

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 19 (Fong) – As Amended: April 15, 2011

SUBJECT: Building standards: water meters: multiunit structures

SUMMARY: Mandates that water purveyors adopt policies requiring that multiunit residential structures or mixed use residential and commercial structures that apply for water connections after January 1, 2014, have, as a condition of new water service, submeters that measure the water supplied to each individual dwelling unit. Specifically, this bill:

- 1) Includes intent language.
- 2) Requires that meters or submeters be of types or designs which have been approved in accordance with state rules and regulations governing devices that weigh and measure.
- 3) Requires that meters or submeters be installed and operated in compliance with state regulations governing the tolerances and specifications for measuring devices.
- 4) Provides that a water purveyor cannot be required to assume responsibility for ensuring compliance with any law or regulation governing installation, certification, maintenance, and testing of water submeters associated with outside plumbing.
- 5) Provides that a water purveyor may adopt and implement a program for the use of water meters and submeters for multiunit residential structures or mixed use residential commercial structures that promotes water conservations and is at least as stringent as the requirements of this bill.
- 6) Provides that the following types of housing are excluded from the requirements of this Act:
 - a) Low-income housing;
 - b) Student dormitories;
 - c) Long-term health care facilities;
 - d) Time-share properties; and
 - e) A structure that is greater than four stories, if the owner or his or her agent demonstrates to the satisfaction of the water provider that the structure's plumbing configuration incorporates multiple points of entry in each dwelling unit that renders the installation of the submeters infeasible.
- 7) Includes the following definitions:

- a) "Low-income housing" means a residential building financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local state or federal loans or grants provided to residents with low-incomes as defined and will deed restrictions;
 - b) "Billing agent" is a person or entity that contracts to provide submetering services, including billing, to a landlord;
 - c) "Landlord" means all agents of the landlord, billing agents, successors in interest to the real property interests of the landlord, person and entities with which the landlord contracts with for billing, meter reading, meter maintenance or repair or other services in connect with imposing water charges;
 - d) "Property" means real property containing two or more dwelling units that are served by a single meter;
 - e) "Rental agreement" includes a fixed-term lease;
 - f) "Renting" includes leasing whether on a periodic or fixed-term basis;
 - g) "Submeter" means:
 - i. a device that measures water consumption of an individual rental unit within a multiunit residential structure or mixed-used residential and commercial structure, and which is owned and operated by the landlord; and
 - ii. includes submeters if more than one submeter is being used to measure water usage in a particular dwelling unit;
 - h) "Water service" includes charges for other services including sewage or storm water services that are based on charges for water services; and
 - i) "Water purveyor" means a water purveyor as defined in Water Code Section 512.
- 8) Provides a landlord may not charge tenants separately for water service unless the water and submetering system is installed, operated and maintained as follows:
- a) A submeter is certified for commercial purposes pursuant to law;
 - b) Installations conforms to all laws;
 - c) Installation was performed by a licensed provider;
 - d) The submeter is operated in compliance with established regulations;
 - e) The submeter for a dwelling unit measures only water that is supplied for the particular use of the dwelling unit;

- f) The primary submeter indicator or remote reader may be easily accessed and read by the tenant of the dwelling unit and by the landlord without entering the unit;
 - g) Each submeter is reinspected and recalibrated with the time limits specified in law or regulation; and
 - h) The plumbing fixtures conform to all laws regarding habitability of dwellings and water conservation.
- 9) Requires a landlord to disclose the following to a tenant in writing in at least 10-point type prior to executing a rental agreement:
- a) The tenant will be billed for water usage separately from the rent;
 - b) The average bill for water usage for units at the property over the most recent calendar year or portion thereof, if the building is less than a year old;
 - c) The frequency of submeter readings;
 - d) The due dates and payment procedures for bills;
 - e) If a billing agent is used, the name, address, e-mail address, normal hours of operation and toll-free number of the agent;
 - f) The date that the submeter was last tested, calibrated and the date by which it must be tested and recalibrated under law;
 - g) A statement that the tenant will only be charged for the actual water usage and not for any other administrative, connection, disconnection or billing fee or charge, other than a late fee;
 - h) The amount and terms of the late fee; and
 - i) The location of the submeter and directions for the tenant to read the submeter
- 10) Provides that a landlord may only bill a tenant for the volumetric usage of water.
- 11) Prohibits a landlord from imposing any periodic, connection, termination or other fee, however denominated, except for late fees or testing fees as provided by this Act.
- 12) Provides that the amount of the water bill shall be calculated by multiplying the water volume as determined by the submeter for the billing period by the rate(s) for the volumetric usage established by the water purveyor for residential use.
- 13) Provides that if the rates established by the water purveyor change the tenant's bill shall be prorated to reflect the time each rate was in effect and the landlord has the option to assess the charges for the entire billing period at the lower rate.

- 14) Provides that if the beginning or ending submeter reading is not available, the landlord may bill the tenant 75% of the amount of the average bill for water usage disclosed to the tenant at the time the rental agreement is provided.
- 15) Provides that the landlord may not charge a tenant for any water usage if the readings have been unavailable for the last three months.
- 16) Requires the billing cycle for the tenant to match that of the water purveyor.
- 17) Requires that submeters must be normally read at the same point in each billing cycle but may be read within three days of the normal date
- 18) Requires that bills must be due at the same point in each billing cycle, however bills will be due no earlier than five days after mailing, if mailed, or one day after personal delivery.
- 19) Requires a tenant's water bills to include the following information:
 - a) The beginning and ending submeter readings, the dates read, and the indicated consumption;
 - b) The unit of measure for the readings and usage;
 - c) The rates charged per unit of measure;
 - d) The amount of the current charge;
 - e) A separate entry showing past due amounts;
 - f) A separate entry showing any previously-imposed late charges;
 - g) The total amount due;
 - h) The due date for the bill;
 - i) A statement of the amount of late charges, if any, and when the late charges apply;
 - j) The name mailing address, e-mail address, telephone number and regular business hours of the person or person that the tenant may call with questions regarding the bill; and
 - k) The name and telephone number of a billing agent if one is used.
- 20) Provides that if a tenancy begins or ends on a date more than three days from a normal reading, the submeter shall be read within three days of the beginning or end of the tenancy, and the first and last bills calculated accordingly.
- 21) Provides that a tenancy that begins or ends within three days of a normal reading may be billed based upon the normal reading for the first and last bills.

- 22) Prohibits a landlord from charging or allowing the following to be charged or recovered from a tenant:
 - a) Any additional servicing, administrative, establishment, maintenance, meter reading, meter testing, billing or submetering fee or other fee including those charged by a billing agent;
 - b) Any fees billed to the landlord by the water purveyor, billing agent or any other person for any deposit, disconnect, reconnect, late payment or other similar fees; and
 - c) Any charges by the water purveyor not directly based on volumetric usage, including any base charges, customer service charges or monthly, bimonthly or other periodic charges assessed regardless of the volume consumed.
- 23) Provides that a landlord may recover the costs associated with the master metering system if they are incorporated into the rent for a dwelling unit, if the rent is a fixed amount per rental period, and the charges are not listed separately and the rental charges are otherwise lawful.
- 24) Requires a landlord to make the following available to a tenant upon request within seven days:
 - a) All installation and maintenance records of the submeter in the tenant's dwelling unit, including the name, license number, and contact information of the service provider who installed or serviced the submeter;
 - b) The most recent test results of the submeter in the tenant's dwelling; and
 - c) The method and sources used to determine the rate at which the tenant is charged for water.
- 25) Provides that if a water system in a dwelling unit does not function properly including leaks, a fixture allowing unnecessary water consumption or a malfunction submeter the tenant may request the landlord repair the problem and the landlord must make the repairs within seven days.
- 26) Provides that a tenant may request that a landlord have a submeter tested for accuracy and the landlord must respond to the request within seven days and the test must be carried out as soon as practical.
- 27) Requires the test on a submeter must be performed by a licensed service provider or other person authorized by law to perform the test.
- 28) Provides if the test shows that the submeter is inaccurate, beyond the tolerances established by law, the landlord must repair or replace it.
- 29) Provides that if the test shows the submeter was indicating more usage than the true amount, beyond the established tolerances the landlord must refund the estimated overcharge to the tenant within 30 days of the receipt of the results.

- 30) Requires the landlord to pay for the cost of the test if either is true:
- a) The tenant requests the test because the submeter has indicated that water usage has increased more than 25% for two consecutive billing periods over the previous three billing periods; or
 - b) The submeter is found to be inaccurate beyond the tolerances established by law.
- 31) Requires the tenant to pay for the test in all other cases up to a maximum of \$50.
- 32) Provides that a landlord is not required to test a submeter, if requested by a tenant, if the submeter was tested and found to be accurate within two years prior to the tenant's request and the landlord provides the written results to the tenant.
- 33) Provides that if a tenant pays for the cost of the test in advance then the landlord is required to perform the test.
- 34) Permits a landlord to impose a late fee of up to 5% if a water bill is not paid within 20 days of the due date.
- 35) Provides that if the 20th day after a bill is due, falls on a weekend or holiday the late fee may not be imposed until one day after the extended time for a payment.
- 36) Provides that if a bill goes unpaid, the landlord may in lieu of a late fee deduct the amount from the security deposit and then require an additional payment of security following the deduction.
- 37) Provides that a landlord may deduct the last water payment from the security deposit at the end of a tenancy if the landlord provides documentation of the deduction.
- 38) Provides that if a bill remains unpaid for 30 days, the nonpayment constitutes a curable breach of a material lease obligation and the landlord may take action in court to remedy the breach.
- 39) Provides that water charges do not constitute rent.
- 40) Prohibits a landlord from shutting off the water or otherwise interfering with a tenants water services for any reason including nonpayment of a bill.
- 41) Provides that in addition to any actual damages sustained by the tenant, for a violation by a landlord, the tenant may recover from the landlord three times the amount of actual damages, a civil penalty three times one month's rent and reasonable attorney's fees and court costs.
- 42) Provides that a landlord is not liable for a civil penalty if the landlord proves that the violation was a good faith, unintentional mistake.
- 43) Provides that a city, county or district may enforce the provisions of this bill.

44) Provides that the rights and obligations provided by this bill may not be waived and any waiver is void.

EXISTING LAW

- 1) Requires urban water suppliers, that do not get water from the federal Central Valley Project to install water meters on all municipal and industrial service connections and to charge each customer based on actual volume of water delivered.
- 2) Each water corporation with 500 or more service connections, that is not already subject to water metering requirements, under the existing Water Measurement Law must currently install a water meter on each new service connection and must retrofit each unmetered service connection by January 1, 2025.
- 3) Authorizes BSC to approve and adopt building standards. Every three years a building standards rulemaking is undertaken to revise and update the California Building Standards Code (Title 24 of the California Code of Regulations).
- 4) Provides that the Division of Measurement Standards (DMS) within the Department of Food and Agriculture (DFA) has general enforcement supervision of the laws relating to weights and measures and measuring devices, and provides for the enforcement of those laws and the inspection and testing of measuring devices in each county by the county sealer.

FISCAL EFFECT: None.

COMMENTS:

As the Pacific Institute highlighted in the report *Waste Not, Want Not: The Potential for Urban Water Conservation in California*, water conservation is the largest, least expensive, and most environmentally sound source of water to meet California's future needs. The installation of water meters on multiunit residential and mixed use commercial buildings has been shown to encourage increased conservation by making homeowners, business owners, or renters aware of the amount of water they are utilizing. Conceptually, this legislation is similar to a draft ordinance requiring submetering that was adopted by the City of San Diego on April 5, 2010. San Diego adopted its ordinance after a report from the City of San Diego Office of the Independent Budget Analyst found that multifamily units comprised 44% of the total housing in San Diego, the trend was increasing, and multifamily properties achieved a 15% to 39% water savings when submetered.

This bill would require the installation water submeters in all newly constructed multi-residential dwellings, for which an application for water connect is received, after 2014.

Previous legislation:

Two previous attempts to introduce submetering, AB 1975 (Fong) of 2010 and AB 1173 (Keene) of 2007, failed because of concerns regarding potential impacts to low-income tenants. Both

measures would have exempted low-income housing from its provisions as well as student dormitories, long-term health care facilities and time-share properties.

Billing and tenant protections:

This bill includes extensive consumer protections for tenants. A landlord could only charge for the tenant's actual water usage and could not include a monthly fee for billing. If a landlord, contracts with a billing agent or wishes to pass their own cost on for administering the billing process, that cost could be built into the monthly rent that a tenant pays. A landlord can charge a late fee if a water bill is not paid within 20 days of the due date. Additionally, the landlord is required to review the fact that the units are water metered, the process for billing, contact information if a billing agent exists and location of the submeter and directions for the tenant to read the submeter, as part of signing up a new tenant.

Building standards process:

The California Building Standards Law establishes the BSC and the process for adopting state building standards. Statewide building standards are intended to provide uniformity in building across the state. The purpose of the building standards process is to address any issues regarding the health and safety of the standards and that in some cases the technology required to implement the standards is available on the market. The Division of Measurement Standards (DMS) within the Department of Food and Agriculture (DFA) oversees the testing submeters for accuracy. AB 19 requires submeters to be certified for commercial purposes, installed in conformity with all laws, be installed by a licensed provider and be operated in compliance with established regulations. The City of San Diego has moved forward with an ordinance to require submeters in new apartment buildings last year without statewide building standards. The committee may wish to consider what if any additional consideration, the building standards process could provide that is not provided in the bill.

Charges to a resident:

As drafted, the bill only allows a landlord to pass through a tenant's actual volumetric water usage. Water bills include not only the water usage but also administrative fees charged by the water purveyor. While the water usage varies by ratepayer, the fixed costs of administrative fees remain relatively constant. These fees vary from community to community, in most cases they are relatively small but in some communities they can be for example \$200 to \$400 for a 48-unit apartment building in Contra Costa County. Unlike the billing fees that this bill prohibits a landlord from passing through to a tenant, these service/administrative charges from the water purveyor are fixed and are not subject to negotiation.

The committee may wish to consider whether it is appropriate to allow the landlord to pass these charges on to the tenant since they are fixed and a part of the service provided by the water purveyor.

Effect on existing local ordinances:

The bill allows a water purveyor to implement a program for submeters for multiunit residential structures that is at least as stringent as the requirements of this bill. According to the sponsor, the intent of that provision is to allow local ordinances that have already been adopted or that will be adopted to continue to operate provided they are at least as stringent as this bill. The committee may wish to consider, clarifying that this provision applies to local governments as well as water purveyors to ensure that ordinances like the one in San Diego are protected.

Arguments in Opposition:

Various apartment associations are opposed to the bill. They would like to be able to include a billing charge as part of the tenant's monthly water bill. In addition, they are concerned that the tenant protections could apply to a landlord that converts their property to individual water meters. Landlords would be prohibited from imposing any fee for costs associated with the collection of water and could not charge for water until the water purveyor imposes a "volumetric" fee, which exceeds the base water rate.

The Community Association Institute (CAI) is opposed to the bill because they are concerned that it would require existing homeowner associations that replace a master water meter in the future out of necessity to be required to tear into every building wall and floor with a water line. They are also concerned that the bill would require existing rental developments that could otherwise be converted to homeownership, to retrofit every dwelling with a separate water meter.

California Building Industry Association, California Apartment Association and California Business Properties Association are also opposed. They are concerned that the bill establishes building standards in statute rather than building code that will not be vetted by the Department of Housing and Community Development (HCD). In addition they would like clarification that neither water purveyors nor local governments can charge a hook up fee for installation of submeters. Finally, they are concerned that there may not be enough water meters available on the market to meet the demand.

Arguments in Support:

The Sierra Club (sponsor), states that "submetering encourages water users to be more aware of their usage, giving them a financial incentive to conserve. Leaks may be reported and fixed more promptly if occupants are paying for water based on actual usage. Studies show that water submeters are associated with decreased water usage. A 2004 Aquacraft Inc. study showed water savings of 15.5% when comparing sub-metered properties with rental properties that do not bill water separately from rent. Another study showed water usage in sub-metered properties to be 18% to 39% less than in-rent properties."

Various water purveyors are in support of the bill. According to the Santa Clara Valley Water District, extending metering to multiunit residential structures is an important and necessary step if the state is to meet its goal of reducing urban per capita water use by 20% by the end of the decade.

Western Center on Law & Poverty is support of the bill and states, "in past years, we have opposed measures similar to AB 19, in part because a tenant has no meaningful redress should a

submeter malfunction. A landlord has little incentive to fix a submeter that is reading high. Were the landlord regulated by the Public Utilities Commission, the tenant would have a forum for his or her concerns. No such forum is feasible for submetering systems. If the overage is only \$5 or \$10 a month, and the landlord is uncooperative, the tenant basically has the choice is either putting up with it or moving. AB 19 minimizes putting tenants in that predicament by ensuring that the submeters are as accurate as possible upon installation."

Staff comments:

The committee may wish to consider that the requirements to install water meters on multi-residential units are for new construction only. There is no requirement that property owners of existing multi-residential units install individual water meters. If a property owner does choose to install water meters on their existing property, then it seems appropriate that the tenant protection that are required for new construction also apply to existing tenants.

Committee Amendments:

- 1) On page 6, strike the provision that limits the landlord to charging only for the volumetric usage incurred by the tenant and not for the "base charges, customer service charges or monthly, bimonthly or other periodic charges assessed regardless of the volume consumed:

1963.080.

(a) A landlord shall not charge or recover, or allow to be charged or recovered, any of the following:

(1) Any additional servicing, administrative, establishment, maintenance, meter reading, meter testing, billing, or submetering fee or other fee whatsoever, however denominated, including those charged by a billing agent.

(2) Any fees billed to the landlord by the water purveyor, billing agent, or any other person for any deposit, disconnect, reconnect, late payment, or other similar fees.

~~(3) Any charges by the water purveyor not directly based on volumetric usage, including any base charges, customer service charges, or monthly, bimonthly, or other periodic charges assessed regardless of the volume consumed.~~

(b) This section does not prohibit a landlord from recovering any costs listed in subdivision (a) that are incorporated into the rent for a dwelling unit, if the rent is a fixed amount per rental period, the charges are not listed separately, and the rental charges are otherwise lawful.

- 2) Add the following language to the bill to allow landlord's to pass through the fixed services charges from the water purveyor to the tenant:

a) On page 4 line 35: (changes to Section 1963.040):

(i) A statement that the tenant shall ~~only~~ be charged for ~~actual~~ water usage service at the exact volumetric rate(s) charged by the water purveyor of water service serving the property.

b) At page 4, line 37: strike out:
~~servicing the building for volumetric water usage, and that~~

and insert:

(j) A statement that the tenant shall also be charged for a portion of any recurring fixed charge billed to the property by the purveyor of water service, which will be proportional to the amount of water the tenant uses in relation to the usage for the entire property

(k) The current amount of the recurring fixed charge referred to in subdivision (j).

(l) A statement that no other administrative, connection, disconnection, billing, or other periodic fee or charge may be assessed, other than a late fee. If the landlord reserves the right to charge a late fee, the amount and terms of the late fee shall also be disclosed.

c) At page 5, line 3 (changes to Section 1963.040)
 (†) (m)

d) Page 5, line 5 (changes to Section 1963.050)
 1963.050. (a) A landlord shall bill a tenant only for volumetric usage of water service - plus a portion of any recurring fixed charge for water service billed to the property by the purveyor of water service. The landlord shall not impose any other periodic, connection, termination, or other fee, however denominated, except for late fees or testing fees as provided in this chapter.

e) Page 5, line 9:

(b) The amount of the volumetric portion of the bill shall be calculated by multiplying the water volume, as determined by the submeter for the billing period in question, times the rate(s) for volumetric usage established by the ~~water~~ purveyor of water service for residential use.

f) Page 5, Line13:

(c) If the rates established by the ~~water~~ purveyor of water service change, the bill shall be prorated to reflect the time each rate was in effect. At the landlord's option, the landlord may assess charges for the entire billing period based on the lower rate.

(d) If a beginning or ending submeter reading is, in good faith, not available, the landlord may bill the tenant 75 percent of the amount originally disclosed to the tenant under subdivision (b) of Section 1963.040.

(e) No charges shall be imposed under this chapter if readings have been unavailable for more than three months

g) Page 5, line 23 add:

(f) The amount of the bill to assess a portion of any recurring fixed charge for water service billed to the property by the purveyor of water service shall be calculated by assessing to each tenant a percentage of the fixed charge using the ratio of the tenant's volume of water use, as shown on the submeter, bears to the water use of the entire property, as shown on the property's water meter.

h) Page 5, line 36 (changes to Section 1963.060(d) starting at (4))

- (4) The amount of the current charges for volumetric use.
- (5) The amount of any recurring fixed charge for water service billed to the property by the purveyor of water service.
- (6) The total water consumption for the property, as indicated by the property's water meter.
- (7) The percentage of the total water consumption of the property that was consumed by the tenant.
- (8) The amount of current charges assessed to the tenant for the tenant's share of any recurring fixed charges for water service billed to the property by the purveyor of water service.
- ~~(5)~~ (9) A separate entry showing past due amounts, if any.
- ~~(6)~~ (10) A separate entry showing any previously-imposed late charges.
- ~~(7)~~ (11) The total amount due.

i) Page 6, line 26 (changes to Section 1963.080 (3)) strike out:

~~(3) Any charges by the water purveyor not directly based on volumetric usage, including any base charges, customer service charges, or monthly, bimonthly, or other periodic charges assessed regardless of the volume consumed.~~

- 3) On page 11, clarify the provision requiring common interest developments apply to newly constructed units as follows:

539. Each water purveyor that sells, leases, rents, furnishes, or delivers water service ***to a newly constructed*** a multiunit residential structure or mixed-use residential and commercial structure that is part of a common interest development for which an application for a water connection, or more than one connection, is submitted after January 1, 2014, shall require the installation of a water meter to measure water supplied to each individual dwelling unit as a condition of new water service.

Double referred: The Assembly Committee on Rules referred AB 19 to the Committee on Water, Parks and Wildlife and Housing and Community Development. The bill passed the Committee on Water, Parks and Wildlife on March 22, 2011, by a vote of 8 to 0.

REGISTERED SUPPORT / OPPOSITION:**Support**

Sierra Club California (sponsor)
 California Advocacy Committee of the United States Green Building Council
 California League of Conservation Voters
 California Rural Legal Assistance Foundation
 California Water Association
 California Water Services Company
 Clean Water Action California
 County of Los Angeles Board of Supervisors
 Environmental Defense Fund
 Environmental Justice Coalition for Water
 Executive Council of Homeowners

Friends of the River
Natural Resources Defense Council
Planning and Conservation League
Santa Clara Valley Water District
Western Center on Law & Poverty

Opposition

Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
California Apartment Association
California Building Industry Association
California Business Properties Association
Citrus Heights Water District
Community Associations Institute
Rental Housing Association of Northern Alameda County
San Diego County Apartment Association
San Francisco Association of Realtors
San Joaquin Rental Property Association
Santa Barbara Rental Property Association
Utility Conservation Coalition

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085