

AMENDED IN SENATE MAY 19, 2015

AMENDED IN SENATE APRIL 7, 2015

SENATE BILL

No. 385

Introduced by Senator Hueso

(Principal coauthors: Assembly Members Alejo and Eduardo Garcia)

(Coauthors: Senators Cannella and Stone)

(Coauthors: Assembly Members Dodd and Mayes)

February 24, 2015

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: hexavalent 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 period of time to achieve compliance with the primary drinking water standard for hexavalent

chromium by approving the compliance plan, as prescribed. This bill would require a public water system to provide specified notice regarding the compliance plan to its customers and the public water system to send written status reports to the state 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 a compliance plan if the board makes certain determinations and would 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 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 compliance plan or submitting a report pursuant to these provisions, would 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 state
- 5 board may grant a period of time to achieve compliance with the
- 6 primary drinking water standard for hexavalent chromium by
- 7 approving the compliance plan.
- 8 (b) (1) A compliance plan shall include all of the following:

1 (A) A compelling reason why it is not feasible for the system
2 to presently comply with the primary drinking water standard for
3 hexavalent chromium.

4 (B) A summary of the public water system’s review of available
5 funding sources, the best available technology or technologies for
6 treatment, and other options to achieve and maintain compliance
7 with the primary drinking water standard for hexavalent chromium
8 by the earliest feasible date.

9 (C) A description of the actions the public water system is taking
10 and will take by milestone dates to comply with the primary
11 drinking water standard for hexavalent chromium by the earliest
12 feasible date. The actions may include, but are not limited to,
13 planning, designing, permitting, financing, constructing, testing,
14 and activating treatment facilities or other capital improvements.
15 The compliance plan shall include the public water system’s best
16 estimate of the funding required for compliance and the actions
17 that the public water system will take to secure the funding. In no
18 event shall the earliest feasible date extend beyond January 1,
19 2020.

20 (2) The state board may approve a compliance plan or provide
21 written comments on the compliance plan to the public water
22 system. The state board may approve a compliance plan if the
23 public water system timely and adequately addresses any and all
24 written comments provided by the state board.

25 (3) The state board may, upon review of a compliance plan and
26 based on the public water system’s specific circumstances
27 identified in the plan, require compliance with the primary drinking
28 water standard for hexavalent chromium before January 1, 2020.

29 (c) The public water system shall provide written notice
30 regarding the compliance plan to its customers at least two times
31 per year. The written notice shall meet the translation requirements
32 provided in subdivision (h) of Section 116450 and shall include
33 notice of all of the following:

34 (1) That the public water system is implementing the compliance
35 plan that has been approved by the state board and that
36 demonstrates the public water system is taking the needed feasible
37 actions to comply with the primary drinking water standard for
38 hexavalent chromium. The notice shall summarize those actions
39 in a form and manner determined by the state board. For notices
40 after the initial notice, the public water system shall update

1 information demonstrating progress implementing the compliance
2 plan.

3 (2) That the public water system's customers have alternative
4 drinking water and that the public water system may provide
5 information on that drinking water. The notice shall identify where
6 the customer can obtain that information.

7 (3) *Basic information describing hexavalent chromium,*
8 *including the level found in drinking water provided by the public*
9 *water system, the maximum contaminant level for hexavalent*
10 *chromium, and the possible effects of hexavalent chromium on*
11 *human health as specified in Appendix 64465-D of Section 64465*
12 *of Title 22 of the California Code of Regulations.*

13 (d) Following the state board's approval of the compliance plan,
14 the public water system shall submit a written status report to the
15 state board, at a frequency and by a deadline or deadlines set by
16 the state board, for the state board's approval, that updates the
17 status of actions specified in the state board-approved compliance
18 plan and that specifies any changes to the compliance plan that
19 are needed to achieve compliance with the primary drinking water
20 standard for hexavalent chromium by the earliest feasible date.
21 State board approval of a written status report that includes
22 proposed changes to the compliance plan shall be deemed approval
23 of those changes to the compliance plan.

24 (e) A public water system shall not be deemed in violation of
25 the primary drinking water standard for hexavalent chromium
26 while implementing an approved compliance plan. A public water
27 system that has submitted a compliance plan for approval shall
28 not be deemed in violation of the primary drinking water standard
29 for hexavalent chromium while state board action on the proposed
30 and submitted compliance plan is pending.

31 (f) (1) At any time, the state board may direct revisions to a
32 compliance plan or disapprove a compliance plan if the state board
33 determines that the compliance plan is insufficient. At any time,
34 the state board may disapprove a written status report if the state
35 board determines that the written status report fails to demonstrate
36 that the public water system is complying with the approved
37 compliance plan by the milestone dates. In these instances, the
38 state board shall provide the public water system with written
39 notice specifying the reason for the required revisions or

1 disapproval and the deficiencies that shall be addressed in a
2 resubmitted compliance plan or written status report.

3 (2) A previously approved compliance plan that the state board
4 requires to be revised, or a written status report that is disapproved
5 by the state board, may be revised and resubmitted by the public
6 water system for state board approval within 60 days of receipt of
7 the notice required by paragraph (1). During the 60 days, a public
8 water system shall not be deemed in violation of the primary
9 drinking water standard for hexavalent chromium. A public water
10 system shall not be granted a period of time to achieve compliance
11 with the primary drinking water standard for hexavalent chromium
12 if the public water system fails to submit a revised compliance
13 plan or revised written status report within 60 days of receiving
14 the notice, or submits a revised compliance plan or revised written
15 status report that is subsequently disapproved.

16 (3) A compliance plan approved by the state board pursuant to
17 this section shall continue in effect until the earliest feasible
18 compliance date, as specified by the compliance plan, or until the
19 state board determines that the compliance plan is no longer in
20 effect pursuant to this subdivision.

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

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

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

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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

12 The state’s regulation setting the new maximum contaminant
13 level for hexavalent chromium VI went into effect on July 1, 2014.
14 The regulation required that the initial compliance monitoring
15 under the regulation be performed by January 1, 2015. Some public
16 water systems need to take major compliance actions, such as
17 designing, financing, and constructing water treatment facilities,
18 to comply with the new regulation. To avoid the systems being
19 deemed in violation of the regulation in 2015, and for a limited
20 time period thereafter, it is necessary for this act, which authorizes
21 a period of time to achieve compliance, to take effect immediately.