
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 230 (Portantino) - State Water Resources Control Board: Constituents of Emerging Concern Program

Version: January 19, 2021

Urgency: No

Hearing Date: March 22, 2021

Policy Vote: E.Q. 7 - 0

Mandate: No

Consultant: Ashley Ames

Bill Summary: This bill would require the State Water Resources Control Board (Water Board) to establish, maintain, and direct an ongoing Constituents of Emerging Concern (CEC) Program to assess the state of information and recommend areas for further study on the occurrence of CEC in drinking water, and would establish the CEC Action Fund.

Fiscal Impact:

- The Water Board estimates costs of \$1 million (special fund) ongoing annually to support five positions, and \$450,000-\$650,000 (special fund) ongoing annually in contract costs to administer the new CEC program mandated by this bill.
- Unknown but potentially significant cost pressure (special fund) for the state to fund research, grants, and other CEC-related financial assistance in future years.

Background: “Constituents of Emerging Concern” or CEC is a term used by water quality professionals to describe pollutants that have been detected in water bodies, that may cause ecological or human health impacts, and typically are not regulated under current environmental laws. CECs can include nanoparticles, pharmaceuticals, personal care products, estrogen-like compounds, flame retardants, detergents, and some industrial chemicals with potential significant impact on human health and aquatic life.

Over the years, CECs have received growing public attention as potential pollutants in drinking water supplies. Yet, the full extent and public health risk of their presence is not well understood.

The federal Safe Drinking Water Act establishes a framework for evaluating *potential* drinking water contaminants. The US EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants suspected to be present in drinking water, but that do not have health-based standards set under the federal Safe Drinking Water Act. California conducts federally required monitoring from the federal UCMR program that can result in California establishing notification levels (NLs) and response levels (RLs) as precautionary measures for contaminants that have not yet undergone or completed the regulatory-standard setting process. When chemicals are found at concentrations greater than their NLs, certain requirements and recommendations apply.

The State Water Board has no standing science advisory bodies to address CECs. Panels are convened as necessary to provide recommendations on specific

management questions. To date, the State Water Board has convened four science advisory panels to provide recommendations on CECs in aquatic ecosystems.

Proposed Law: This bill would:

- 1) Require the Water Board to establish the CEC Program to assess information on and make recommendations regarding areas for further study related to: the occurrence of CEC in drinking water sources and treated drinking water; the fate, transport, and biodegradation of these constituents; water treatment and laboratory analyses; and the potential public health effects.
- 2) Require the Water Board to convene a Science Advisory Panel for CEC in drinking water sources and treated drinking water.
- 3) Specify that the panel include at least seven members comprised of experts from the fields of public health sciences, water and wastewater engineering, toxicology, epidemiology, chemical sciences, and biological sciences.
- 4) Require the panel review and provide recommendations to the Water Board on CEC for further action.
- 5) Specify that the Water Board may adjust the panel membership numbers and composition, as necessary.
- 6) Specify that the panel's advisory duties *may* include all of the following activities, at the Water Board's request, in consultation, as needed, with the Office of Environmental Health Hazard Assessment (OEHHA) and the Department of Toxic Substances Control (DTSC):
 - a) Review existing data for CEC collected by the State Water Board and nationwide by the United States Environmental Protection Agency's Unregulated Contaminant Monitoring Rule Program and recommend to the State Water Board further actions based on state-specific conditions and the state's constituent of emerging concern initiatives.
 - b) Identify CEC candidates based on potential public health effects;
 - c) Incorporate recommendations from other ongoing state efforts evaluating CEC;
 - d) Evaluate and recommend a framework for standardizing and validating detection methods, new screening methods, monitoring approaches, and reporting procedures for CEC;
 - e) Recommend a framework for a risk-based screening program for CEC and appropriate indicators and surrogates that consider their occurrence in drinking water sources and treated drinking water supplies, contribution and fate in the environment, and potential for human exposure;
 - f) Recommend a process to ensure CEC data is integrated with existing state databases;
 - g) Review the results of any screening program and provide recommendations to assist the State Water Board in prioritizing, monitoring, and making regulatory determinations for CEC; and
 - h) Require the State Water Board to provide an annual report to the Legislature on the ongoing work conducted by the panel.

- 7) State that nothing in these provisions duplicates, changes, or interferes with the State Water Board's ongoing efforts on CEC in Recycled Water.
- 8) Specify that if the State Water Board imposes CEC monitoring requirements based on the recommendations of the panel, the State Water Board may provide financial assistance, upon appropriation by the Legislature for this purpose, to any public water system upon a showing that the costs associated with testing drinking water in compliance with those requirements would impose a financial hardship. Requires these funds be dedicated for use public water systems serving fewer than 10,000 individuals located in disadvantaged communities.
- 9) Make findings that the program is intended to help inform the State Water Board in making regulatory determinations for CEC and is not intended to supersede any requirements related to setting a maximum contaminant level or public health goal.
- 10) Establish the CEC Action Fund in the State Treasury and directs the Water Board to administer the Fund.
- 11) Specify that that monies in the Fund be used, upon appropriation by the Legislature, to support costs associated with:
 - a) Establishing and maintaining the panel, developing standardized methods and a risk-based screening program, collecting occurrence data, and reporting on those activities
 - b) Developing standardized analytical methods internally by the State Water Board or through external contracts or grants;
 - c) Contracts or grants to public or private external research organizations to fill research gaps; and
 - d) Other State Water Board costs associated with the implementation and administration of the program.
- 12) Require the program provide opportunities for public participation. Specify that participation include conducting periodic stakeholder meetings and workshops to solicit relevant information, data, suggestions, and feedback for the development and implementation of the program.
- 13) Require the Water Board to maintain a program internet website and make relevant research, reports, and data available to the public.
- 14) Require the Water Board to provide an annual program update at a regularly noticed meeting of the Water Board.

Related Legislation:

SB 996 (Portantino, 2020) would have required the Water Board to establish a dedicated CEC program to support and conduct research on CEC in drinking water that may pose risks to public health. The measure was held in the Senate Environmental Quality Committee.

AB 1056 (Portantino, 2020) would have required the Water Board to establish an analytical laboratory method, by January 1, 2022, that could be used as a tool to

assess the extent of per- and polyfluoroalkyl substances (PFAS) contamination in drinking water, surface water, groundwater, and wastewater. The measure was held in the Senate Environmental Quality Committee.

AB 756 (C. Garcia, Chapter 162, Statutes of 2019) authorizes the Water Board to order one or more public water systems to monitor for per- and polyfluoroalkyl substances (PFASs) and establishes a separate customer notification process as a result of any confirmed detection.

AB 2072 (Quirk, 2018) would have required the Water Board to establish and maintain a dedicated program to research the potential effects of CEC in water sources on human and ecosystem health. The measure was held in Assembly Appropriations Committee.

Staff Comments:

Water Board Costs. Staff notes that the Water Board already has the statutory authority—but not dedicated staff or funding—to accomplish the tasks set forth in this bill. The Water Board has estimates costs of \$1 million annually (special fund) ongoing to support five positions, and \$450,000-\$650,000 annually (special fund) ongoing for contract costs to administer the new CEC program that would be mandated by this bill. This estimate presumes that the Water Board would be implementing recommendations for the identification, screening, and analysis of new constituents at the recommendation of the science advisory panel, at a rate of two new CECs per year.

Cost Pressure of CEC Action Fund. This bill would establish the CEC Action Fund, thus creating a cost pressure for the Legislature to provide appropriations in future years to the new fund. This fund would support costs associated with developing standardized analytical detection methods for CEC, and fund contracts and grants to external research organizations to fill research gaps, among other things. Should the Legislature appropriate funding for this purpose, the Water Board would also incur costs related to administering CEC-related financial assistance as directed by this bill. These costs would be related to traditional Water Board oversight roles such as adoption of funding guidelines, identification of projects, review of applications for funding, and fraud prevention oversight.

Funding Source. Staff notes that while the bill establishes the CEC Action Fund to provide resources for the new program, it does not include an appropriation or any revenue mechanism for the fund. Without an ongoing funding source, the costs of this program would likely be borne by the Safe Drinking Water Account. The Water Board indicates that this could necessitate fee increases for drinking water permit holders, which could limit the Water Board's flexibility in generating funds to cover other drinking-water-related expenses given the statutory five-percent cap in annual drinking water fee increases.

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