

Senate Bill No. 385

CHAPTER 272

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.

[Approved by Governor September 4, 2015. Filed with
Secretary of State September 4, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 385, 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 the persons served by the public water system 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.

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

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

116431. (a) At the request of any public water system that prepares and submits a compliance plan to the state board, the state board may grant a period of time to achieve compliance with the primary drinking water standard for hexavalent chromium by the state board's written approval of the compliance plan.

(b) (1) A compliance plan shall include all of the following:

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

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

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

(2) The state board may do either of the following:

(A) Approve a compliance plan.

(B) Provide written comments on the compliance plan to the public water system. The comments may include requiring the public water system's compliance, prior to January 1, 2020, with the primary drinking water standard for hexavalent chromium if the earliest feasible date, based on review of the compliance plan and based on the public water system's specific circumstances identified in the plan, is prior to January 1, 2020. If the state board provides written comments, the public water system may submit a revised compliance plan that the state board may approve if the

plan timely and adequately addresses any and all written comments provided by the state board.

(c) The public water system shall provide written notice regarding the compliance plan to the persons served by the public water system at least two times per year. The written notice shall meet the translation requirements provided in subdivision (h) of Section 116450 and shall include notice of all of the following:

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

(2) That the persons served by the public water system have access to alternative drinking water and that the public water system shall provide information on that drinking water. The notice shall identify where that information may be obtained.

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

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

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

(f) (1) At any time, the state board may direct revisions to a compliance plan or disapprove a compliance plan if the state board determines that the actions and timelines addressed in the compliance plan are inadequate to achieve compliance by the earliest feasible date. At any time, the state board may disapprove a written status report if the state board determines that the written status report fails to demonstrate that the public water system is complying with the approved compliance plan by the milestone dates. In

these instances, the state board shall provide the public water system with written notice specifying the reason for the required revisions or disapproval and the deficiencies that shall be addressed in a resubmitted compliance plan or written status report.

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

(3) A compliance plan approved by the state board pursuant to this section shall continue in effect until the earliest feasible compliance date, as specified by the compliance plan, or until the water system fails to retain state board approval of the compliance plan.

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

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

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

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

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

O