

AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 385**

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**Introduced by Senator Hueso**

(Principal coauthors: Assembly Members Alejo and Eduardo Garcia)

**(Coauthors: Senators Cannella and Stone)**

~~(Coauthor: Coauthors: Assembly Member Members Dodd and Mayes)~~

February 24, 2015

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An act to add and repeal Section 116431 of the Health and Safety Code, relating to drinking water, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Hueso. Primary drinking water standards: ~~variances: hexavalent chromium.~~ *chromium: compliance plan.*

The California Safe Drinking Water Act provides for the operation of public water systems and imposes on the State Water Resources Control Board various duties and responsibilities for the regulation and control of drinking water in the State of California. The act requires the state board to adopt primary drinking water standards for contaminants in drinking water based upon specified criteria, and required a primary drinking water standard to be established for hexavalent chromium by January 1, 2004. Existing law authorizes the state board to grant a variance from primary drinking water standards to a public water system. Existing law makes certain violations of the act a crime.

This bill would authorize, until January 1, 2020, the state board, at the request of a public water system *that prepares and submits a compliance plan to the state board*, to grant a ~~variance from period of time to achieve compliance with~~ the primary drinking water standard for hexavalent chromium ~~if the public water system prepares and submits~~

~~a by approving the compliance plan, the state board approves the compliance plan, the plan, as prescribed. This bill would require a public water system provides to provide specified notice requirements regarding the compliance plan to its customers, customers and the public water system sends annual to send written status reports to the state board that updates the status of the approved compliance plan. The bill would require the compliance plan to describe the actions the public water system is taking and will take to comply with the primary drinking water standard for hexavalent chromium by the earliest feasible date, include the public water system's best estimate of the funding required for compliance, and the actions the public water system will take to secure funding. board. This bill would prohibit a public water system from being deemed in violation of the primary drinking water standard for hexavalent chromium while implementing an approved compliance plan or while state board action on its proposed and submitted compliance plan is pending.~~

The bill would authorize the state board to direct revisions to ~~the a compliance plan or previously approved compliance plan~~, if the board makes certain determinations and would ~~make a variance ineffective prohibit a public water system from being granted a period of time to achieve compliance~~ under certain circumstances, including if the public water system does not submit a revised compliance plan or the revised compliance plan is disapproved. The bill would authorize the state board to ~~adopt emergency regulations to implement these provisions, to be in effect for no more than 2 years implement, interpret, or make specific these provisions by means of criteria, published on its Internet Web site.~~ To the extent that a public water system, when requesting ~~approval of a variance compliance plan~~ or submitting a report pursuant to these provisions, would ~~violate certain provisions of the act make any false statement or representation~~, this bill would expand the scope of a crime and impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 116431 is added to the Health and Safety  
2 Code, to read:

3 116431. (a) At the request of any public water system *that*  
4 *prepares and submits a compliance plan to the state board*, the  
5 state board may grant a ~~variance from~~ *period of time to achieve*  
6 *compliance with the primary drinking water standard for hexavalent*  
7 *chromium, if all of the following conditions are met: by approving*  
8 *the compliance plan.*

9 ~~(1) (A) The public water system has prepared and submitted a~~  
10 ~~compliance plan, as described in subparagraph (B), to the state~~  
11 ~~board for approval.~~

12 ~~(B) The~~

13 ~~(b) (1) A compliance plan shall describe~~ *include all of the*  
14 *following:*

15 ~~(A) A compelling reason why it is not feasible for the system to~~  
16 ~~presently comply with the primary drinking water standard for~~  
17 ~~hexavalent chromium.~~

18 ~~(B) A summary of the public water system's review of available~~  
19 ~~funding sources, the best available technology or technologies for~~  
20 ~~treatment, and other options to achieve and maintain compliance~~  
21 ~~with the primary drinking water standard for hexavalent chromium~~  
22 ~~by the earliest feasible date.~~

23 ~~(C) A description of the actions the public water system is taking~~  
24 ~~and will take by milestone dates to comply with the primary~~  
25 ~~drinking water standard for hexavalent chromium by the earliest~~  
26 ~~feasible date. The actions may include, but are not limited to,~~  
27 ~~planning, designing, permitting, financing, constructing, testing,~~  
28 ~~and activating treatment facilities or other capital improvements.~~  
29 ~~The compliance plan shall include the public water system's best~~  
30 ~~estimate of the funding required for compliance and the actions~~  
31 ~~that the public water system will take to secure the funding. In no~~  
32 ~~event shall the earliest feasible date exceed five years from the~~  
33 ~~date on which compliance otherwise would be required. extend~~  
34 ~~beyond January 1, 2020.~~

35 ~~(2) The state board has reviewed the compliance plan, identified~~  
36 ~~any changes needed to ensure compliance with the primary~~  
37 ~~drinking water standard for hexavalent chromium by the earliest~~  
38 ~~feasible date, and approved the plan. The state board shall ensure~~

1 ~~that the public water system has reviewed available funding~~  
2 ~~sources, cleanup and treatment technologies, and other options to~~  
3 ~~achieve and maintain compliance of the primary drinking water~~  
4 ~~standard by the earliest feasible date.~~

5 (2) *The state board may approve a compliance plan or provide*  
6 *written comments on the compliance plan to the public water*  
7 *system. The state board may approve a compliance plan if the*  
8 *public water system timely and adequately addresses any and all*  
9 *written comments provided by the state board.*

10 (3) *The state board may, upon review of a compliance plan and*  
11 *based on the public water system's specific circumstances identified*  
12 *in the plan, require compliance with the primary drinking water*  
13 *standard for hexavalent chromium before January 1, 2020.*

14 ~~(3)~~

15 (c) ~~The public water system provides~~ *shall provide* written notice  
16 regarding the compliance plan to its customers at least two times  
17 per year. The written notice shall meet the translation requirements  
18 provided in subdivision (h) of Section 116450 and shall include  
19 notice of all of the following:

20 ~~(A)~~

21 (1) That the public water system is implementing the compliance  
22 plan that has been approved by the state board and that  
23 demonstrates the public water system is taking the needed feasible  
24 actions to comply with the primary drinking water standard for  
25 hexavalent chromium. The notice shall summarize those actions  
26 in a form and manner determined by the state board. For notices  
27 after the initial notice, the public water system shall update  
28 information demonstrating progress implementing the compliance  
29 plan.

30 ~~(B)~~

31 (2) That the public water system's customers have ~~an~~ alternative  
32 ~~to consuming tap water and that the public water system can~~  
33 *drinking water and that the public water system may provide*  
34 *information on that alternative: drinking water.* The notice shall  
35 identify where the customer can obtain that information.

36 ~~(4) Every 12 months following~~

37 (d) *Following the state board's approval of the compliance plan,*  
38 *the public water system shall submit a written status report to the*  
39 *state board, at a frequency and by a deadline or deadlines set by*  
40 *the state board, for the state board's approval, that updates the*

1 status of actions specified in the state board-approved compliance  
2 plan and that specifies any changes to the compliance plan that  
3 are needed to achieve compliance with the primary drinking water  
4 standard for hexavalent chromium by the earliest feasible date.  
5 ~~Approval of a report with changes to the compliance plan shall~~  
6 ~~result in an approved revised compliance plan.~~ *State board*  
7 *approval of a written status report that includes proposed changes*  
8 *to the compliance plan shall be deemed approval of those changes*  
9 *to the compliance plan.*

10 (b)

11 (e) A public water system ~~that has requested, or has been~~  
12 ~~granted, a variance pursuant to this section shall not be deemed in~~  
13 ~~violation of the primary drinking water standard for hexavalent~~  
14 ~~chromium while the request for a variance is pending or while the~~  
15 ~~variance is in effect.~~ *shall not be deemed in violation of the primary*  
16 *drinking water standard for hexavalent chromium while*  
17 *implementing an approved compliance plan. A public water system*  
18 *that has submitted a compliance plan for approval shall not be*  
19 *deemed in violation of the primary drinking water standard for*  
20 *hexavalent chromium while state board action on the proposed*  
21 *and submitted compliance plan is pending.*

22 (e)

23 (f) (1) At any time, the state board may direct revisions to a  
24 compliance plan ~~or disapprove a compliance plan~~ if the state board  
25 determines that the compliance plan is ~~insufficient or insufficient.~~  
26 *At any time, the state board may disapprove an annual a written*  
27 *status report if the state board determines that the annual written*  
28 *status report fails to demonstrate that the public water system is*  
29 *complying with the approved compliance plan by the milestone*  
30 *dates. In these instances, the state board shall provide the public*  
31 *water system with written notice specifying the reason for the*  
32 *required revisions or disapproval and the deficiencies that shall be*  
33 *addressed before the compliance plan is resubmitted. in a*  
34 *resubmitted compliance plan or written status report.*

35 (d)

36 (2) A previously approved compliance plan that the state board  
37 requires to be revised, or ~~an annual a written status report~~ that is  
38 disapproved by the state board, may be revised and resubmitted  
39 by the public water system for state board approval within 60 days  
40 of receipt of the notice required by ~~subdivision (e).~~ *A paragraph*

1 (1). During the 60 days, a public water system shall not be deemed  
2 in violation of the primary drinking water standard for hexavalent  
3 chromium for 60 days following receipt of this notice. A variance  
4 granted pursuant to subdivision (a) shall not be effective for any  
5 chromium. A public water system that shall not be granted a period  
6 of time to achieve compliance with the primary drinking water  
7 standard for hexavalent chromium if the public water system fails  
8 to submit a revised compliance plan or revised ~~annual~~ written  
9 status report within 60 days of receiving the notice, or that submits  
10 a revised compliance plan or revised ~~annual~~ written status report  
11 that is subsequently disapproved.

12 (e) ~~(1) Except as provided in paragraph (2), the state board may~~  
13 ~~adopt emergency regulations in accordance Section 11346.1 of~~  
14 ~~the Government Code in order to implement this section.~~

15 (2) ~~The emergency regulations shall remain in effect for a period~~  
16 ~~not to exceed two years during which time the state board shall go~~  
17 ~~back and adopt the regulations in conformity with the provisions~~  
18 ~~of Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
19 ~~Division 3 of Title 2 of the Government Code.~~

20 (3) *A compliance plan approved by the state board pursuant to*  
21 *this section shall continue in effect until the earliest feasible*  
22 *compliance date, as specified by the compliance plan, or until the*  
23 *state board determines that the compliance plan is no longer in*  
24 *effect pursuant to this subdivision.*

25 (g) *The state board may implement, interpret, or make specific*  
26 *the provisions of this section by means of criteria, published on*  
27 *its Internet Web site. This action by the state board shall not be*  
28 *subject to the rulemaking requirements of the Administrative*  
29 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*  
30 *Part 1 of Division 3 of Title 2 of the Government Code).*

31 (h) *This section does not affect the state's requirements for*  
32 *establishing drinking water standards for contaminants in drinking*  
33 *water. This section does not apply to any contaminants other than*  
34 *hexavalent chromium. This section is intended to address the*  
35 *specific circumstance that for some public water systems,*  
36 *compliance with the state's hexavalent chromium drinking water*  
37 *standard requires the design, financing, and construction of capital*  
38 *improvements. These major compliance actions necessitate a*  
39 *period of time for compliance.*

40 (f) ~~(1)~~

1 (i) This section shall remain in effect only until January 1, 2020,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2020, deletes or extends that date.

4 ~~(2) A variance granted by the state board pursuant to this section~~  
5 ~~before January 1, 2020, shall continue in effect until the state board~~  
6 ~~determines that the variance is no longer in effect pursuant to~~  
7 ~~subdivision (d) or until the earliest feasible compliance date, as~~  
8 ~~specified by the compliance plan.~~

9 SEC. 2. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

18 SEC. 3. This act is an urgency statute necessary for the  
19 immediate preservation of the public peace, health, or safety within  
20 the meaning of Article IV of the Constitution and shall go into  
21 immediate effect. The facts constituting the necessity are:

22 The state's regulation setting the new maximum contaminant  
23 level for hexavalent chromium VI went into effect on July 1, 2014.  
24 The regulation required that the initial compliance monitoring  
25 under the regulation be performed by January 1, 2015. ~~Public~~ *Some*  
26 *public* water systems need to take major compliance actions, such  
27 as designing, financing, and constructing water treatment facilities,  
28 to comply with the new regulation. To avoid the systems being  
29 deemed in violation of the regulation in 2015, and for a limited  
30 time period thereafter, it is necessary for this act, which authorizes  
31 a ~~time-limited variance~~, *period of time to achieve compliance*, to  
32 take effect immediately.