

AMENDED IN ASSEMBLY APRIL 17, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2309

**Introduced by Assembly Member Muratsuchi Members Muratsuchi
and Pacheco**

February 12, 2024

An act to amend Section 41803.5 of the Government Code, to amend Section 115885 of the Health and Safety Code, and to amend Section 633.05 of the Penal Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2309, as amended, Muratsuchi. City attorney: state law: misdemeanor.

~~(1) Existing~~

Existing law authorizes the city attorney of any general law city or chartered city to, with the consent of the district attorney of that county, prosecute any misdemeanor committed within the city arising out of violation of state law, as specified.

~~This bill would remove the above-described consent requirement and, instead, would, notwithstanding the above-described authorization for city attorneys, authorize the city attorney of any general law city or chartered city to prosecute any misdemeanor committed within the city arising out of violation of state law. The bill would make conforming changes: law, provided that the legislative body of a city passes an ordinance granting that prosecutorial authority to the city attorney.~~

~~(2) Existing law makes violations of specified standards relating to public beaches by any private person a misdemeanor. Existing law requires, subject to specified limitations, a health officer, as defined, to report any violation of those standards to the district attorney, or to the~~

city attorney if the violation occurred in that city and the city attorney is authorized by the district attorney of that county to prosecute any misdemeanor committed within the city, as specified.

This bill would, instead, require a health officer to report the above-described violations to the district attorney and city attorney without the limitation described above. By increasing the reporting obligations of a health officer, as specified above, the bill would impose a state-mandated local program.

(3) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: *yes-no*.

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

1 SECTION 1. Section 41803.5 of the Government Code is
2 amended to read:

3 41803.5. (a) With the consent of the district attorney of the
4 county, the city attorney of any general law city or chartered city
5 within the county may prosecute any misdemeanor committed
6 within the city arising out of violation of state law. ~~This section
7 shall not be deemed to affect any of the provisions of Section
8 72193.~~

9 (b) In any case in which the district attorney is granted any
10 powers or access to information with regard to the prosecution of
11 misdemeanors, this grant of powers or access to information shall
12 be deemed to apply to any other officer charged with the duty of
13 prosecuting misdemeanor charges in the state, as authorized by
14 law.

15 (c) *Notwithstanding subdivision (a), the city attorney of any
16 general law city or chartered city may prosecute any misdemeanor
17 committed within the city arising out of violation of state law,
18 provided that the legislative body of a city passes an ordinance
19 granting that prosecutorial authority to the city attorney.*

1 *(d) This section shall not be deemed to affect any of the*
2 *provisions of Section 72193.*

3 ~~SECTION 1. Section 41803.5 of the Government Code is~~
4 ~~amended to read:~~

5 ~~41803.5. (a) The city attorney of any general law city or~~
6 ~~chartered city may prosecute any misdemeanor committed within~~
7 ~~the city arising out of violation of state law. This section shall not~~
8 ~~be deemed to affect any of the provisions of Section 72193.~~

9 ~~(b) In any case in which the district attorney is granted any~~
10 ~~powers or access to information with regard to the prosecution of~~
11 ~~misdemeanors, this grant of powers or access to information shall~~
12 ~~be deemed to apply to any other officer charged with the duty of~~
13 ~~prosecuting misdemeanor charges in the state, as authorized by~~
14 ~~law.~~

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

17 ~~115885. (a) The health officer having jurisdiction over the~~
18 ~~area in which a public beach is created shall:~~

19 ~~(1) Inspect the public beach to determine whether the standards~~
20 ~~established pursuant to Section 115880 are being complied with.~~
21 ~~If the health officer finds any violation of the standards, the health~~
22 ~~officer may restrict the use of, or close, the public beach or portion~~
23 ~~thereof in which the violation occurs until the standard is complied~~
24 ~~with.~~

25 ~~(2) Investigate any complaint of a violation of any standard~~
26 ~~established by the department pursuant to Section 115880. If the~~
27 ~~health officer finds any violation of the standards prescribed by~~
28 ~~the department, the health officer may restrict the use of, or close,~~
29 ~~the public beach or portion thereof until the standard is complied~~
30 ~~with. If the person who made the complaint is not satisfied with~~
31 ~~the action taken by the health officer, they may report the violation~~
32 ~~to the department. The department shall investigate the reported~~
33 ~~violation, and, if it finds that the violation exists, it may restrict~~
34 ~~the use of or close the public beach or portion thereof until the~~
35 ~~standard violated is complied with.~~

36 ~~(3) Whenever a beach is posted, closed, or otherwise restricted~~
37 ~~in accordance with Section 115915, inform the agency responsible~~
38 ~~for the operation and maintenance of the public beach within 24~~
39 ~~hours of the posting, closure, or restriction.~~

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

5 ~~(5) Report any violation of the standards established pursuant~~
6 ~~to Section 115880 to the district attorney, or if the violation~~
7 ~~occurred in a city, to a city attorney.~~

8 ~~(6) In the event of a known untreated sewage release,~~
9 ~~immediately test the waters adjacent to the public beach and to~~
10 ~~take action pursuant to regulations established under Sections~~
11 ~~115880 and 115881.~~

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

18 ~~(b) If the department is aware of an untreated sewage release~~
19 ~~that has reached recreational waters adjacent to a public beach,~~
20 ~~and that the local health officer has not taken action to close the~~
21 ~~beach, it may take action to close those waters until the waters are~~
22 ~~in compliance.~~

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

33 ~~SEC. 3. Section 633.05 of the Penal Code is amended to read:~~
34 ~~633.05. (a) Nothing in Section 632, 632.5, 632.6, or 632.7~~
35 ~~prohibits a city attorney acting under authority of Section 41803.5~~
36 ~~of the Government Code, or any person acting pursuant to the~~
37 ~~direction of one of those city attorneys acting within the scope of~~
38 ~~their authority, from overhearing or recording any communication~~
39 ~~that they could lawfully overhear or record.~~

1 ~~(b) Nothing in Section 632, 632.5, 632.6, or 632.7 renders~~
 2 ~~inadmissible any evidence obtained by the above-named persons~~
 3 ~~by means of overhearing or recording any communication that~~
 4 ~~they could lawfully overhear or record.~~

5 ~~SEC. 4. If the Commission on State Mandates determines that~~
 6 ~~this act contains costs mandated by the state, reimbursement to~~
 7 ~~local agencies and school districts for those costs shall be made~~
 8 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
 9 ~~4 of Title 2 of the Government Code.~~

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REVISIONS:

Heading—Line 1.

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