

Assembly Bill No. 733

CHAPTER 660

An act to add Sections 4026.7 and 4026.8 to the Health and Safety Code, and to add Section 21080.26 to the Public Resources Code, relating to drinking water.

[Approved by Governor October 8, 1995. Filed
with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 733, Speier. Drinking water: fluoridation.

Existing law, commonly referred to as the California Safe Drinking Water Act, is administered by the State Department of Health Services and, among other things, requires the department to establish recommended public health levels for contaminants in drinking water, and requires operators of public water systems to obtain a permit. Existing law also requires the department to, at the request of any public water system, grant a variance from the primary drinking water standard adopted by the department for fluoride, if certain conditions are satisfied.

This bill would require the department to adopt regulations that require the fluoridation of the water of any public water system that has at least 10,000 service connections according to a prescribed schedule based upon the lowest capital cost per connection. Among other things, it would require the regulations to establish the minimum and maximum permissible concentrations of fluoride.

This bill would provide that a public water system scheduled to fluoridate pursuant to the bill is not required to comply until funds sufficient to pay capital and associated costs for the system have become available from any source other than ratepayers, shareholders, local taxpayers, or bondholders of the public water system. This bill would also exempt a public water system from complying with this fluoridation requirement and the related regulations adopted by the department in any fiscal year that funds are not appropriated, or made available from sources other than ratepayers, shareholders, local taxpayers, or bondholders of the public water system, for new capital operation and maintenance costs. The bill would provide that a public water system with less than 10,000 service connections may elect to comply with the fluoridation standards of the bill. It would require costs of compliance with the standards, compliance requirements, and regulations to be paid from federal grants, or donations from private foundations, for these purposes.

This bill would require each public water system to provide the department with an estimate of anticipated total annual noncapital operations and maintenance costs related to fluoridation treatment by January 1 of each year.

The bill would also require the Attorney General to, upon request by the department, institute mandamus or other appropriate proceedings in cases where the owner or operator of a public water system fails to comply with a regulation adopted pursuant to its provisions. This bill would permit the department to grant variances pursuant to existing law.

This bill would require the Public Utilities Commission to approve rate increases related to costs of compliance for public water systems under its jurisdiction.

Existing law, the California Environmental Quality Act, provides that the maintenance of a quality environment is a matter of statewide concern.

This bill would exempt from that act minor alterations to utilities in compliance with this bill.

By requiring the addition of fluorides to public water systems, this bill would impose additional duties on local public entities that operate public water systems, thereby imposing 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 specified reasons.

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

SECTION 1. Section 4026.7 is added to the Health and Safety Code, to read:

4026.7. (a) In order to promote the public health through the protection and maintenance of dental health, the department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, requiring the fluoridation of public water systems. By July 1, 1996, each public water system with at least 10,000 services connections shall provide to the department an estimate of the total capital costs to install fluoridation treatment. The regulations adopted by the department shall take effect on January 1, 1997.

(b) The regulations shall include, but not be limited to, the following:

(1) Minimum and maximum permissible concentrations of fluoride to be maintained by fluoridation of public water systems.

(2) The requirements and procedures for maintaining proper concentrations of fluoride, including equipment, testing, recordkeeping, and reporting.

(3) Requirements for the addition of fluorides to public water systems in which the natural level of fluorides is less than the minimum level established in the regulations.

(4) A schedule for the fluoridation of public water systems with at least 10,000 service connections, based on the lowest capital cost per connection for each system.

SEC. 2. Section 4026.8 is added to the Health and Safety Code, to read:

4026.8. (a) (1) A public water system is not required to comply with Section 4026.7, or the regulations adopted thereunder by the department, in either of the following situations:

(A) If the public water system is scheduled to implement a fluoridation program pursuant to paragraph (4) of subdivision (b) of Section 4026.7 and funds are not available to the public water system sufficient to pay the capital and associated costs from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(B) If the public water system has obtained the capital and associated funds necessary for fluoridation as set forth in subparagraph (A), however, in any given fiscal year (July 1–June 30) funding is not available to the public water system sufficient to pay the noncapital operation and maintenance costs described in subdivision (g) from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(2) Each year the department shall prepare and distribute a list of those water systems that do not qualify for exemption under this section from the fluoridation requirements of Section 4026.7. This list shall include water systems that have received, or are expected to receive, sufficient funding for capital and associated costs so as to not qualify for exemption under subparagraph (A) of paragraph (1), and have received, or anticipate receiving, sufficient noncapital maintenance and operation funding pursuant to subdivision (g), so that they do not qualify for exemption under subparagraph (B) of paragraph (1).

(3) Any water system that has acquired the funds necessary for fluoridation as set forth in subparagraph (A) of paragraph (1), and is not included in the list pursuant to paragraph (2), may elect to exercise the option not to fluoridate during the following fiscal year pursuant to subparagraph (B) of paragraph (1) by so notifying the department by certified mail on or before June 1.

(4) The permit issued by the department for a public water system that is scheduled to implement fluoridation pursuant to paragraph (4) of subdivision (b) of Section 4026.7 shall specify

whether it is required to fluoridate pursuant to Section 4026.7, or whether it has been granted an exemption pursuant to either subparagraph (A) or subparagraph (B) of paragraph (1).

(b) The department shall enforce Section 4026.7 and this section, and all regulations adopted pursuant to these sections, unless delegated pursuant to a local primary agreement.

(c) If the owner or operator of any public water system subject to Section 4026.7 fails, or refuses, to comply with any regulations adopted pursuant to Section 4026.7, or any order of the department implementing these regulations, the Attorney General shall, upon the request of the department, institute mandamus proceedings, or other appropriate proceedings, in order to compel compliance with the order, rule, or regulation. This remedy shall be in addition to all other authorized remedies or sanctions.

(d) Neither this section nor Section 4026.7 shall supersede subdivision (b) of Section 4027.6.

(e) The department shall seek all sources of funding for enforcement of the standards and capital cost requirements established pursuant to this section and Section 4026.7, including, but not limited to, all of the following:

(1) Federal block grants.

(2) Donations from private foundations.

Expenditures from governmental sources shall be subject to specific appropriation by the Legislature for these purposes.

(f) A public water system with less than 10,000 service connections may elect to comply with the standards, compliance requirements, and regulations for fluoridation established pursuant to this section and Section 4026.7.

(g) Costs, other than capital costs, incurred in complying with this section and Section 4026.7, including regulations adopted pursuant to those sections, may be paid from federal grants, or donations from private foundations, for these purposes. Each public water system that will incur costs, other than capitalization costs, as a result of compliance with this section and Section 4026.7, shall provide an estimate to the department of the anticipated total annual operations and maintenance costs related to fluoridation treatment by January 1 of each year.

(h) A public water system subject to the jurisdiction of the Public Utilities Commission shall be entitled to recover from its customers all of its capital and associated costs, and all of its operation and maintenance expenses associated with compliance with this section and Section 4026.7. The Public Utilities Commission shall approve rate increases for an owner or operator of a public water system that is subject to its jurisdiction within 45 days of the filing of an application or an advice letter, in accordance with the commission's requirements, showing in reasonable detail the amount of additional

revenue required to recover the foregoing capital and associated costs, and operation and maintenance expenses.

SEC. 3. Section 21080.26 is added to the Public Resources Code, to read:

21080.26. This division does not apply to minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code or regulations adopted thereunder.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because to the extent that this act imposes a mandated cost on public water systems, that cost is not reimbursable by the state because this act applies to public water systems generally, not just to public water systems owned or operated by local agencies. This finding is consistent with the decision in the case of *County of Los Angeles v. State of California*, 43 Cal. 3d 46.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

