

AMENDED IN SENATE SEPTEMBER 6, 1995

AMENDED IN SENATE AUGUST 29, 1995

AMENDED IN SENATE AUGUST 21, 1995

AMENDED IN SENATE JULY 5, 1995

AMENDED IN SENATE JUNE 14, 1995

AMENDED IN ASSEMBLY MAY 31, 1995

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Speier
(Principal coauthor: Assembly Member Willie Brown)
(Principal coauthor: Senator Maddy)
(Coauthors: Assembly Members Goldsmith and Katz)

February 22, 1995

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, 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, it 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 ~~authorize public water systems to recover the costs of compliance through its rates. The 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.

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



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

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

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

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

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

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

18 4026.8. (a) (1) A public water system is not required
19 to comply with Section 4026.7, or the regulations adopted
20 thereunder by the department, in either of the following
21 situations:

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

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

39 (2) ~~By March 1 of each~~ *Each* year the department shall
40 prepare and distribute a list of those water systems that



1 do not qualify for exemption under this section from the
2 fluoridation requirements of Section 4026.7. This list shall
3 include water systems that have received, or are
4 expected to receive, sufficient funding for capital and
5 associated costs so as to not qualify for exemption under
6 subparagraph (A) of paragraph (1), and have received,
7 or anticipate receiving, sufficient noncapital
8 maintenance and operation funding pursuant to
9 subdivision (g), so that they do not qualify for exemption
10 under subparagraph (B) of paragraph (1).

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

19 (4) The permit issued by the department for a public
20 water system that is scheduled to implement fluoridation
21 pursuant to paragraph (4) of subdivision (b) of Section
22 4026.7 shall specify whether it is required to fluoridate
23 pursuant to Section 4026.7, or whether it has been granted
24 an exemption pursuant to either subparagraph (A) or
25 subparagraph (B) of paragraph (1).

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

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



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

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

8 (1) Federal block grants.

9 (2) Donations from private foundations.

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

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

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

29 ~~(h) A public water system voluntarily complying with
30 this section or Section 4026.7 shall be entitled to recover
31 through its rates the costs of compliance with this section
32 and Section 4026.7.~~

33 ~~(i)~~

34 (h) A public water system subject to the jurisdiction of
35 the Public Utilities Commission shall be entitled to
36 recover from its customers all of its capital and associated
37 costs, and all of its operation and maintenance expenses
38 associated with compliance with this section and Section
39 4026.7. The Public Utilities Commission shall approve rate
40 increases for an owner or operator of a public water



1 system that is subject to its jurisdiction within 45 days of
2 the filing of an application or an advice letter, in
3 accordance with the commission's requirements,
4 showing in reasonable detail the amount of additional
5 revenue required to recover the foregoing capital and
6 associated costs, and operation and maintenance
7 expenses.

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

10 21080.26. This division does not apply to *minor*
11 alterations to utilities made for the purposes of complying
12 with Sections 4026.7 and 4026.8 of the Health and Safety
13 Code or regulations adopted thereunder.

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

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

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

