

HOUSE BILL REPORT

HB 1356

As Reported By House Committee On:
Environmental Affairs

Title: An act relating to enforcement of public water system requirements.

Brief Description: Modifying penalties and compliance for public water systems.

Sponsors: Representatives Rust, Horn, Roland and Valle; by request of Department of Health.

Brief History:

Reported by House Committee on:
Environmental Affairs, February 11, 1993, DPS.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Van Luven, Assistant Ranking Minority Member; Bray; Edmondson; Foreman; Hansen; Holm; L. Johnson; J. Kohl; Linville; Roland; and Sheahan.

Staff: Harry Reinert (786-7110).

Background: Under current state law, the Department of Health and local health departments have regulatory authority over public water systems. A public water system is any system with two or more connections.

The department may assess a penalty of not less than \$500 and not more than \$5,000 against a person who does not comply with a department order to stop work on a public water system, who fails to eliminate a cross connection, or who continues to violate any other rule of the department. The penalty is imposed in writing by the department. The person against whom the penalty is imposed may request mitigation or remission of the penalty within 14 days after the notice of penalty is sent. The person may also file a request for an adjudicative proceeding to be conducted under the Administrative Procedures Act.

The attorney general may bring an action to collect a penalty which has been assessed by the department.

All penalties collected by the department are deposited in the general fund.

The Department of Health may delegate enforcement authority, including the authority to assess penalties, to local health departments. Penalties collected by local health departments are deposited in the general fund of the local government.

There is currently no explicit authority for the department to enter the premises of a public water system to carry out an inspection or to request a search warrant if the system owner refuses the department access. A number of other state agencies do have explicit authority to conduct inspections and request search warrants when necessary to conduct inspections.

Summary of Substitute Bill: The Department of Health may impose a maximum penalty of \$5,000 for violation of its rules or statutes relating to public water systems. There is no minimum penalty. If the violation creates a public health emergency, the maximum penalty is \$10,000.

Construction, alteration, or expansion of a public water system without department approval may result in a penalty of not more than \$5,000 per service connection. If the system serves a transient population, such as a hotel or motel, the penalty may be a maximum of \$400 per person served by the system. Under either of these circumstances, the total penalty that may be imposed is \$500,000.

The existing procedure for a mitigation hearing prior to an adjudicative proceeding is eliminated.

A person who fails to pay penalties is subject to interest charges at the rate of 1 percent for each month the penalty remains unpaid after the final administrative order has been issued.

If the final administrative order is not appealed to superior court, the department may file the order with the clerk of the superior court and request that judgment be rendered in favor of the department for the amount of the penalty.

Penalties collected by the department, instead of being deposited in the general fund, are deposited in the safe drinking water account.

In addition to their existing authority to impose civil penalties, local health departments may also collect civil penalties.

The department, and local health departments which have been delegated enforcement powers, may enter upon the premises of a public water system to determine the system's compliance with state law. Prior notice must be given to the water system, unless the inspection is to ensure compliance with a prior order of the department or in response to a serious public health emergency. The department may also request an administrative search warrant from a court of competent jurisdiction.

Substitute Bill Compared to Original Bill: The original bill had a maximum \$10,000 per connection penalty, with no upper limit, for a failure to obtain department approval prior to constructing a water system. The substitute bill provides a maximum \$5,000 per connection penalty with a total penalty of \$500,000.

The original bill allowed the department to inspect a water system without prior notification under all circumstances. The substitute bill requires prior notification, unless the water system is under an enforcement order.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Department of Health now expends more time and energy than necessary to enforce compliance with water systems standards. The mitigation process is inefficient. Local health departments need additional enforcement authority that will be satisfied with the proposed right to inspect the water system without prior notification. Current penalties for failure to obtain approval prior to constructing a water system are not sufficient to prevent some water system developers from violating this requirement and placing the department in an awkward position.

Testimony Against: The maximum fine of \$5,000 is too high for smaller water systems.

Witnesses: B. David Clark, Department of Health (pro); Pat Wiles, Harbor Water (pro); and Richard Junk, Woodland Park Utility Association (con).