

Assembly Bill No. 411

CHAPTER 765

An act to amend Sections 115880, 115885, and 115915 of the Health and Safety Code, relating to public beaches.

[Approved by Governor October 7, 1997. Filed with Secretary of State October 8, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 411, Wayne. Beach sanitation: posting.

Existing law requires the State Department of Health Services to adopt regulations establishing minimum standards for the sanitation of public beaches. Violation of these regulations adopted by the department is a crime.

This bill would require these regulations to require the testing of the waters adjacent to all public beaches, as defined, for microbiological contaminations, including, but not limited to, total coliform, fecal coliform, and enterococci bacteria, to establish protocols for determining the location of monitoring sites and monitoring frequency based on risks to public health, and for public notification of health hazards, including, but not limited to, the posting, closing, and reopening of public beaches, and to require that public beaches, with certain exceptions, be tested for microbiological contaminations, including, but not limited to, total coliform, fecal coliform, and enterococci bacteria on a weekly basis from April 1 to October 31, inclusive, of each year if certain conditions are met. By changing the definition of a crime, this bill would impose a state-mandated local program.

This bill would, subject to appropriation of sufficient funds, require local health officers to be responsible for testing waters adjacent to public beaches within their jurisdiction. This bill would require the local health officer to immediately test the waters adjacent to a public beach and to take related action in the event of a known untreated sewage release, and in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, would require the local health officer to immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards. By increasing the duties of local health officers, this bill would impose a state-mandated local program.

Existing law requires the health officer having jurisdiction of the area in which a public beach is created to close, or restrict the use of, the public beach if he or she finds any violation of the standards.

This bill would, instead, authorize the health officer to close, or restrict the use of, the public beach if he or she finds that a violation exists.

Existing law requires the department, upon investigation of a complaint, to close, or restrict the use of, any public beach if it finds that a violation exists.

This bill would, instead, authorize the department to close, or restrict the use of, a public beach if it finds that a violation exists.

Existing law requires the local health officer to post a beach with conspicuous warning signs whenever the beach fails to meet certain bacteriological standards, and it is determined that the cause of the elevated levels constitutes a public health hazard.

This bill would, in addition, require the local health officer to post a beach with conspicuous warning signs, as described, whenever the beach fails to meet the standards developed by the department established pursuant to this bill.

Existing law requires each local health officer to notify the Director of Parks and Recreation when a public beach is in violation of the sanitation standards.

This bill would, instead, require the local health officer to notify the agency responsible for the operation and maintenance of the public beach within 24 hours of any public beach posting, closure, or restriction, and would, subject to appropriation, require the agency responsible for the operation and maintenance of the public beach to establish a telephone hotline and update it as need to convey changes in public health risks, to inform the public of beach postings, closures, and restrictions. By increasing the duties of the local health officer, this bill would impose a state-mandated local program.

This bill would make any duty imposed upon a local public officer or agency pursuant to these provisions mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of those duties, and would require the director to annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that for certain mandates, no reimbursement is required by this act for a specified reason. With

regard to other mandates, this bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

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

SECTION 1. Section 115880 of the Health and Safety Code is amended to read:

115880. (a) The department shall by regulation, in consultation with local health officers and the public, establish minimum standards for the sanitation of public beaches, including, but not limited to, the removal of refuse, as it determines are reasonably necessary for the protection of the public health and safety.

(b) Prior to final adoption by the department, the regulations and standards required by this section shall undergo an external comprehensive review process similar to the process set forth in Section 57004 of the Health and Safety Code.

(c) The regulations shall, at a minimum, do all of the following, by December 31, 1998:

(1) Require the testing of the waters adjacent to all public beaches for microbiological contaminants, including, but not limited to, total coliform, fecal coliform, and enterococci bacteria. The department may require the testing of waters adjacent to all public beaches for microbiological indicators other than those set forth in this paragraph, or a subset of those set forth in this paragraph, if the department affirmatively establishes, based on the best available scientific studies and the weight of the evidence, that the alternative indicators are as protective of the public health.

(2) Establish protective minimum standards for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1).

(3) Establish protocols for all of the following:

(A) Determining monitoring site locations and monitoring frequency based on risks to public health.

(B) Making decisions regarding public notification of health hazards, including, but not limited to the posting, closing, and reopening of public beaches.

(4) Require that the waters adjacent to public beaches be tested for total coliform, fecal coliform, and enterococci bacteria, or for other microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1). Except as set forth in paragraph (5), testing shall be conducted on at least a weekly basis, from April 1 to October 31, inclusive, of each year, beginning in 1999, if all of the following apply:

(A) The beach is visited by more than 50,000 people annually.

(B) The beach is located on an area adjacent to a storm drain that flows in the summer.

(5) The monitoring frequency and locations established pursuant to this subdivision and related regulations may only be reduced or altered after the testing required pursuant to paragraph (4) reveals levels of microbiological contaminants that do not exceed for a period of two years the minimum protective standards established pursuant to paragraph (2).

(d) The local health officer shall be responsible for testing the waters adjacent to, and coordinating the testing of, all public beaches within his or her jurisdiction.

(e) The local health officer may meet the testing requirements of this section by utilizing test results from other agencies conducting microbiological contamination testing of the waters under his or her jurisdiction.

(f) Any city or county may adopt standards for the sanitation of public beaches within its jurisdiction that are stricter than the standards adopted by the state department pursuant to this section.

(g) For purposes of this section, "public beach" means any public beach located within the coastal zone, as defined in Section 30103 of the Public Resources Code.

(h) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 2. Section 115885 of the Health and Safety Code is amended to read:

115885. The health officer having jurisdiction over the area in which a public beach is created shall:

(a) Inspect the public beach to determine whether the standards established pursuant to Section 115880 are being complied with. If the health officer finds any violation of the standards, he or she may restrict the use of, or close, the public beach or portion thereof in which the violation occurs until the standard is complied with.

(b) Investigate any complaint of a person of a violation of any standard established by the department pursuant to Section 115880. If the health officer finds any violation of the standards prescribed by the department, he or she may restrict the use of, or close, the public beach or portion thereof until the standard is complied with. If the person who made the complaint is not satisfied with the action taken

by the health officer, he or she may report the violation to the department. The department shall investigate the reported violation, and, if it finds that the violation exists, it may restrict the use of or close the public beach or portion thereof until the standard violated is complied with.

(c) (1) Whenever a beach is posted, closed, or otherwise restricted in accordance with Section 115915, the health officer shall inform the agency responsible for the operation and maintenance of the public beach within 24 hours of the posting, closure, or restriction.

(2) The health officer shall establish a telephone hotline to inform the public of all beaches currently closed, posted, or otherwise restricted. The hotline shall be updated as needed in order to convey changes in public health risks.

(d) Report any violation of the standards established pursuant to Section 115880 to the district attorney, or if the violation occurred in a city and, pursuant to Section 41803.5 of the Government Code, the city attorney is authorized to prosecute misdemeanors, to the city attorney.

(e) In the event of a known untreated sewage release, the local health officer shall immediately test the waters adjacent to the public beach and to take action pursuant to regulations established under Section 115880.

(f) Notwithstanding any other provision of law, in the event of an untreated sewage release that is known to have reached recreational waters adjacent to a public beach, the local health officer shall immediately close those waters until it has been determined by the local health officer that the waters are in compliance with the standards established pursuant to Section 115880.

(g) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 3. Section 115915 of the Health and Safety Code is amended to read:

115915. (a) Whenever any beach fails to meet the bacteriological standards established pursuant to subdivision (b) of Section 115880, the health officer shall, at a minimum, post the beach with conspicuous warning signs to inform the public of the nature of the problem and the possibility of risk to public health.

(b) A warning sign shall be visible from each legal primary beach access point, as identified in the coastal access inventory prepared

and updated pursuant to Section 30531 of the Public Resources Code, and any additional access points identified by the health officer.

(c) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district 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.

Moreover, as to other costs, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Also, 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.

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