

Introduced by Senator KehoeFebruary 17, 2011

An act to amend Sections 115875, 115880, 115885, 115890, 115895, and 115915 of, to add Section 115917 to, and to repeal Sections 115900 and 115905 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 482, as introduced, Kehoe. Public beach contamination: standards: testing: closing.

Existing law requires local health officers to submit to the State Water Resources Control Board prescribed information regarding beach postings and closures and requires the board to make that information available to the public and to post the information on its Internet Web site.

Existing law requires the State Department of Public Health to adopt regulations to establish minimum standards for the sanitation of public beaches, as defined, and to require the testing of the waters adjacent to beaches for microbiological contaminants and to require posting and closure of beaches that are in violation of the standards. A violation of these regulations is a crime.

This bill would, commencing January 1, 2012, give primary responsibility for adopting, amending, and enforcing the regulations to the board, in consultation with the department. The bill would delete related findings, and would require the board to report to the Legislature regarding funding these state and local duties and options for modifying wastewater discharge monitoring requirements as an alternative method to meet those requirements.

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

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

1 SECTION 1. Section 115875 of the Health and Safety Code
2 is amended to read:

3 115875. ~~“Public beach,” as used in this article,~~ *For the purposes*
4 *of this article, the following terms have the following meanings:*

5 (a) *“Public beach” means any beach area used by the public*
6 *for recreational purposes that is owned, operated, or controlled by*
7 *the state, any state agency, any local agency, or any private person*
8 *in this state, and is located in the coastal zone, as defined in Section*
9 *30103 of the Public Resources Code, or within the jurisdiction of*
10 *the San Francisco Bay Conservation and Development*
11 *Commission, as set forth in Section 66610 of the Government*
12 *Code. “Public beach” also includes any beach of ocean waters*
13 *and bays of the state where water-contact sports are engaged in*
14 *by the public.*

15 (b) *“Board” means the State Water Resources Control Board.*

16 (c) *“Health officer” means the legally appointed local health*
17 *officer or director of environmental health of the county or city*
18 *having jurisdiction of the area in which a public saltwater beach*
19 *is located.*

20 SEC. 2. Section 115880 of the Health and Safety Code is
21 amended to read:

22 115880. (a) ~~The department board~~ shall by regulation, in
23 consultation with ~~the department~~, local health officers, and the
24 public, establish, *maintain, and amend as necessary*, minimum
25 standards for the sanitation of public beaches, including, but not
26 limited to, the removal of refuse, as it determines are reasonably
27 necessary for the protection of the public health and safety.

28 (b) Prior to final adoption *or amendment* by ~~the department~~
29 ~~board~~, the regulations and standards required by this section shall
30 undergo an external comprehensive review process similar to the
31 process set forth in Section 57004 of the Health and Safety Code.

32 (c) The regulations shall, at a minimum, do all of the following;
33 ~~by December 31, 1998:~~

34 (1) Require the testing of the waters adjacent to all public
35 beaches for microbiological contaminants, including, but not
36 limited to, total coliform, fecal coliform, and enterococci bacteria.
37 ~~The department board~~ may require the testing of waters adjacent
38 to all public beaches for microbiological indicators other than those

1 set forth in this paragraph, or a subset of those set forth in this
2 paragraph, if the ~~department~~ *board* affirmatively establishes, based
3 on the best available scientific studies and the weight of the
4 evidence, that the alternative indicators are as protective of the
5 public health.

6 (2) Establish protective minimum standards for total coliform,
7 fecal coliform, and enterococci bacteria, or for other
8 microbiological indicators that the ~~department~~ *board* determines
9 are appropriate for testing pursuant to paragraph (1).

10 (3) Establish protocols for all of the following:

11 (A) Determining monitoring site locations and monitoring
12 frequency based on risks to public health.

13 (B) Making decisions regarding public notification of health
14 hazards, including, but not limited to the posting, closing, and
15 reopening of public beaches.

16 (4) Require that the waters adjacent to public beaches be tested
17 for total coliform, fecal coliform, and enterococci bacteria, or for
18 other microbiological indicators that the ~~department~~ *board*
19 determines are appropriate for testing pursuant to paragraph (1).
20 Except as set forth in paragraph (5), testing shall be conducted on
21 at least a weekly basis, from April 1 to October 31, inclusive, of
22 each year, beginning in 1999, if all of the following apply:

23 (A) The beach is visited by more than 50,000 people annually.

24 (B) The beach is located on an area adjacent to a storm drain
25 that flows in the summer.

26 (5) The monitoring frequency and locations established pursuant
27 to this subdivision and related regulations may only be reduced or
28 altered after the testing required pursuant to paragraph (4) reveals
29 levels of microbiological contaminants that do not exceed for a
30 period of two years the minimum protective standards established
31 pursuant to paragraph (2).

32 (d) The local health officer shall be responsible for testing the
33 waters adjacent to, and coordinating the testing of, all public
34 beaches within his or her jurisdiction.

35 (e) The local health officer may meet the testing requirements
36 of this section by utilizing test results from other agencies
37 conducting microbiological contamination testing of the waters
38 under his or her jurisdiction.

39 (f) Any city or county may adopt standards for the sanitation
40 of public beaches within its jurisdiction that are stricter than the

1 standards adopted by the ~~state department~~ *board* pursuant to this
2 section.

3 (g) Any duty imposed upon a local public officer or agency
4 pursuant to this ~~section~~ *article* shall be mandatory only during a
5 fiscal year in which the Legislature has appropriated sufficient
6 funds, as determined by the ~~State Director of Health Services~~
7 *board*, in the annual Budget Act or otherwise for local agencies
8 to cover the costs to those agencies associated with the performance
9 of these duties. The ~~State Director of Health Services~~ *board* shall
10 annually, within 15 days after enactment of the Budget Act, file a
11 written statement with the Secretary of the Senate and with the
12 Chief Clerk of the Assembly memorializing whether sufficient
13 funds have been appropriated.

14 (h) *Commencing January 1, 2012, primary jurisdiction over*
15 *state administration of this article is transferred from the*
16 *department to the board. Regulations of the department*
17 *implementing this article in effect immediately preceding January*
18 *1, 2012, shall remain in effect and shall, thereafter, be*
19 *administered, enforced, and amended as necessary, by the board.*

20 SEC. 3. Section 115885 of the Health and Safety Code is
21 amended to read:

22 115885. The health officer having jurisdiction over the area in
23 which a public beach is created shall:

24 (a) Inspect the public beach to determine whether the standards
25 established pursuant to Section 115880 are being complied with.
26 If the health officer finds any violation of the standards, he or she
27 may restrict the use of, or close, the public beach or portion thereof
28 in which the violation occurs until the standard is complied with.

29 (b) Investigate any complaint of a person of a violation of any
30 standard established by the ~~department~~ *board* pursuant to Section
31 115880. If the health officer finds any violation of the standards
32 prescribed by the ~~department~~ *board*, he or she may restrict the use
33 of, or close, the public beach or portion thereof until the standard
34 is complied with. If the person who made the complaint is not
35 satisfied with the action taken by the health officer, he or she may
36 report the violation to the ~~department~~ *board*. The ~~department~~ *board*
37 shall investigate the reported violation, and, if it finds that the
38 violation exists, it may restrict the use of or close the public beach
39 or portion thereof until the standard violated is complied with.

1 (c) (1) Whenever a beach is posted, closed, or otherwise
2 restricted in accordance with Section 115915, the health officer
3 shall inform the agency responsible for the operation and
4 maintenance of the public beach within 24 hours of the posting,
5 closure, or restriction.

6 (2) The health officer shall establish a telephone hotline to
7 inform the public of all beaches currently closed, posted, or
8 otherwise restricted. The hotline shall be updated as needed in
9 order to convey changes in public health risks.

10 (d) Report any violation of the standards established pursuant
11 to Section 115880 to the district attorney, or if the violation
12 occurred in a city and, pursuant to Section 41803.5 of the
13 Government Code, the city attorney is authorized to prosecute
14 misdemeanors, to the city attorney.

15 (e) In the event of a known untreated sewage release, the local
16 health officer shall immediately test the waters adjacent to the
17 public beach and to take action pursuant to regulations established
18 under Section 115880.

19 (f) Notwithstanding any other provision of law, in the event of
20 an untreated sewage release that is known to have reached
21 recreational waters adjacent to a public beach, the local health
22 officer shall immediately close those waters until it has been
23 determined by the local health officer that the waters are in
24 compliance with the standards established pursuant to Section
25 115880. *If the department is aware of an untreated sewage release*
26 *that has reached recreational waters adjacent to a public beach,*
27 *and that the local health officer has not taken action to close the*
28 *beach, it may take action to close those waters until the waters*
29 *are in compliance.*

30 ~~(g) Any duty imposed upon a local public officer or agency~~
31 ~~pursuant to this section shall be mandatory only during a fiscal~~
32 ~~year in which the Legislature has appropriated sufficient funds, as~~
33 ~~determined by the State Director of Health Services, in the annual~~
34 ~~Budget Act or otherwise for local agencies to cover the costs to~~
35 ~~those agencies associated with the performance of these duties.~~
36 ~~The State Director of Health Services shall annually, within 15~~
37 ~~days after enactment of the Budget Act, file a written statement~~
38 ~~with the Secretary of the Senate and with the Chief Clerk of the~~
39 ~~Assembly memorializing whether sufficient funds have been~~
40 ~~appropriated.~~

1 SEC. 4. Section 115890 of the Health and Safety Code is
2 amended to read:

3 115890. Prior to restricting the use of or closing a public beach
4 or portion thereof alleged to be in violation of standards, the health
5 officer, *the board*, or the department as the case may be, shall give
6 reasonable notice of the violation to the owner of, or person or
7 agency in charge of, the beach.

8 SEC. 5. Section 115895 of the Health and Safety Code is
9 amended to read:

10 115895. Any private person who violates any regulation
11 adopted by the state department *board* pursuant to Section 115880
12 is guilty of a misdemeanor.

13 SEC. 6. Section 115900 of the Health and Safety Code is
14 repealed.

15 ~~115900. For the purposes of Sections 115900 to 115915,~~
16 ~~inclusive, the following definitions apply:~~

17 ~~(a) “Beach” means any public beach of the ocean waters and~~
18 ~~bays of the state where water-contact sports are engaged in by the~~
19 ~~public.~~

20 ~~(b) “Board” means the State Water Resources Control Board.~~

21 ~~(c) “Health officer” means the legally appointed health officer~~
22 ~~or director of environmental health of the county or city having~~
23 ~~jurisdiction of the area in which a public saltwater beach is located.~~

24 SEC. 7. Section 115905 of the Health and Safety Code is
25 repealed.

26 ~~115905. The Legislature finds and declares all of the following:~~

27 ~~(a) California’s world-famous beaches are an invaluable~~
28 ~~economic, environmental, and recreational resource that must be~~
29 ~~protected for present and future generations. Millions of residents~~
30 ~~and visitors alike visit the state’s beaches annually.~~

31 ~~(b) Pollution from toxic spills, untreated municipal sewage,~~
32 ~~and agricultural and urban runoff threatens this critical resource.~~

33 ~~(c) During 1989 through 1991 alone, at least 400 of the state’s~~
34 ~~beaches had to be posted “off-limits” due to dangerous levels of~~
35 ~~bacterial and toxic contamination.~~

36 ~~(d) Due to this pollution, local health officials were forced to~~
37 ~~close one or more beaches between San Diego and Mendocino~~
38 ~~Counties for all but 18 days in 1991.~~

39 ~~(e) This contamination of our beaches poses serious threats to~~
40 ~~the public’s health, increasing the risk that persons who use the~~

1 ~~beaches will suffer from hepatitis, gastroenteritis, and other~~
2 ~~dangerous illnesses.~~

3 ~~(f) Notwithstanding the importance and potential severity of~~
4 ~~this problem, the state has never conducted a statewide survey to~~
5 ~~document annual beach closings.~~

6 ~~(g) The state does not have uniform testing protocols that must~~
7 ~~be followed to ensure that the public is never exposed to dangerous~~
8 ~~contamination at the state's beaches.~~

9 ~~(h) The state does not have uniform standards requiring beach~~
10 ~~postings when California Ocean Plan bathing water standards, as~~
11 ~~adopted by the board pursuant to Section 13170.2 of the Water~~
12 ~~Code, are exceeded.~~

13 ~~(i) The state does not have uniform requirements mandating~~
14 ~~the frequency with which beach waters must be tested to ensure~~
15 ~~public safety. Beach water sampling currently varies greatly from~~
16 ~~county to county. For example, Los Angeles County tests its~~
17 ~~beaches every week of the year while other coastal counties test~~
18 ~~much less frequently.~~

19 ~~(j) More accurate and centralized recordkeeping on the relative~~
20 ~~contributions of pollutant sources to beach closures would enable~~
21 ~~more effective targeting of corrective actions to keep our beaches~~
22 ~~safe and our coastal areas economically strong.~~

23 SEC. 8. Section 115915 of the Health and Safety Code is
24 amended to read:

25 115915. (a) Whenever any beach fails to meet the
26 bacteriological standards established pursuant to subdivision (b)
27 of Section 115880, the health officer shall, at a minimum, post the
28 beach with conspicuous warning signs to inform the public of the
29 nature of the problem and the possibility of risk to public health.

30 (b) A warning sign shall be visible from each legal primary
31 beach access point, as identified in the coastal access inventory
32 prepared and updated pursuant to Section 30531 of the Public
33 Resources Code, and any additional access points identified by
34 the health officer.

35 ~~(e) Any duty imposed upon a local public officer or agency~~
36 ~~pursuant to this section shall be mandatory only during a fiscal~~
37 ~~year in which the Legislature has appropriated sufficient funds, as~~
38 ~~determined by the State Director of Health Services, in the annual~~
39 ~~Budget Act or otherwise for local agencies to cover the costs to~~
40 ~~those agencies associated with the performance of these duties.~~

1 ~~The State Director of Health Services shall annually, within 15~~
2 ~~days after enactment of the Budget Act, file a written statement~~
3 ~~with the Secretary of the Senate and with the Chief Clerk of the~~
4 ~~Assembly memorializing whether sufficient funds have been~~
5 ~~appropriated.~~

6 SEC. 9. Section 115917 is added to the Health and Safety Code,
7 to read:

8 115917. By June 30, 2012, the board shall, in consultation with
9 the local health officers and other stakeholders, submit a plan to
10 the Legislature regarding options for sustainable funding for the
11 payment of costs associated with performance of state and local
12 duties under this article and options for modifying wastewater
13 discharge monitoring requirements of local agencies as an
14 alternative method of meeting the requirements set forth in Section
15 115880.