



- Board of Directors  
*Communications and Legislation Committee*

4/14/2015 Board Meeting

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8-4

## Subject

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Express support for SB 385 (Hueso, D-San Diego) – Primary Drinking Water Standards: Hexavalent Chromium

## Executive Summary

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Senate Bill 385 was introduced by Senator Ben Hueso (D-San Diego) on February 24, 2015 ([Attachment 1](#)). SB 385 authorizes the State Water Resources Control Board (State Board) to grant a variance from the primary drinking water standard for hexavalent chromium (chromium 6) at the request of a public water system, if: (1) the State Board approves a compliance plan submitted by the public water system, (2) the public water system annually updates the State Board on the status of the approved compliance plan, and (3) the public water system notifies its customers at least twice a year regarding its compliance strategy and tap water alternatives. A public water system that has requested, or has been granted, a variance shall not be deemed in violation of the primary drinking water standard for chromium 6 while the request for a variance is pending or while the variance is in effect. The bill's variance provision sunsets on January 1, 2020. By declaring an urgency measure, the SB 385 provisions go into effect immediately after passage.

## Background

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California's new 0.010 mg/L (10 ppb) maximum contaminant level (MCL) for chromium 6 went into effect on July 1, 2014. To comply with the regulation, public water systems may need to take major compliance actions, such as designing, financing, and constructing water treatment facilities. Other water systems may have to comply with the regulation through distribution system infrastructure projects, such as source blending and/or new source development. Either way, there is concern that there is insufficient time to implement the required actions given how long it takes to design, plan, and finance these projects. Despite their best efforts to comply, public water systems run the risk of being deemed in violation of the chromium 6 MCL. The State Board's Division of Drinking Water has estimated that approximately 128 water systems will be impacted by the chromium 6 MCL.

Monitoring for chromium 6 compliance is ongoing. Compliance with the chromium 6 MCL is based on a running annual average of monitoring results. If the running annual average exceeds the 10 ppb, the water system is immediately in violation of the MCL. Accordingly, water systems with chromium 6 concentrations that are consistently above 10 ppb will be in violation of the chromium 6 MCL by January 1, 2016.

In a comment letter on the proposed chromium 6 MCL, Metropolitan staff advocated for a three-to five-year implementation and compliance schedule to help plan, design, and construct treatment facilities for the upcoming chromium 6 MCL. While not adopted into the regulation, Metropolitan's strategy was similar to that used for federal drinking water standard rulemaking (e.g., for arsenic and disinfection by-products). An extended implementation period as allowed by the United States Environmental Protection Agency for arsenic and disinfection by-products is sound public policy that balances the need to protect public health with practical implementation constraints. An extended implementation period preserves public confidence by not forcing into drinking water violations public water systems which have no ability to install additional treatment in a short amount of time.

## Details

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SB 385 has no direct impact on Metropolitan. Further, the member agencies have already adjusted operations (e.g., blending) to comply with the chromium 6 MCL. Chromium 6, however, is naturally occurring in a desert environment. Some California water systems cannot blend with other water supply sources and require extensive treatment facility upgrades in order to comply with the regulation.

Because the regulation provided only 18 months for compliance, impacted water systems could exceed the MCL for several years, leading to potential enforcement actions and litigation costs for those districts in violation of the standard. Given the extraordinary drought impacting California's water supplies, limited ratepayer funds are better spent on investments in water treatment for chromium 6 than tied up in costly fines and/or litigation.

Under California Health and Safety Code Sections 116425 and 116430, water systems may apply for a variance or exemption from a MCL. The sponsor of SB 385, the Association of California Water Agencies (ACWA), asserts that the existing variance process is too restrictive and seeks statutory flexibility for bringing public water systems into compliance. SB 385 allows the State Board to grant a variance from the MCL for chromium 6 if the following conditions are met: (1) the public water system prepares and submits a compliance plan; (2) the State Board approves the compliance plan; (3) the public water system provides specified notice requirements regarding the compliance plan to its customers; and (4) the public water system sends annual reports to the State Board concerning the status of the approved compliance plan. The compliance plan must describe the actions the public water system is taking and will take by milestone dates to comply with the MCL for chromium 6 by the earliest feasible date, which cannot be more than five years from the date on which compliance would otherwise be required. Also, the compliance plan must include the public water system's best estimate of the funding required for compliance and the actions it will take to secure funding.

SB 385 authorizes the State Board at any time to direct revisions to a compliance plan if the State Board determines it is insufficient. The State Board may also disapprove an annual report if the State Board determines it fails to demonstrate that the public water system is complying with the approved compliance plan by the milestone dates. A variance may become ineffective under certain circumstances, including if a public water system fails to submit a revised compliance plan or a revised annual report within 60 days of receiving notice from the State Board that such revisions are necessary, or if a revised compliance plan or a revised annual report is disapproved.

The public water system must notify its customers in writing at least twice a year that: (1) the public water system is implementing the approved compliance plan; and (2) the public water system's customers have an alternative to consuming tap water and where the customer can obtain information on the alternative. In the annual written report to the State Board, the public water system must update the status of actions specified in the approved compliance plan and specify any changes to the compliance plan that are necessary to achieve compliance with the chromium 6 MCL by the earliest feasible date.

SB 385 does not change the existing monitoring and notification requirements of the chromium 6 MCL. Also, it does not affect the requirement that water systems with sampling results in excess of the MCL must notify the State Board of those results and start quarterly monitoring. In addition, public water systems would still be required to notify customers of monitoring results in excess of the chromium 6 MCL in their annual Consumer Confidence Reports, as well as prepare compliance plans and annual reports that detail the steps being taken to achieve compliance with the MCL.

## Policy

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M.I. 46191 – April 12, 2005 – “Support legislative and administrative efforts to adopt cost-effective drinking water regulations to help ensure the protection of human health...”

**California Environmental Quality Act (CEQA)**

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

**Board Options**

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**Option #1**

Adopt the CEQA determination that the proposed action is not subject to CEQA and authorize the General Manager to express support for SB 385.

**Fiscal Impact:** No fiscal impact to Metropolitan

**Business Analysis:** If passed, SB 385 would give public water systems time to plan, design, and construct treatment facilities to comply with the new chromium 6 MCL.

**Option #2**

Take no position on SB 385.

**Fiscal Impact:** No fiscal impact to Metropolitan

**Business Analysis:** Public water systems may be unable to meet new chromium 6 MCL by January 1, 2016.

**Staff Recommendation**

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Option #1

  
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Dee Zinke  
Deputy General Manager, External Affairs

4/7/2015

Date

  
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Jeffrey Kighlinger  
General Manager

4/7/2015

Date

**Attachment 1 – Senate Bill 385, dated 2/24/15**

**SENATE BILL****No. 385**

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**Introduced by Senator Hueso**

(Principal coauthors: Assembly Members Alejo and Eduardo Garcia)

**(Coauthors: Senators Cannella and Stone)**

(Coauthor: Assembly Member Mayes)

February 24, 2015

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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 introduced, Hueso. Primary drinking water standards: variances: hexavalent chromium.

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, to grant a variance from the primary drinking water standard for hexavalent chromium if the public water system prepares and submits a compliance plan, the state board approves the compliance plan, the public water system provides specified notice requirements regarding the compliance plan to its customers, and the public water system sends annual reports to the state board that updates

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the status of the approved compliance plan. The bill would require the compliance plan to describe the actions the public water system is taking and will take to comply with the primary drinking water standard for hexavalent chromium by the earliest feasible date, include the public water system's best estimate of the funding required for compliance, and the actions the public water system will take to secure funding.

The bill would authorize the state board to direct revisions to the compliance plan or previously approved compliance plan, if the board makes certain determinations and would make a variance ineffective 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 adopt emergency regulations to implement these provisions, to be in effect for no more than 2 years. To the extent that a public water system, when requesting a variance or submitting a report pursuant to these provisions, would violate certain provisions of the act, 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, the
- 4 state board may grant a variance from the primary drinking water
- 5 standard for hexavalent chromium, if all of the following conditions
- 6 are met:
- 7 (1) (A) The public water system has prepared and submitted a
- 8 compliance plan, as described in subparagraph (B), to the state
- 9 board for approval.
- 10 (B) The compliance plan shall describe the actions the public
- 11 water system is taking and will take by milestone dates to comply

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1 with the primary drinking water standard for hexavalent chromium  
2 by the earliest feasible date. The actions may include, but are not  
3 limited to, planning, designing, permitting, financing, constructing,  
4 testing, and activating treatment facilities or other capital  
5 improvements. The compliance plan shall include the public water  
6 system's best estimate of the funding required for compliance and  
7 the actions that the public water system will take to secure the  
8 funding. In no event shall the earliest feasible date exceed five  
9 years from the date on which compliance otherwise would be  
10 required.

11 (2) The state board has reviewed the compliance plan, identified  
12 any changes needed to ensure compliance with the primary  
13 drinking water standard for hexavalent chromium by the earliest  
14 feasible date, and approved the plan. The state board shall ensure  
15 that the public water system has reviewed available funding  
16 sources, cleanup and treatment technologies, and other options to  
17 achieve and maintain compliance of the primary drinking water  
18 standard by the earliest feasible date.

19 (3) The public water system provides written notice regarding  
20 the compliance plan to its customers at least two times per year.  
21 The written notice shall meet the translation requirements provided  
22 in subdivision (h) of Section 116450 and shall include notice of  
23 all of the following:

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

33 (B) That the public water system's customers have an alternative  
34 to consuming tap water and that the public water system can  
35 provide information on that alternative. The notice shall identify  
36 where the customer can obtain that information.

37 (4) Every 12 months following the state board's approval of the  
38 compliance plan, the public water system shall submit a written  
39 report to the state board, for the state board's approval, that updates  
40 the status of actions specified in the state board-approved

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1 compliance plan and that specifies any changes to the compliance  
2 plan that are needed to achieve compliance with the primary  
3 drinking water standard for hexavalent chromium by the earliest  
4 feasible date. Approval of a report with changes to the compliance  
5 plan shall result in an approved revised compliance plan.

6 (b) A public water system that has requested, or has been  
7 granted, a variance pursuant to this section shall not be deemed in  
8 violation of the primary drinking water standard for hexavalent  
9 chromium while the request for a variance is pending or while the  
10 variance is in effect.

11 (c) At any time, the state board may direct revisions to a  
12 compliance plan if the state board determines that the compliance  
13 plan is insufficient or may disapprove an annual report if the state  
14 board determines that the annual report fails to demonstrate that  
15 the public water system is complying with the approved compliance  
16 plan by the milestone dates. In these instances, the state board shall  
17 provide the public water system with written notice specifying the  
18 reason for the required revisions or disapproval and the deficiencies  
19 that shall be addressed before the compliance plan is resubmitted.

20 (d) A previously approved compliance plan that the state board  
21 requires to be revised, or an annual report that is disapproved by  
22 the state board, may be revised and resubmitted by the public water  
23 system for state board approval within 60 days of receipt of the  
24 notice required by subdivision (c). A public water system shall not  
25 be deemed in violation of the primary drinking water standard for  
26 hexavalent chromium for 60 days following receipt of this notice.  
27 A variance granted pursuant to subdivision (a) shall not be effective  
28 for any public water system that fails to submit a revised  
29 compliance plan or revised annual report within 60 days of  
30 receiving the notice, or that submits a revised compliance plan or  
31 revised annual report that is subsequently disapproved.

32 (e) (1) Except as provided in paragraph (2), the state board may  
33 adopt emergency regulations in accordance Section 11346.1 of  
34 the Government Code in order to implement this section.

35 (2) The emergency regulations shall remain in effect for a period  
36 not to exceed two years during which time the state board shall go  
37 back and adopt the regulations in conformity with the provisions  
38 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
39 Division 3 of Title 2 of the Government Code.

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1 (f) (1) This section shall remain in effect only until January 1,  
2 2020, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, 2020, deletes or extends that date.

4 (2) A variance granted by the state board pursuant to this section  
5 before January 1, 2020, shall continue in effect until the state board  
6 determines that the variance is no longer in effect pursuant to  
7 subdivision (d) or until the earliest feasible compliance date, as  
8 specified by the compliance plan.

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

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

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

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