

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 482

Introduced by Senator Kehoe

February 17, 2011

An act to amend Sections 115875, 115880, 115885, 115890, 115895, and 115915 of, to add Section ~~115917~~ *115881* 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 amended, 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~~ *administration of the provisions relating to monitoring site locations, monitoring frequency, and public notification to the board,* ~~in consultation with the department~~ *and would leave in place the regulations existing as of January 1, 2012, to be administered, enforced,*

and amended as necessary by the board. 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. For the purposes of this article, the following terms
 4 have the following meanings:

5 (a) “Public beach” means any beach area used by the public for
 6 recreational purposes that is owned, operated, or controlled by the
 7 state, any state agency, any local agency, or any private person in
 8 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 and
 13 bays of the state where water-contact sports are engaged in by the
 14 public.

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

16 (c) “Department” means the State Department of Public Health.

17 (e)

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

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

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

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

6 (c) The regulations shall, at a minimum, do all of the following:

7 (1) Require the testing of the waters adjacent to all public
8 beaches for microbiological contaminants, including, but not
9 limited to, total coliform, fecal coliform, and enterococci bacteria.

10 The ~~board~~ *department* may require the testing of waters adjacent
11 to all public beaches for microbiological indicators other than those
12 set forth in this paragraph, or a subset of those set forth in this
13 paragraph, if the ~~board~~ *department* affirmatively establishes, based
14 on the best available scientific studies and the weight of the
15 evidence, that the alternative indicators are as protective of the
16 public health.

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

21 ~~(3) Establish protocols for all of the following:~~

22 ~~(A) Determining monitoring site locations and monitoring~~
23 ~~frequency based on risks to public health.~~

24 ~~(B) Making decisions regarding public notification of health~~
25 ~~hazards, including, but not limited to the posting, closing, and~~
26 ~~reopening of public beaches.~~

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

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

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

37 ~~(5) The monitoring frequency and locations established pursuant~~
38 ~~to this subdivision and related regulations may only be reduced or~~
39 ~~altered after the testing required pursuant to paragraph (4) reveals~~
40 ~~levels of microbiological contaminants that do not exceed for a~~

1 period of two years the minimum protective standards established
2 pursuant to paragraph (2):

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

6 ~~(e) The local health officer may meet the testing requirements~~
7 ~~of this section by utilizing test results from other agencies~~
8 ~~conducting microbiological contamination testing of the waters~~
9 ~~under his or her jurisdiction.~~

10 ~~(f) Any city or county may adopt standards for the sanitation~~
11 ~~of public beaches within its jurisdiction that are stricter than the~~
12 ~~standards adopted by the board pursuant to this section.~~

13 ~~(g) Any duty imposed upon a local public officer or agency~~
14 ~~pursuant to this article shall be mandatory only during a fiscal year~~
15 ~~in which the Legislature has appropriated sufficient funds, as~~
16 ~~determined by the board, in the annual Budget Act or otherwise~~
17 ~~for local agencies to cover the costs to those agencies associated~~
18 ~~with the performance of these duties. The board shall annually,~~
19 ~~within 15 days after enactment of the Budget Act, file a written~~
20 ~~statement with the Secretary of the Senate and with the Chief Clerk~~
21 ~~of the Assembly memorializing whether sufficient funds have been~~
22 ~~appropriated.~~

23 ~~(h) Commencing January 1, 2012, primary jurisdiction over~~
24 ~~state administration of this article is transferred from the~~
25 ~~department to the board. Regulations of the department~~
26 ~~implementing this article in effect immediately preceding January~~
27 ~~1, 2012, shall remain in effect and shall, thereafter, be administered,~~
28 ~~enforced, and amended as necessary, by the board.~~

29 *SEC. 3. Section 115881 is added to the Health and Safety Code,*
30 *to read:*

31 *115881. (a) Commencing January 1, 2012, primary*
32 *jurisdiction shall be transferred from the department to the board*
33 *for state administration of all of the following:*

34 *(1) Determining monitoring site locations and monitoring*
35 *frequency based on risks to public health and options for modifying*
36 *wastewater and stormwater discharge monitoring requirements*
37 *of local agencies as a method of meeting the requirements set forth*
38 *in Section 115880.*

1 (2) *Making decisions regarding public notification of health*
2 *hazards, including, but not limited to, the posting, closing, and*
3 *reopening of public beaches.*

4 (3) *Requiring that the waters adjacent to public beaches are*
5 *tested for total coliform, fecal coliform, and enterococci bacteria,*
6 *or for other microbiological indicators that the department*
7 *determines are appropriate for testing pursuant to paragraph (1).*
8 *Except as set forth in subdivision (b), testing shall be conducted*
9 *on at least a weekly basis year round if all of the following apply:*

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

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

13 (b) *The monitoring frequency and locations established pursuant*
14 *to this section and related regulations may only be reduced or*
15 *altered after the testing required pursuant to paragraph (3) of*
16 *subdivision (a) reveals levels of microbiological contaminants that*
17 *do not exceed for a period of two years the minimum protective*
18 *standards established pursuant to Section 115880.*

19 (c) *Regulations adopted by the department for the*
20 *implementation of this article that are in effect as of January 1,*
21 *2012, shall remain in effect and shall, thereafter, be administered,*
22 *enforced, and amended as necessary by the board.*

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

26 (e) *The local health officer may meet the testing requirements*
27 *of this section by utilizing test results from other agencies*
28 *conducting microbiological contamination testing of the waters*
29 *under his or her jurisdiction.*

30 (f) *Any city or county may adopt standards for the sanitation of*
31 *public beaches within its jurisdiction that are stricter than the*
32 *standards adopted by the board pursuant to this section.*

33 (g) *Any duty imposed upon a local public officer or agency*
34 *pursuant to this section shall be mandatory only during a fiscal*
35 *year in which the Legislature has appropriated sufficient funds,*
36 *as determined by the Public Health Officer, in the annual Budget*
37 *Act or otherwise for local agencies to cover the costs to those*
38 *agencies associated with the performance of these duties. The*
39 *Public Health Officer shall annually, within 15 days after*
40 *enactment of the Budget Act, file a written statement with the*

1 *Secretary of the Senate and with the Chief Clerk of the Assembly*
2 *memorializing whether sufficient funds have been appropriated.*

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 115885 of the Health and Safety Code is
5 amended to read:

6 115885. The health officer having jurisdiction over the area in
7 which a public beach is created shall:

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

13 (b) Investigate any complaint ~~of a person~~ of a violation of any
14 standard established by the ~~board~~ department pursuant to Section
15 115880. If the health officer finds any violation of the standards
16 prescribed by the ~~board~~ department, he or she may restrict the use
17 of, or close, the public beach or portion thereof until the standard
18 is complied with. If the person who made the complaint is not
19 satisfied with the action taken by the health officer, he or she may
20 report the violation to the ~~board~~. ~~The board~~ department. *The*
21 *department* shall investigate the reported violation, and, if it finds
22 that the violation exists, it may restrict the use of or close the public
23 beach or portion thereof until the standard violated is complied
24 with.

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

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

34 (d) Report any violation of the standards established pursuant
35 to Section 115880 to the district attorney, or if the violation
36 occurred in a city and, pursuant to Section 41803.5 of the
37 Government Code, the city attorney is authorized to prosecute
38 misdemeanors, to the city attorney.

39 (e) In the event of a known untreated sewage release, the local
40 health officer shall immediately test the waters adjacent to the

1 public beach and to take action pursuant to regulations established
2 under ~~Section 115880~~ *Sections 115880 and 115881*.

3 (f) Notwithstanding any other provision of law, in the event of
4 an untreated sewage release that is known to have reached
5 recreational waters adjacent to a public beach, the local health
6 officer shall immediately close those waters until it has been
7 determined by the local health officer that the waters are in
8 compliance with the standards established pursuant to Section
9 115880. If the department is aware of an untreated sewage release
10 that has reached recreational waters adjacent to a public beach,
11 and that the local health officer has not taken action to close the
12 beach, it may take action to close those waters until the waters are
13 in compliance.

14 ~~SEC. 4.~~

15 *SEC. 5.* Section 115890 of the Health and Safety Code is
16 amended to read:

17 115890. Prior to restricting the use of or closing a public beach
18 or portion thereof alleged to be in violation of standards, the health
19 officer, ~~the board~~, or the department as the case may be, shall give
20 reasonable notice of the violation to the owner of, or person or
21 agency in charge of, the beach.

22 ~~SEC. 5.~~

23 *SEC. 6.* Section 115895 of the Health and Safety Code is
24 amended to read:

25 115895. Any private person who violates any regulation
26 adopted by the ~~board~~ *department* pursuant to Section 115880 is
27 guilty of a misdemeanor.

28 ~~SEC. 6.~~

29 *SEC. 7.* Section 115900 of the Health and Safety Code is
30 repealed.

31 ~~SEC. 7.~~

32 *SEC. 8.* Section 115905 of the Health and Safety Code is
33 repealed.

34 ~~SEC. 8.~~

35 *SEC. 9.* Section 115915 of the Health and Safety Code is
36 amended to read:

37 115915. (a) Whenever any beach fails to meet the
38 bacteriological standards established pursuant to subdivision (b)
39 of Section 115880, the health officer shall, at a minimum, post the

1 beach with conspicuous warning signs to inform the public of the
2 nature of the problem and the possibility of risk to public health.

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

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

10 ~~115917. By June 30, 2012, the board shall, in consultation with~~
11 ~~the local health officers and other stakeholders, submit a plan to~~
12 ~~the Legislature regarding options for sustainable funding for the~~
13 ~~payment of costs associated with performance of state and local~~
14 ~~duties under this article and options for modifying wastewater~~
15 ~~discharge monitoring requirements of local agencies as an~~
16 ~~alternative method of meeting the requirements set forth in Section~~
17 ~~115880.~~