2) Existing law, the Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose, until July 1, 2020, a safe and affordable drinking water fee in specified amounts on each customer of a public water system, to be administered by the state board, in consultation with the California Department of Tax and Fee Administration, in accordance with the Fee Collection Procedures Law. The bill would exempt from the fee a customer that self-certifies under penalty of perjury the customer's satisfaction of specified criteria relating to income. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would require, beginning July 1, 2020, the state board to annually determine the amounts of the safe and affordable drinking water fee not to exceed the amounts imposed until July 1, 2020, and not to exceed the anticipated funding need in the most recent assessment of funding need adopted by the state board pursuant to the Safe and Affordable Drinking Water Fund provisions, as prescribed. The bill would require the state board, by July 1, 2020, to adopt regulations, in consultation with the Public Utilities Commission, relating to an exemption from the fee for low-income households, as specified. The bill would require a public water system to collect the fee and to remit these moneys to the state board to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize a public water system to apply to the state board to use an alternative method to calculate the fee. By expanding the application of the Fee Collection Procedures Law that imposes criminal penalties for various acts, this bill would impose a state-mandated local program.

(3) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose

of providing funding for research and education regarding the use of fertilizing materials. Existing law specifies that a violation of the fertilizing material laws or the regulations adopted pursuant to those laws is a misdemeanor.

This bill, until January 1, 2033, would require a licensee to pay to the secretary a fertilizer safe drinking water fee of \$0.005 per dollar of sale for all sales of fertilizing materials. The bill, on and after January 1, 2033, would reduce the fee to \$0.002 per dollar of sale and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to adopt regulations relating to the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.

(4) Existing law regulates the production, handling, and marketing of milk and dairy products and requires every milk handler subject to that regulatory scheme to pay specified assessments and fees to the Secretary of Food and Agriculture to cover the costs of regulating milk. Existing law governing milk defines “handler” as any person who, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling. Existing law defines “market milk” as milk conforming to specified standards and “manufacturing milk” as milk that does not conform to the requirements of market milk. Existing law provides that a violation of that regulatory scheme or a regulation adopted pursuant to that regulatory scheme is a misdemeanor.

This bill would require, beginning January 1, 2020, until January 1, 2035, each handler subject to that regulatory scheme to deduct from payments made to producers for market and manufacturing milk the sum of \$0.01355 per hundredweight of milk as a dairy safe drinking water fee. On and after January 1, 2035, the bill would reduce the fee to \$0.00678 per hundredweight of milk and would authorize the secretary to reduce the fee as necessary to not exceed the anticipated funding need in the most recent assessment of funding need adopted by

the board pursuant to the Safe and Affordable Drinking Water Fund provisions. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to take specified enforcement actions and would require the secretary to adopt regulations for the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.

(3)

(5) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. The act requires the state board to formulate and adopt state policies for water quality control and requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Under the act, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The act requires, upon the order of a regional board, a person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, to take other remedial action.

This bill would prohibit the state board or a regional board, until January 1, 2028, from subjecting an agricultural operation, as defined, to specified enforcement for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance for nitrates in groundwater if that agricultural operation demonstrates that it has satisfied certain mitigation requirements, including, among other requirements, the timely payment of any applicable fee, assessment, or charge *the fertilizer safe drinking water fee or the dairy safe drinking water fee, as applicable*, into the fund. The bill would prohibit the state board or a regional board, beginning January 1, 2028, until January 1, 2033, from subjecting an agricultural operation to specified enforcement for creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if that agricultural operation demonstrates that it has satisfied the prescribed mitigation requirements. The bill

would require the state board, by January 1, 2027, to conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: ~~majority~~^{2/3}. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

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

1 ~~SECTION 1. Section 116395 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~116395. (a) The Legislature finds and declares all of the~~
4 ~~following:~~

5 ~~(1) The large water system testing program has discovered~~
6 ~~chemical contamination of the state's drinking water with~~
7 ~~increasing frequency.~~

8 ~~(2) A significant number of California residents rely on the~~
9 ~~state's small water systems and individual domestic wells to~~
10 ~~provide their water.~~

11 ~~(3) The small systems and individual domestic wells, because~~
12 ~~they tend to be located in outlying rural areas where pesticide use~~
13 ~~is prevalent, and because they draw their water from shallow~~
14 ~~aquifers, face a serious threat of contamination.~~

15 ~~(4) Unchecked water sources that may be contaminated pose a~~
16 ~~potentially serious threat to the health of the citizens of California,~~
17 ~~particularly those living in outlying rural areas.~~

1 ~~(5) It is in the interest of all Californians that a testing program~~
2 ~~for small public water systems and individual domestic wells be~~
3 ~~implemented and carried out as expeditiously as possible.~~

4 ~~(6) Section 106.3 of the Water Code declares that every~~
5 ~~Californian has the right to sufficient clean, safe, affordable, and~~
6 ~~accessible water adequate for human consumption, cooking, and~~
7 ~~sanitary purposes.~~

8 ~~(7) To ensure that the right of every Californian to sufficient~~
9 ~~clean, safe, affordable, and accessible water adequate for human~~
10 ~~consumption, cooking, and sanitary purposes is met, it is in the~~
11 ~~interest of the State of California to identify water quality threats~~
12 ~~in the state's drinking water supply, to the extent feasible, whether~~
13 ~~those supplies serve a public water system, state small water~~
14 ~~system, or an individual domestic well.~~

15 ~~(b) (1) For purposes of this section, "small public water system"~~
16 ~~means a system with 200 connections or less, and is one of the~~
17 ~~following:~~

18 ~~(A) A community water system that serves at least 15 service~~
19 ~~connections used by yearlong residents or regularly serves at least~~
20 ~~25 yearlong residents.~~

21 ~~(B) A state small water system.~~

22 ~~(C) A noncommunity water system such as a school, labor camp,~~
23 ~~institution, or place of employment, as designated by the state~~
24 ~~board.~~

25 ~~(2) For the purposes of this section, "individual domestic well"~~
26 ~~means a groundwater well used to supply water for the domestic~~
27 ~~needs of an individual residence or systems of four or less service~~
28 ~~connections.~~

29 ~~(e) The state board shall conduct training workshops to assist~~
30 ~~health officers in evaluation of small public water systems for~~
31 ~~organic chemical contamination, and in sampling and testing~~
32 ~~procedures. The state board shall, at a minimum, provide health~~
33 ~~officers with guidelines for evaluating systems and instructions~~
34 ~~for sampling.~~

35 ~~(d) The state board shall develop a schedule for conduct of the~~
36 ~~programs by the local health officers. The schedule shall establish~~
37 ~~a program to address first those systems with the most serious~~
38 ~~potential for contamination. The state board shall enter into~~
39 ~~agreements with the local health agencies to conduct the necessary~~
40 ~~work to be performed pursuant to the schedule. The department~~

1 shall begin the program no later than three months after September
 2 19, 1985. All local health officers shall complete the evaluation,
 3 sampling, testing, review of sampling results, and notification to
 4 the public water systems within their jurisdiction in accordance
 5 with the agreements entered into with the state board and within
 6 the schedule established by the state board. All work required by
 7 this subdivision shall be completed within three years after
 8 September 19, 1985.

9 (e) By January 1, 2019, the state board shall promulgate
 10 regulations to require state small water systems and individual
 11 domestic wells to test their water supply wells for contamination.
 12 The state board shall prioritize testing based on local water quality
 13 conditions. The state board shall review these regulations at least
 14 every five years.

15 (f) (1) Except as provided in paragraph (2), this section shall
 16 be operative during any fiscal year only if the Legislature
 17 appropriates sufficient funds to pay for all state-mandated costs
 18 to be incurred by local agencies pursuant to this section during
 19 that year.

20 (2) Subdivisions (a), (b), (c), and (f) shall not become
 21 inoperative.

22 SECTION 1. Article 6.5 (commencing with Section 14615) is
 23 added to Chapter 5 of Division 7 of the Food and Agricultural
 24 Code, to read:

25
 26 *Article 6.5. Fertilizer Safe Drinking Water Fee*

27
 28 14615. (a) It is the intent of the Legislature to require licensees
 29 of bulk fertilizing materials, and to authorize licensees of packaged
 30 fertilizing materials, to pass the fertilizer safe drinking water fee
 31 on to the end user of the fertilizer.

32 (b) For purposes of this article, the following definitions apply:

33 (1) "Bulk fertilizing material" has the same meaning as applies
 34 to "bulk material" in Section 14517.

35 (2) "Fertilizing material" has the same meaning as defined in
 36 Section 14533.

37 (3) "Fund" means the Safe and Affordable Drinking Water
 38 Fund established by Section 116767 of the Health and Safety Code.

39 (4) "Packaged" has the same meaning as defined in Section
 40 14551.

1 14616. (a) In addition to the assessments provided in Section
2 14611, a licensee whose name appears on the label of bulk or
3 packaged fertilizing materials shall pay to the secretary a fertilizer
4 safe drinking water fee of five mills (\$0.005) per dollar of sales
5 for all sales of fertilizing materials to be deposited into the fund.

6 (b) This section shall remain in effect only until January 1, 2033,
7 and as of that date is repealed, unless a later enacted statute that
8 is enacted before January 1, 2033, deletes or extends that date.

9 14616. (a) In addition to the assessments provided in Section
10 14611, a licensee whose name appears on the label of bulk or
11 packaged fertilizing materials shall pay to the secretary a fertilizer
12 safe drinking water fee of two mills (\$0.002) per dollar of sales
13 for all sales of fertilizing materials to be deposited into the fund.

14 (b) The secretary may reduce the fertilizer safe drinking water
15 fee as necessary to not exceed the anticipated funding need in the
16 most recent assessment of funding need adopted by the State Water
17 Resources Control Board pursuant to subdivision (b) of Section
18 116769 of the Health and Safety Code. By October 1 of each year,
19 the secretary shall notify all licensees of the amount of the fertilizer
20 safe drinking water fee to be assessed in the following calendar
21 year.

22 (c) This section shall become operative on January 1, 2033.

23 14617. (a) (1) A licensee whose name appears on the label
24 who sells or distributes bulk fertilizing materials shall charge an
25 unlicensed purchaser the fertilizer safe drinking water fee as a
26 charge that is separate from, and not included in, any other fee,
27 charge, or other amount paid by the purchaser. This fee shall be
28 included on the bill of sale as a separate line item.

29 (2) A licensee whose name appears on the label of packaged
30 fertilizing materials may include the fertilizer safe drinking water
31 fee as a charge that is separate from, and not included in, any
32 other fee, charge, or other amount paid by the purchaser.

33 (b) The secretary may prescribe, adopt, and enforce regulations
34 relating to the administration and enforcement of this article.

35 (c) The secretary may retain up to 2 percent of the moneys
36 collected pursuant to this article for reasonable costs associated
37 with the implementation and enforcement of this article.

38 SEC. 2. Article 14.5 (commencing with Section 62215) is added
39 to Chapter 2 of Part 3 of Division 21 of the Food and Agricultural
40 Code, to read:

1
2 Article 14.5. Dairy Safe Drinking Water Fee
3

4 62215. (a) *It is the intent of the Legislature that the dairy safe*
5 *drinking water fee be paid for all milk purchased in the state,*
6 *regardless of grade.*

7 (b) *For purposes of this article, the following definitions apply:*

8 (1) *“Fee” means the dairy safe drinking water fee.*

9 (2) *“Manufacturing milk” has the same meaning as defined in*
10 *Section 32509.*

11 (3) *“Market milk” has the same meaning as defined in Section*
12 *32510.*

13 (4) *“Milk” includes market milk and manufacturing milk.*

14 62216. (a) *Beginning January 1, 2020, each handler, including*
15 *a producer-handler, subject to the provisions of a stabilization*
16 *and marketing plan shall deduct the sum of \$0.01355 per*
17 *hundredweight of milk from payments made to producers for milk,*
18 *including the handler’s own production, as a dairy safe drinking*
19 *water fee.*

20 (b) *The secretary shall adopt regulations necessary for the*
21 *proper administration and enforcement of this section by January*
22 *1, 2020.*

23 (c) *This section shall remain in effect only until January 1, 2035,*
24 *and as of that date is repealed, unless a later enacted statute that*
25 *is enacted before January 1, 2035, deletes or extends that date.*

26 62216. (a) *Each handler, including a producer-handler,*
27 *subject to the provisions of a stabilization and marketing plan*
28 *shall deduct the sum of \$0.00678 per hundredweight of milk from*
29 *payments made to producers for milk, including the handler’s own*
30 *production, as a dairy safe drinking water fee.*

31 (b) *The secretary may reduce the fee, and may adjust the fee*
32 *reduction from time to time, as necessary to not exceed the*
33 *anticipated funding need in the most recent assessment of funding*
34 *need adopted by the State Water Resources Control Board pursuant*
35 *to subdivision (b) of Section 116769 of the Health and Safety Code.*

36 (c) *The secretary shall adopt regulations necessary for the*
37 *proper administration and enforcement of this section.*

38 (d) *This section shall become operative on January 1, 2035.*

1 62217. (a) A handler shall pay the dairy safe drinking water
2 fee to the secretary on or before the 45th day following the last
3 day of the month in which the milk was received.

4 (b) The secretary shall remit the moneys paid to him or her
5 pursuant to this article to the State Water Resources Control Board
6 for deposit into the Safe and Affordable Drinking Water Fund
7 established by Section 116767 of the Health and Safety Code. The
8 secretary may retain up to 2 percent of the total amount that is
9 paid to the secretary for the purposes of covering administrative
10 costs borne by the secretary for implementing this section.

11 (c) The secretary may require handlers, including cooperative
12 associations acting as handlers, to make reports at any intervals
13 and in any detail that he or she finds necessary for the accurate
14 collection of the fee.

15 (d) For the purposes of enforcing this article, the secretary,
16 through his or her duly authorized representatives and agents,
17 shall have access to the records of every producer and handler.
18 The secretary shall have at all times free and unimpeded access
19 to any building, yard, warehouse, store, manufacturing facility,
20 or transportation facility in which any milk or milk product is
21 produced, bought, sold, stored, bottled, handled, or manufactured.

22 (e) Any books, papers, records, documents, or reports made to,
23 acquired by, prepared by, or maintained by the secretary pursuant
24 to this article that would disclose any information about finances,
25 financial status, financial worth, composition, market share, or
26 business operations of any producer or handler, excluding
27 information that solely reflects transfers of production base and
28 pool quota among producers, is confidential and shall not be
29 disclosed to any person other than the person from whom the
30 information was received, except pursuant to the final order of a
31 court with jurisdiction, or as necessary for the proper
32 determination of any proceeding before the secretary.

33 ~~SEC. 2.~~

34 SEC. 3. Chapter 4.6 (commencing with Section 116765) is
35 added to Part 12 of Division 104 of the Health and Safety Code,
36 to read:

1 CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER

2
3 Article 1. Legislative Findings and Declarations

4
5 116765. The Legislature finds and declares all of the following:

6 (a) Section 106.3 of the Water Code declares that it is the policy
7 of the state that every human being has the right to safe, clean,
8 affordable, and accessible water adequate for human consumption,
9 cooking, and sanitary purposes.

10 (b) For all public water systems, the operation and maintenance
11 costs to supply, treat, and distribute potable water that complies
12 with federal and state drinking water standards on a routine and
13 consistent basis may be significant.

14 (c) All public water systems are currently required to set,
15 establish, and charge a schedule of rates and fees that are sufficient
16 to recover the operation and maintenance costs required to supply,
17 treat, and distribute potable water that complies with federal and
18 state drinking water standards on a routine and consistent basis.

19 (d) Hundreds of public water systems in the state cannot charge
20 rates and fees that are affordable and sufficient to recover the full
21 operation and maintenance costs required to supply, treat, and
22 distribute potable water that complies with federal and state
23 drinking water standards on a routine and consistent basis due to
24 a combination of low income levels of customers, high treatment
25 costs for contaminated water sources, and a lack of economies of
26 scale that result in high unit costs for water service. Many schools
27 that serve as their own regulated public water systems and have
28 contaminated water sources cannot afford the full operation and
29 maintenance costs required to provide water that meets federal
30 and state drinking water standards.

31 (e) Nearly all state or federal drinking water project funding
32 sources prohibit the use of that funding for operation and
33 maintenance costs, and as a result, those systems that cannot afford
34 required operation and maintenance costs are unable to access
35 funding for capital projects to meet federal and state drinking
36 water standards.

37 (f) As a result, hundreds of thousands of Californians,
38 particularly those living in small disadvantaged communities, may
39 be exposed to unsafe drinking water in their homes and schools,

1 *which impacts human health, household costs, and community*
 2 *economic development.*

3 *(g) A significant number of California residents rely on state*
 4 *small water systems and domestic wells to provide their drinking*
 5 *water.*

6 *(h) State small water systems and domestic wells are not*
 7 *currently subject to any comprehensive federal or state*
 8 *requirements for chemical water quality monitoring. Many local*
 9 *agencies do not require any monitoring beyond what is required*
 10 *by state law, and there are wide discrepancies among local*
 11 *jurisdictions in well monitoring programs.*

12 *(i) The state small water systems and individual domestic wells*
 13 *face a serious threat of contamination because they often draw*
 14 *their water from shallow groundwater sources and have fewer or*
 15 *no chemical monitoring requirements.*

16 *(j) To ensure that the right of every Californian to safe, clean,*
 17 *affordable, and accessible water adequate for human consumption,*
 18 *cooking, and sanitary purposes is protected, it is in the interest of*
 19 *the State of California to identify where Californians are at high*
 20 *risk of lacking reliable access to safe drinking water or are known*
 21 *to lack reliable access to safe drinking water, whether they rely*
 22 *on a public water system, state small water system, or domestic*
 23 *well for their potable water supply.*

24 *(k) Long-term sustainability of drinking water infrastructure*
 25 *and service provision is necessary to secure safe drinking water*
 26 *for all Californians and therefore it is in the interest of the state*
 27 *to discourage the proliferation of new, unsustainable public water*
 28 *systems and state small water systems, to prevent waste, and to*
 29 *encourage consolidation and service extension when feasible.*

30 *(l) It is in the interest of all Californians to establish a fund with*
 31 *a stable source of revenue to provide financial support, particularly*
 32 *for operation and maintenance, necessary to secure access to safe*
 33 *drinking water for all Californians, while also ensuring the long*
 34 *term sustainability of drinking water service and infrastructure.*

35

36

Article 2. Definitions

37

38 ~~116765.~~

39 116766. For the purposes of this chapter:

- 1 ~~(a) “Agricultural operations” has the same meaning as defined~~
2 ~~in Section 13050 of the Water Code.~~
- 3 (a) *“Administrator” has the same meaning as defined in Section*
4 *116686.*
- 5 (b) *“Board” means the State Water Resources Control Board.*
- 6 (c) *“Community water system” has the same meaning as defined*
7 *in Section 116275.*
- 8 (d) *“Customer” has the same meaning as defined in Section*
9 *10612 of the Water Code.*
- 10 ~~(d)~~
- 11 (e) *“Disadvantaged community” has the same meaning as*
12 *defined in Section 116275.*
- 13 (f) *“Domestic well” means a groundwater well used to supply*
14 *water for the domestic needs of an individual residence or water*
15 *systems with no more than four service connections.*
- 16 ~~(e)~~
- 17 (g) *“Fund” means the Safe and Affordable Drinking Water Fund*
18 *established pursuant to Section 116766. 116767.*
- 19 (h) *“Fund implementation plan” means the fund implementation*
20 *plan adopted pursuant to Section 116769.*
- 21 ~~(f)~~
- 22 (i) *“Nontransient noncommunity water system” has the same*
23 *meaning as defined in Section 116275.*
- 24 ~~(g)~~
- 25 (j) *“Public water system” has the same meaning as defined in*
26 *Section 116275.*
- 27 ~~(h)~~
- 28 (k) *“Replacement water” includes, but is not limited to, bottled*
29 *water, point-of-use, or point-of-entry treatment units.*
- 30 ~~(i) “Safe Drinking Water Plan” means the plan prepared pursuant~~
31 ~~to Section 116355.~~
- 32 (l) *“Safe drinking water” has the same meaning as defined in*
33 *Section 116681.*
- 34 (m) *“Service connection” has the same meaning as defined in*
35 *Section 116275.*
- 36 (n) *“Small community water system” has the same meaning as*
37 *defined in Section 116275.*
- 38 (o) *“State small water system” has the same meaning as defined*
39 *in Section 116275.*

1 *Article 3. Safe and Affordable Drinking Water Fund*

2
3 ~~116766.~~

4 116767. The Safe and Affordable Drinking Water Fund is
5 hereby established in the State Treasury. Notwithstanding Section
6 13340 of the Government Code, all moneys in the fund are
7 continuously appropriated to ~~the Office of Sustainable Water~~
8 ~~Solutions within~~ the board without regard to fiscal years, in
9 accordance with this chapter. Moneys in the fund at the close of
10 the fiscal year shall remain in the fund and shall not revert to the
11 General Fund.

12 ~~116767.~~

13 116768. (a) The board shall administer the fund for the
14 purposes of this chapter to provide a stable source of funding to
15 ~~assist communities and individual domestic well users to address~~
16 ~~contaminants in drinking water that exceed~~ *secure access to safe*
17 *drinking water standards, the treatment of which would otherwise*
18 ~~make the cost of water service unaffordable for all Californians,~~
19 *while also ensuring the long-term sustainability of drinking water*
20 *service and infrastructure.* The board shall prioritize the use of
21 this funding to assist ~~low-income disadvantaged~~ communities and
22 low-income individual domestic well users. ~~In addition, order to~~
23 *maximize the use of other funding sources for capital construction*
24 *projects when available,* the board shall prioritize ~~the use of this~~
25 funding for costs other than those related to capital construction
26 ~~costs. An costs, except for capital construction costs associated~~
27 *with consolidation and service extension to reduce the ongoing*
28 *unit cost of service and to increase sustainability of drinking water*
29 *infrastructure and service delivery. Beginning January 1, 2019,*
30 *an expenditure from the fund shall be consistent with the annual*
31 *fund implementation plan developed pursuant to Section 116769.*
32 ~~On and after January 1, 2020, the total unencumbered amount in~~
33 ~~the fund shall not exceed the board's total estimated need for~~
34 ~~moneys in the fund over a two-year period.~~ *plan.*

35 (b) In accordance with subdivision (a), the board shall expend
36 moneys in the fund for grants, loans, contracts, or services to assist
37 ~~those communities and individual domestic well owners that rely~~
38 ~~on contaminated drinking water to have access to safe and~~
39 ~~affordable drinking water~~ *eligible applicants* with any of the
40 following:

1 (1) The provision of replacement water, as needed, to ensure
2 immediate protection of health and safety as a short-term solution.

3 (2) The development, implementation, and sustainability of
4 long-term solutions, including, but not limited to, *technical*
5 *assistance*, planning, construction, and operation and maintenance
6 costs associated with replacing, blending, or treating contaminated
7 ~~wells and drinking water sources~~, consolidating water systems
8 ~~systems, or extending drinking water services to other public water~~
9 ~~systems, domestic wells, or state small water systems. Technical~~
10 ~~assistance and planning costs may include, but are not limited to,~~
11 ~~analyses to identify, and efforts to further, opportunities to reduce~~
12 ~~the unit cost of providing drinking water through organizational~~
13 ~~and operational efficiency improvements, system consolidation~~
14 ~~and service extension, implementation of new technology, and~~
15 ~~other options and approaches to reduce costs.~~

16 (3) ~~Identifying and providing outreach to Californians without~~
17 ~~access to safe drinking water who are eligible to receive assistance~~
18 ~~from the fund and providing outreach to them. fund.~~

19 (4) Testing the drinking water quality of ~~individual~~ domestic
20 wells serving ~~low-income households~~: *households with an income*
21 *equal to or less than 200 percent of the federal poverty level in*
22 *high risk areas identified pursuant to Article 4 (commencing with*
23 *Section 116770).*

24 (c) Eligible applicants for funding include *public water systems;*
25 *public agencies, including, but not limited to, local educational*
26 *agencies; nonprofit organizations, public utilities, organizations;*
27 ~~federally recognized Indian tribes, tribes;~~ *state Indian tribes listed*
28 *on the Native American Heritage Commission’s California tribal*
29 ~~consultation list, Tribal Consultation List; administrators; and~~
30 ~~groundwater sustainability agencies, and mutual water companies.~~
31 *agencies.*

32 (d) *The board may expend moneys from the fund for reasonable*
33 *costs associated with administration of the fund. Beginning July*
34 *1, 2020, the board may expend up to no more than 5 percent of*
35 *the annual expenditures from the fund for reasonable costs*
36 *associated with administration of the fund.*

37 (e) The board may undertake any of the following actions to
38 implement the fund:

39 (1) Provide for the deposit of any of the following available and
40 necessary moneys into the fund:

1 (A) Federal contributions.

2 (B) Voluntary contributions, gifts, grants, or bequests.

3 (C) *Settlements from parties responsible for contamination of*
4 *drinking water supplies.*

5 (2) Enter into agreements for contributions to the fund from the
6 federal government, local or state agencies, and private
7 corporations or nonprofit organizations.

8 (3) Provide for appropriate audit, accounting, and fiscal
9 management services, plans, and reports relative to the fund.

10 (4) *Direct portions of the fund to a subset of eligible applicants*
11 *as required or appropriate based on funding source and consistent*
12 *with the annual fund implementation plan.*

13 ~~(4)~~

14 (5) Take additional incidental action as may be appropriate for
15 adequate administration and operation of the fund.

16 (f) *In administering the fund, the board shall make reasonable*
17 *efforts to ensure all of the following:*

18 (1) *That parties responsible for contamination of drinking water*
19 *supplies affecting an eligible applicant can be directly or easily*
20 *identified by the board to pay or reimburse costs associated with*
21 *contamination.*

22 (2) *That funds are used to secure the long-term sustainability*
23 *of drinking water service and infrastructure, including, but not*
24 *limited to, requiring adequate technical, managerial, and financial*
25 *capacity of eligible applicants as part of funding agreement*
26 *outcomes. Funding shall be prioritized to implement consolidations*
27 *and service extensions when feasible, and administrative and*
28 *managerial contracts entered into pursuant to Section 116686*
29 *where applicable. Funds shall not be used to delay, prevent, or*
30 *avoid the consolidation or extension of service to public water*
31 *systems where it is feasible and the least-cost alternative. The*
32 *board may set appropriate requirements as a condition of funding,*
33 *including, but not limited to, a system technical, managerial, or*
34 *financial capacity audit, improvements to reduce costs and increase*
35 *efficiencies, an evaluation of alternative treatment technologies,*
36 *and a consolidation or service extension feasibility study. As a*
37 *condition of funding, the board may require a domestic well with*
38 *nitrate contamination where ongoing septic system failure may be*
39 *causing or contributing to contamination of a drinking water*
40 *source to conduct an investigation and project to address the septic*

1 system failure if adequate funding sources are identified and
2 accessible.

3 (3) That funds are not used to subsidize large-scale nonpotable
4 use, to the extent feasible.

5 (g) At least once every 10 years, the board shall conduct a public
6 review and assessment of the Safe and Affordable Drinking Water
7 Fund, including, but not limited to, the effectiveness of the fund,
8 the appropriateness of fees deposited into the fund, and any actions
9 needed to carry out the purposes of this chapter. The board shall
10 post the information it gathers on its Internet Web site and shall
11 submit the information to the Legislature in compliance with
12 Section 9795 of the Government Code.

13 ~~116768. It is the intent of the Legislature to subsequently amend~~
14 ~~this section to seek specific funding from agricultural operations~~
15 ~~to assist in providing emergency, interim, and long-term assistance~~
16 ~~to community water systems and individual domestic well users~~
17 ~~whose wells have been impacted by nitrate contamination and~~
18 ~~whose wells are located in agricultural areas.~~

19 ~~116769.~~

20 ~~116769. Annually, By July 1 of each year, the board shall do~~
21 ~~all of the following:~~

22 (a) Prepare and make available a report of expenditures from
23 the fund.

24 (b) Adopt, after a public hearing, an assessment of funding
25 needed to ensure all Californians have access to safe drinking
26 water. This annual assessment shall incorporate information
27 contained in the Safe Drinking Water Plan and include a list of
28 community water systems and nontransient noncommunity water
29 systems without access to safe drinking water, as well as
30 identification of small communities and rural populations not
31 served by public water systems that do not have access to safe
32 drinking water. need, based on available data, that includes all of
33 the following:

34 (1) Identification of systems and populations potentially in need
35 of assistance, including all of the following:

36 (A) A list of systems that consistently fail to provide an adequate
37 supply of safe drinking water. The list shall include, but is not
38 limited to, all of the following:

39 (i) Any public water system that consistently fails to provide an
40 adequate supply of safe drinking water.

1 (ii) Any community water system that serves a disadvantaged
2 community that must charge fees that exceed the affordability
3 threshold established in the Clean Water State Revolving Fund
4 Intended Use Plan in order to supply, treat, and distribute potable
5 water that complies with federal and state drinking water
6 standards.

7 (iii) Any state small water system that consistently fails to
8 provide an adequate supply of safe drinking water.

9 (B) A list of programs that assist, or that will assist, households
10 supplied by a domestic well that consistently fails to provide an
11 adequate supply of safe drinking water. This list shall include the
12 number and approximate location of households served by each
13 program without identifying exact addresses or other personal
14 information.

15 (C) A list of public water systems and state small water systems
16 that may be at risk of failing to provide an adequate supply of safe
17 drinking water.

18 (D) An estimate of the number of households that are served by
19 domestic wells or state small water systems in high risk areas
20 identified pursuant to Article 4 (commencing with Section 116770).
21 The estimate shall identify approximate locations of households,
22 without identifying exact addresses or other personal information,
23 in order to identify potential target areas for outreach and
24 assistance programs.

25 (2) An analysis of anticipated funding needed for known
26 projects, services, or programs by eligible applicants, consistent
27 with the fund implementation plan, including any funding needed
28 for existing long-term funding commitments from the fund. The
29 board shall identify and consider other existing funding sources
30 able to support any projects, services, or programs identified,
31 including, but not limited to, local funding capacity, state or federal
32 funding sources for capital projects, funding from responsible
33 parties, and specialized funding sources contributing to the fund.

34 (3) An estimate of the funding needed for the next fiscal year
35 based on the amount available in the fund, anticipated funding
36 needs, other existing funding sources, and other relevant data and
37 information.

38 (c) (1) Adopt, after a public hearing, a fund implementation
39 plan with priorities and guidelines for expenditures of the fund.
40 The

1 (2) *The board shall work with a multistakeholder advisory group*
 2 *that shall be open to participation by representatives of entities*
 3 *paying into the fund, public water systems, technical assistance*
 4 *providers, local agencies, ~~affected persons,~~ nongovernmental*
 5 *organizations, residents served by community water systems in*
 6 *disadvantaged communities, state small water systems, domestic*
 7 *wells, and the public, to establish priorities for the plan.*

8 ~~(2) The fund implementation plan shall prioritize eligibility for~~
 9 ~~expenditures of the fund based on the following:~~

10 ~~(A) A water system’s current or projected water rates needed~~
 11 ~~to ensure safe drinking water exceed or will exceed 1.5 percent of~~
 12 ~~the median household income for that water system and the water~~
 13 ~~system qualifies as a disadvantaged community.~~

14 ~~(B) The costs for providing potable water for an individual~~
 15 ~~domestic well exceed or will exceed 1.5 percent of the household’s~~
 16 ~~income and the household’s income is less than 80 percent of the~~
 17 ~~statewide household median income.~~

18
 19 *Article 4. Information on High Risk Areas*
 20

21 *116770. (a) (1) By January 1, 2019, the board, in consultation*
 22 *with local health officers and other relevant stakeholders, shall*
 23 *use available data to make available a map of aquifers that are at*
 24 *high risk of containing contaminants and that exceed primary*
 25 *federal and state drinking water standards that are used or likely*
 26 *to be used as a source of drinking water for a state small water*
 27 *system or a domestic well. The board shall update the map at least*
 28 *annually based on any newly available data.*

29 *(2) The board shall make the map of high risk areas, as well as*
 30 *the data used to make the map, publicly accessible on its Internet*
 31 *Web site in a manner that does not identify exact addresses or*
 32 *other personal information and that complies with the Information*
 33 *Practices Act of 1977 (Chapter 1 (commencing with Section 1798)*
 34 *of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board*
 35 *shall notify local health officers and county planning agencies of*
 36 *high risk areas within their jurisdictions.*

37 *(b) (1) A local health officer or other relevant local agency*
 38 *shall provide all results of, and data associated with, water quality*
 39 *testing performed by certified laboratories for a state small water*
 40 *system or domestic well that is in the possession of the local health*

1 officer or other relevant local agency in an electronic format to
2 the board by January 1, 2019.

3 (2) On and after January 1, 2019, a local health officer or other
4 relevant local agency shall require all results of, and data
5 associated with, water quality testing performed by a certified
6 laboratory for a state small water system or domestic well that is
7 submitted to the local health officer or other relevant local agency
8 to also be submitted directly to the board in electronic format.

9

10 Article 5. Safe and Affordable Drinking Water Fee

11

12 116771. (a) (1) Until July 1, 2020, there is hereby imposed
13 a safe and affordable drinking water fee on each person or entity
14 that purchases water from a public water system, as follows:

15 (A) For a customer with a water meter that is less than or equal
16 to one inch in size, the fee shall be ninety-five cents (\$0.95) per
17 month.

18 (B) For a customer with a water meter that is greater than one
19 inch and less than or equal to two inches in size, the fee shall be
20 four dollars (\$4) per month.

21 (C) For a customer with a water meter that is greater than two
22 inches and less than or equal to four inches in size, the fee shall
23 be six dollars (\$6) per month.

24 (D) For a customer with a water meter that is greater than four
25 inches in size, the fee shall be ten dollars (\$10) per month.

26 (E) For a customer without a water meter, the fee shall be
27 ninety-five cents (\$0.95) per month.

28 (2) A customer that self-certifies under penalty of perjury to the
29 public water system collecting the fee that he or she meets either
30 of the following criteria shall be exempt from the payment of the
31 fee:

32 (i) The customer's household income is equal to or less than
33 200 percent of the federal poverty level.

34 (ii) The customer operates a deed-restricted multifamily housing
35 development that is required to provide housing exclusively to
36 tenants with household incomes equal to or less than 200 percent
37 of the federal poverty level.

38 (3) (A) A customer that is already enrolled in a program offered
39 by a public water system that is designed specifically to reduce
40 the cost of water service incurred by customers who meet

1 *established income guidelines is exempt from the payment of the*
2 *fee.*

3 *(B) A connection or meter that is used exclusively for fire flow*
4 *or uses nonpotable water, including, but not limited to, recycled*
5 *water, is exempt from the fee.*

6 *(4) A customer that has multiple connections or meters serving*
7 *a single address shall only pay a single monthly fee based on the*
8 *customer's largest metered connection.*

9 *(b) (1) (A) Beginning July 1, 2020, each person or entity that*
10 *purchases water from a public water system shall be assessed a*
11 *fee according to a fee schedule established by the board for the*
12 *purposes of the Safe and Affordable Drinking Water Fund.*

13 *(B) The fee schedule shall not exceed the amounts established*
14 *in paragraph (1) of subdivision (a).*

15 *(C) The board shall review and revise the fee schedule each*
16 *fiscal year as necessary to not exceed the anticipated funding need*
17 *in the most recent assessment of funding need.*

18 *(D) The fee schedule shall establish that a customer that has*
19 *multiple connections or meters serving a single address shall only*
20 *pay a single monthly fee pursuant to this section, based on its*
21 *largest metered connection.*

22 *(E) (i) The fee schedule shall exempt any connection or meter*
23 *that is used exclusively for fire flow or utilizes nonpotable water,*
24 *including, but not limited to, recycled water.*

25 *(ii) By July 1, 2020, the board, in consultation with the Public*
26 *Utilities Commission, shall adopt regulations to exempt households*
27 *with incomes equal to or less than 200 percent of the federal*
28 *poverty level from the fee established in the fee schedule pursuant*
29 *to this subdivision. The Public Utilities Commission shall provide*
30 *consultation, as well as relevant data, from the California Alternate*
31 *Rates for Energy or CARE program established pursuant to Section*
32 *739.1 of the Public Utilities Code and from the water utility*
33 *low-income rate payer assistance programs developed pursuant*
34 *to Section 739.8 of the Public Utilities Code to the board to aid*
35 *in development and implementation of the regulations for*
36 *exemption pursuant to this clause.*

37 *(2) (A) Beginning July 1, 2022, the fee schedule shall be set at*
38 *an amount that does not result in the total uncommitted amount*
39 *in the fund exceeding two times the anticipated funding need in*
40 *the most recent assessment of funding need.*

1 (B) For purposes of this paragraph, “total uncommitted amount
2 in the fund” does not include moneys in the fund from the fertilizer
3 safe drinking water fee established by Article 6.5 (commencing
4 with Section 14615) of Chapter 5 of Division 7 of the Food and
5 Agricultural Code until January 1, 2033, and does not include
6 moneys in the fund from the dairy safe drinking water fee
7 established by Article 14.5 (commencing with Section 62215) of
8 Chapter 2 of Part 3 of Division 21 of the Food and Agricultural
9 Code until January 1, 2035.

10 (c) A public water system shall collect the fee from each of its
11 customers and may retain an amount, as approved by the board,
12 as reimbursement for the reasonable costs incurred by the public
13 water system associated with the collection of the fee. For small
14 community water systems, reasonable public water system
15 administrative cost reimbursement shall not exceed five hundred
16 dollars (\$500) or 2 percent of the total revenue collected,
17 whichever is greater. For all other public water systems,
18 reasonable public water system administrative cost reimbursement
19 shall not exceed 1 percent of the total revenue from the fees
20 collected. The public water system shall remit the remainder to
21 the board on an annual schedule.

22 (d) The board may approve an exemption for a community water
23 system and its customers from the requirements of this section if
24 the board finds that the amount that would be required to be
25 remitted to the board pursuant to this section would be de minimis.

26 (e) Notwithstanding any other provision of this article, a fee
27 shall not be imposed pursuant to this article on a person or entity
28 that is itself a public water system if that public water system is
29 only purchasing water from a public water system to supply its
30 own customers that are themselves being assessed the fee.

31 (f) All moneys remitted to the board under this article shall be
32 deposited in the Safe and Affordable Drinking Water Fund. The
33 moneys remitted to the board under this article shall not be
34 available for appropriation or borrowed for use for any purpose
35 not established in this chapter unless that use of the moneys
36 receives an affirmative vote of two-thirds of the membership in
37 each house of the Legislature.

38 116772. (a) A public water system may apply to the board to
39 authorize the public water system to use an alternative method to
40 calculate the amount owed by each customer for the charge

1 *imposed by Section 116771 by submitting an application, in a form*
2 *prescribed by the board, that demonstrates both of the following:*

3 *(1) That the method required by statute, regulation, or fee*
4 *schedule adopted by the board would be impractical for the public*
5 *water system to collect.*

6 *(2) That the method proposed by the public water system would*
7 *provide an approximately equivalent level of total revenue and is*
8 *consistent with the fee restrictions in this article, including, but*
9 *not limited to, amount maximums and exemptions.*

10 *(b) The board shall review any application submitted pursuant*
11 *to subdivision (a) to determine whether the justifications*
12 *demonstrated pursuant to paragraphs (1) and (2) of subparagraph*
13 *(a) are valid. If the board denies the application, that denial shall*
14 *be in writing and shall not be reviewable. If the board approves*
15 *the application, the public water system may use the alternative*
16 *method for an amount of time prescribed by the board, not to*
17 *exceed five years.*

18 *(c) There is not a limit on the number of applications the board*
19 *is authorized to approve pursuant to this section to establish or*
20 *renew an alternative method of fee calculation.*

21 *116773. (a) The board, in consultation with the California*
22 *Department of Tax and Fee Administration, shall administer and*
23 *collect the fees imposed by this article in accordance with the Fee*
24 *Collection Procedures Law (Part 30 (commencing with Section*
25 *55001) of Division 2 of the Revenue and Taxation Code).*

26 *(b) For purposes of administration of the fee imposed by this*
27 *article, the following references in the Fee Collection Procedures*
28 *Law shall have the following meanings:*

29 *(1) "Board" or "State Board of Equalization" means the State*
30 *Water Resources Control Board.*

31 *(2) "Fee" means the safe and affordable drinking water fee*
32 *imposed pursuant to this article.*

33 *(3) "Feepayer" means a customer liable to pay the fee.*

34 *(c) The board, in consultation with the California Department*
35 *of Tax and Fee Administration, may prescribe, adopt, and enforce*
36 *regulations relating to the administration and enforcement of this*
37 *article, including, but not limited to, collections, reporting, refunds,*
38 *and appeals.*

39 *(d) The initial regulations adopted by the board to implement*
40 *this article shall be adopted in accordance with Chapter 3.5*

1 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
 2 *2 of the Government Code, and shall not rely on the statutory*
 3 *declaration of emergency in subdivision (e).*

4 *(e) Except as provided in subdivision (d), the regulations*
 5 *adopted pursuant to this section, any amendment to those*
 6 *regulations, or subsequent adjustments to the annual fees or*
 7 *adoption of fee schedule, shall be adopted by the board as*
 8 *emergency regulations in accordance with Chapter 3.5*
 9 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
 10 *2 of the Government Code. The adoption of these regulations is*
 11 *an emergency and shall be considered by the Office of*
 12 *Administrative Law as necessary for the immediate preservation*
 13 *of the public peace, health, safety, and general welfare. Any*
 14 *emergency regulations adopted by the board, or adjustments to*
 15 *the annual fees made by the board pursuant to this section, shall*
 16 *remain in effect until revised by the board.*

17 ~~SEC. 3.~~

18 SEC. 4. Section 13050 of the Water Code is amended to read:
 19 13050. As used in this division:

20 (a) “State board” means the State Water Resources Control
 21 Board.

22 (b) “Regional board” means any California regional water
 23 quality control board for a region as specified in Section 13200.

24 (c) “Person” includes any city, county, district, the state, and
 25 the United States, to the extent authorized by federal law.

26 (d) “Waste” includes sewage and any and all other waste
 27 substances, liquid, solid, gaseous, or radioactive, associated with
 28 human habitation, or of human or animal origin, or from any
 29 producing, manufacturing, or processing operation, including waste
 30 placed within containers of whatever nature prior to, and for
 31 purposes of, disposal.

32 (e) “Waters of the state” means any surface water or
 33 groundwater, including saline waters, within the boundaries of the
 34 state.

35 (f) “Beneficial uses” of the waters of the state that may be
 36 protected against quality degradation include, but are not limited to,
 37 to, domestic, municipal, ~~agricultural~~ *agricultural*, and industrial
 38 supply; power generation; recreation; aesthetic enjoyment;
 39 navigation; and preservation and enhancement of fish, wildlife,
 40 and other aquatic resources or preserves.

1 (g) “Quality of the water” refers to chemical, physical,
2 biological, bacteriological, radiological, and other properties and
3 characteristics of water which affect its use.

4 (h) “Water quality objectives” means the limits or levels of
5 water quality constituents or characteristics which are established
6 for the reasonable protection of beneficial uses of water or the
7 prevention of nuisance within a specific area.

8 (i) “Water quality control” means the regulation of any activity
9 or factor which may affect the quality of the waters of the state
10 and includes the prevention and correction of water pollution and
11 nuisance.

12 (j) “Water quality control plan” consists of a designation or
13 establishment for the waters within a specified area of all of the
14 following:

15 (1) Beneficial uses to be protected.

16 (2) Water quality objectives.

17 (3) A program of implementation needed for achieving water
18 quality objectives.

19 (k) “Contamination” means an impairment of the quality of the
20 waters of the state by waste to a degree which creates a hazard to
21 the public health through poisoning or through the spread of
22 disease. “Contamination” includes any equivalent effect resulting
23 from the disposal of waste, whether or not waters of the state are
24 affected.

25 (l) (1) “Pollution” means an alteration of the quality of the
26 waters of the state by waste to a degree which unreasonably affects
27 either of the following:

28 (A) The waters for beneficial uses.

29 (B) Facilities which serve these beneficial uses.

30 (2) “Pollution” may include “contamination.”

31 (m) “Nuisance” means anything which meets all of the following
32 requirements:

33 (1) Is injurious to health, or is indecent or offensive to the senses,
34 or an obstruction to the free use of property, so as to interfere with
35 the comfortable enjoyment of life or property.

36 (2) Affects at the same time an entire community or
37 neighborhood, or any considerable number of persons, although
38 the extent of the annoyance or damage inflicted upon individuals
39 may be unequal.

1 (3) Occurs during, or as a result of, the treatment or disposal of
2 wastes.

3 (n) “Recycled water” means water which, as a result of treatment
4 of waste, is suitable for a direct beneficial use or a controlled use
5 that would not otherwise occur and is therefor considered a
6 valuable resource.

7 (o) “Citizen or domiciliary” of the state includes a foreign
8 corporation having substantial business contacts in the state or
9 which is subject to service of process in this state.

10 (p) (1) “Hazardous substance” means either of the following:

11 (A) For discharge to surface waters, any substance determined
12 to be a hazardous substance pursuant to Section 311(b)(2) of the
13 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

14 (B) For discharge to groundwater, any substance listed as a
15 hazardous waste or hazardous material pursuant to Section 25140
16 of the Health and Safety Code, without regard to whether the
17 substance is intended to be used, reused, or discarded, except that
18 “hazardous substance” does not include any substance excluded
19 from Section 311(b)(2) of the Federal Water Pollution Control Act
20 because it is within the scope of Section 311(a)(1) of that act.

21 (2) “Hazardous substance” does not include any of the
22 following:

23 (A) Nontoxic, nonflammable, and noncorrosive stormwater
24 runoff drained from underground vaults, chambers, or manholes
25 into gutters or storm sewers.

26 (B) Any pesticide which is applied for agricultural purposes or
27 is applied in accordance with a cooperative agreement authorized
28 by Section 116180 of the Health and Safety Code, and is not
29 discharged accidentally or for purposes of disposal, the application
30 of which is in compliance with all applicable state and federal laws
31 and regulations.

32 (C) Any discharge to surface water of a quantity less than a
33 reportable quantity as determined by regulations issued pursuant
34 to Section 311(b)(4) of the Federal Water Pollution Control Act.

35 (D) Any discharge to land which results, or probably will result,
36 in a discharge to groundwater if the amount of the discharge to
37 land is less than a reportable quantity, as determined by regulations
38 adopted pursuant to Section 13271, for substances listed as
39 hazardous pursuant to Section 25140 of the Health and Safety
40 Code. No discharge shall be deemed a discharge of a reportable

1 quantity until regulations set a reportable quantity for the substance
2 discharged.

3 (q) (1) “Mining waste” means all solid, semisolid, and liquid
4 waste materials from the extraction, beneficiation, and processing
5 of ores and minerals. Mining waste includes, but is not limited to,
6 soil, waste rock, and overburden, as defined in Section 2732 of
7 the Public Resources Code, and tailings, slag, and other processed
8 waste materials, including cementitious materials that are managed
9 at the cement manufacturing facility where the materials were
10 generated.

11 (2) For the purposes of this subdivision, “cementitious material”
12 means cement, cement kiln dust, clinker, and clinker dust.

13 (r) “Master recycling permit” means a permit issued to a supplier
14 or a distributor, or both, of recycled water, that includes waste
15 discharge requirements prescribed pursuant to Section 13263 and
16 water recycling requirements prescribed pursuant to Section
17 13523.1.

18 (s) (1) “Agricultural operation” means either of the following:

19 (A) A discharger that satisfies both of the following conditions:

20 (i) The discharger is an owner, operator, or both, of land that is
21 irrigated to produce crops or pasture for commercial purposes or
22 a nursery.

23 (ii) The discharger is enrolled or named in an irrigated lands
24 regulatory program order adopted by the state board or a regional
25 board pursuant to Section 13263 or 13269.

26 (B) A discharger that satisfies both of the following conditions:

27 (i) The discharger is an owner, operator, or both of a facility
28 that is used for the raising or harvesting of livestock.

29 (ii) The discharger is enrolled or named in an order adopted by
30 the state board or a regional board pursuant to Section 13263 or
31 13269 that regulates the discharges of waste from a facility
32 identified in clause (i) to protect ground and surface water.

33 (2) “Agricultural operation” does not include any of the
34 following:

35 (A) An off-farm facility that processes crops or livestock.

36 (B) An off-farm facility that manufactures, synthesizes, stores,
37 or processes fertilizer.

38 (C) Any portions of land or activities occurring on those portions
39 of land that are not covered by an order adopted by the state board

1 or a regional board identified in clause (ii) of subparagraph (A) or
2 clause (ii) of subparagraph (B) of paragraph (1).

3 ~~SEC. 4.~~

4 *SEC. 5.* Article 4.5 (commencing with Section 13278) is added
5 to Chapter 4 of Division 7 of the Water Code, to read:

6
7 Article 4.5. Discharges of Nitrate to Groundwater from
8 Agricultural Operations
9

10 13278. (a) For the purposes of this article, the Legislature finds
11 all of the following:

12 (1) Implementation of currently known best management
13 practices for some crops can reduce but not always completely
14 prevent nitrogen in organic and synthetic fertilizers that transform
15 to nitrates from reaching groundwater at concentrations above the
16 water quality objectives established pursuant to this division.

17 (2) It is acknowledged that discharges of nitrate from agricultural
18 operations could reach groundwater and could cause or contribute
19 to exceedances of drinking water standards for ~~nitrate~~, and *nitrate*,
20 and could cause conditions of pollution of or nuisance in those
21 waters as defined and applied in accordance with this division, or
22 both.

23 (3) Nitrate contamination of groundwater impacts drinking water
24 sources for hundreds of thousands of Californians and it is
25 necessary to protect current and future drinking water users from
26 the impacts of nitrate contamination.

27 (4) Despite progress in controlling discharges of nitrogen that
28 lead to nitrate formation, some groundwater sources of drinking
29 water will continue to be adversely impacted by nitrates and it is
30 important to have in place a program for mitigating these impacts.

31 (5) The regional boards will continue to regulate discharges to
32 reduce nitrogen loading and protect beneficial uses of water and
33 groundwater basins; the state board, regional boards, and courts
34 will ensure compliance with those orders; and dischargers will pay
35 for mitigation of pollution by funding replacement water for
36 affected communities.

37 (b) The Legislature declares its intent in establishing this article
38 ~~to do both of the following:~~

39 ~~(1) To subsequently amend this article to establish an~~
40 ~~agricultural assessment to be paid by agricultural operations for a~~

1 period of 15 years to provide funding, as a portion of the Safe and
2 Affordable Drinking Water Fund, to make available alternative
3 supplies of safe drinking water to persons affected by discharges
4 of nitrogen from agricultural operations that may occur in amounts
5 that may cause or contribute to an exceedance of a water quality
6 objective or cause conditions of pollution or nuisance.

7 (2) ~~To limit~~ to limit enforcement actions that a regional board
8 or the state board could otherwise initiate during that 15-year period
9 against an agricultural operation paying the agricultural assessment,
10 while maintaining the overall framework of this division to protect
11 beneficial uses, implement water quality objectives in waters of
12 the state, and regulate activities and factors that affect water quality
13 to attain the highest water quality that is reasonable.

14 13278.1. (a) An agricultural operation shall not be subject to
15 enforcement undertaken or initiated by the state board or a regional
16 board under Chapter 5 (commencing with Section 13330) for
17 causing or contributing to an exceedance of a water quality
18 objective for nitrate in groundwater or for causing or contributing
19 to a condition of pollution or nuisance for nitrates in groundwater
20 if an agricultural operation that discharges or threatens to discharge,
21 or has discharged or previously threatened to discharge, nitrate to
22 groundwater demonstrates that it has satisfied all of the following
23 mitigation requirements:

24 (1) The agricultural operation has timely paid any applicable
25 fee, ~~assessment, or charge~~ *fertilizer safe drinking water fee*
26 *established by Article 6.5 (commencing with Section 14615) of*
27 *Chapter 5 of Division 7 of the Food and Agricultural Code or*
28 *dairy safe drinking water fee established by Article 14.5*
29 *(commencing with Section 62215) of Chapter 2 of Part 3 of*
30 *Division 21 of the Food and Agricultural Code* into the Safe and
31 Affordable Drinking Water Fund ~~or an applicable agricultural~~
32 ~~assessment is providing funding into the Safe and Affordable~~
33 ~~Drinking Water Fund.~~ *established by Section 116767 of the Health*
34 *and Safety Code.* For the purposes of this paragraph, “timely paid”
35 means that an agricultural operation has paid all applicable fees,
36 assessments, or charges, no later than 90 days after their respective
37 due dates, since the application of the fee, assessment, or charge
38 to the agricultural operation.

39 (2) Except as provided in subdivision (b), the agricultural
40 operation is in compliance with all applicable provisions prescribed

1 by a regional board or the state board in an order adopted pursuant
2 to Section 13263 or 13269, including, but not limited to, the
3 following:

4 (A) Requirements to implement best practicable treatment or
5 control.

6 (B) Best efforts, monitoring, and reporting requirements.

7 (C) Timelines.

8 (3) The agricultural operation is in compliance with an
9 applicable program of implementation for achieving groundwater
10 quality objectives for nitrate that is part of an applicable water
11 quality control plan adopted by the state board or a regional board
12 pursuant to Article 3 (commencing with Section 13240).

13 (b) (1) The mitigation requirement contained in paragraph (2)
14 of subdivision (a) does not include any generalized prohibition
15 contained in an order adopted under Section 13263 or 13269 on
16 causing or contributing, or threatening to cause or contribute, to
17 an exceedance of a water quality objective for nitrate in
18 groundwater or a condition of pollution or nuisance for nitrate in
19 groundwater.

20 (2) (A) An agricultural operation is not in compliance with the
21 mitigation requirement in paragraph (2) of subdivision (a) if the
22 agricultural operation has been subject to an enforcement action
23 under Chapter 5 (commencing with Section 13330) within the
24 preceding 12 months for any violation of an order adopted under
25 Section 13263 or 13269 authorizing discharges from agricultural
26 operations.

27 (B) Subparagraph (A) does not apply to an enforcement action
28 commenced after January 1, 2016, and before January 1, 2018,
29 inclusive, alleging that a discharge from an agricultural operation
30 caused or contributed, or threatened to cause or contribute, to an
31 exceedance of a water quality objective for nitrate in groundwater,
32 conditions of pollution or nuisance for nitrate in groundwater, or
33 both.

34 (3) An agricultural operation does not qualify for the
35 enforcement exemption set forth in this subdivision if the operation
36 fails to continue to make applicable payments into the Safe and
37 Affordable Drinking Water Fund to the extent that the agricultural
38 operation maintains a continuance of farming operation.

1 (c) Both of the following apply to a discharge of nitrogen by an
2 agricultural operation that occurs when the discharger is in full
3 compliance with the mitigation requirements:

4 (1) The discharge shall not be admissible in a future enforcement
5 action against the agricultural operation by the state board or a
6 regional board pursuant to Chapter 5 (commencing with Section
7 13300) to support a claim that the agricultural operation is causing
8 or contributing, or threatening to cause or contribute, to an
9 exceedance of a water quality objective for nitrate in groundwater
10 or a condition of pollution or nuisance for nitrate in groundwater.

11 (2) The discharge shall not be considered by the state board or
12 a regional board to apportion responsibility and shall not be used
13 by any person to diminish responsibility in any enforcement action
14 initiated pursuant to Chapter 5 (commencing with Section 13300)
15 with respect to discharges of nitrogen, regardless of source, that
16 did not occur in compliance with the mitigation requirements.

17 (d) Nothing in this section alters the state board's or a regional
18 board's authority to require or conduct investigations, to require
19 reports on or to establish other requirements for best practicable
20 treatment or control, or to require monitoring and reporting
21 requirements to protect water quality.

22 (e) This section shall not be deemed to change or alter a water
23 quality objective that is part of a water quality control plan adopted
24 by the state board or a regional board pursuant to Article 3
25 (commencing with Section 13240).

26 (f) This section shall remain in effect only until January 1, 2028,
27 and as of that date is repealed.

28 13278.2. (a) An agricultural operation shall not be subject to
29 enforcement undertaken or initiated by the state board or a regional
30 board under Section 13304 for creating or threatening to create a
31 condition of pollution or nuisance for nitrates in groundwater if
32 an agricultural operation that discharges or threatens to discharge,
33 or has discharged or previously threatened to discharge, nitrate to
34 groundwater demonstrates that it has satisfied all of the following
35 mitigation requirements:

36 (1) The agricultural operation has timely paid any applicable
37 ~~fee, assessment, or charge~~ *fertilizer safe drinking water fee*
38 *established by Article 6.5 (commencing with Section 14615) of*
39 *Chapter 5 of Division 7 of the Food and Agricultural Code or*
40 *dairy safe drinking water fee established by Article 14.5*

1 (*commencing with Section 62215*) of Chapter 2 of Part 3 of
2 *Division 21 of the Food and Agricultural Code* into the Safe and
3 Affordable Drinking Water Fund ~~or an applicable agricultural~~
4 ~~assessment is providing funding into the Safe and Affordable~~
5 ~~Drinking Water Fund.~~ *established by Section 116767 of the Health*
6 *and Safety Code.* For the purposes of this paragraph, “timely paid”
7 means that an agricultural operation has paid all applicable fees,
8 assessments, or charges, no later than 90 days after their respective
9 due dates, since the application of the fee, assessment, or charge
10 to the agricultural operation.

11 (2) Except as provided in subdivision (b), the agricultural
12 operation is in compliance with all applicable provisions prescribed
13 by a regional board or the state board in an order adopted pursuant
14 to Section 13263 or 13269, including, but not limited to, the
15 following:

16 (A) Requirements to implement best practicable treatment or
17 control.

18 (B) Best efforts, monitoring, and reporting requirements.

19 (C) Timelines.

20 (3) The agricultural operation is in compliance with an
21 applicable program of implementation for achieving groundwater
22 quality objectives for nitrate that is part of an applicable water
23 quality control plan adopted by the state board or a regional board
24 pursuant to Article 3 (*commencing with Section 13240*).

25 (b) (1) The mitigation requirement contained in paragraph (2)
26 of subdivision (a) does not include any generalized prohibition
27 contained in an order adopted under Section 13263 or 13269 on
28 causing or contributing, or threatening to cause or contribute, to
29 an exceedance of a water quality objective for nitrate in
30 groundwater or a condition of pollution or nuisance for nitrate in
31 groundwater.

32 (2) An agricultural operation is not in compliance with the
33 mitigation requirement in paragraph (2) of subdivision (a) if the
34 agricultural operation has been subject to an enforcement action
35 under Chapter 5 (*commencing with Section 13330*) within the
36 preceding 12 months for any violation of an order adopted under
37 Section 13263 or 13269 authorizing discharges from agricultural
38 operations.

39 (3) An agricultural operation does not qualify for the
40 enforcement exemption set forth in this subdivision if the operation

1 fails to continue to make applicable payments into the Safe and
2 Affordable Drinking Water Fund to the extent that the agricultural
3 operation maintains a continuance of farming operation.

4 (c) Both of the following apply to a discharge of nitrogen by an
5 agricultural operation that occurs when the discharger is in full
6 compliance with the mitigation requirements:

7 (1) The discharge shall not be admissible in a future enforcement
8 action against the agricultural operation by the state board or a
9 regional board pursuant to Chapter 5 (commencing with Section
10 13300) to support a claim that the agricultural operation is causing
11 or contributing, or threatening to cause or contribute, to an
12 exceedance of a water quality objective for nitrate in groundwater
13 or a condition of pollution or nuisance for nitrate in groundwater.

14 (2) The discharge shall not be considered by the state board or
15 a regional board to apportion responsibility and shall not be used
16 by any person to diminish responsibility in any enforcement action
17 initiated pursuant to Chapter 5 (commencing with Section 13300)
18 with respect to discharges of nitrogen, regardless of source, that
19 did not occur in compliance with the mitigation requirements.

20 (d) Nothing in this section alters the state board's or a regional
21 board's authority to require or conduct investigations, to require
22 reports on or to establish other requirements for best practicable
23 treatment or control, or to require monitoring and reporting
24 requirements to protect water quality.

25 (e) This section shall not be deemed to change or alter a water
26 quality objective that is part of a water quality control plan adopted
27 by the state board or a regional board pursuant to Article 3
28 (commencing with Section 13240).

29 (f) (1) This section shall become operative on January 1, 2028.

30 (2) This section shall remain in effect only until January 1, 2033,
31 and as of that date is repealed, unless a later enacted statute that
32 is enacted before January 1, 2033, deletes or extends that date.

33 13278.3. By January 1, 2027, the state board shall conduct a
34 public review of regulatory and basin plan amendment
35 implementation programs to evaluate progress toward achieving
36 water quality objectives with respect to nitrates in groundwater
37 and assess compliance with adopted timelines, monitoring
38 requirements, and implementation of best practicable treatment or
39 control.

1 13278.4. Nothing in this article limits the liability of a
2 discharger under any other law, including, but not limited to, Part
3 3 (commencing with Section 3479) of Division 4 of the Civil Code.
4 *SEC. 6. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution for certain*
6 *costs that may be incurred by a local agency or school district*
7 *because, in that regard, this act creates a new crime or infraction,*
8 *eliminates a crime or infraction, or changes the penalty for a crime*
9 *or infraction, within the meaning of Section 17556 of the*
10 *Government Code, or changes the definition of a crime within the*
11 *meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*
13 *However, if the Commission on State Mandates determines that*
14 *this act contains other costs mandated by the state, reimbursement*
15 *to local agencies and school districts for those costs shall be made*
16 *pursuant to Part 7 (commencing with Section 17500) of Division*
17 *4 of Title 2 of the Government Code.*