

SENATE BILL REPORT

SB 5235

AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, FEBRUARY 19, 1993

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

SPONSORS: Senators Fraser, Barr, Sutherland, Owen and Winsley; by request of Department of Health

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 5235 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fraser, Chairman; Moore, Sutherland, and Talmadge.

Staff: Shannon Murphy (786-7483)

Hearing Dates: January 25, 1993; February 19, 1993

SENATE COMMITTEE ON WAYS & MEANS

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: March 4, 1993

BACKGROUND:

The Washington State Safe Drinking Water Act was developed in response to the federal Safe Drinking Water Act passed in 1976 and substantially expanded in 1986. The purpose of the act was to ensure that the citizens of this state have a safe and reliable drinking water supply.

The Department of Health is charged with carrying out the enforcement of the act. Penalties for violations of the act are subject to a minimum penalty of \$500.

Persons assessed penalties for violation of the act have the option to apply for remission or mitigation of the penalty with the department. In addition, persons violating the act have the opportunity for an adjudicative proceeding.

If the person violating a provision of the act fails to pay an assessed penalty, the Attorney General has the authority to bring an action on behalf of the Department of Health to collect the penalty.

SUMMARY:

The Department of Health has the authority to administratively assess penalties regarding violations of the Safe Drinking Water Act.

Persons violating a law or rule regulating public water systems administered by the Department of Health are subject to a penalty of \$5,000 per day or less. In cases where the violation is determined to be a public health emergency, the maximum penalty is \$10,000 per day for each violation.

Persons who construct, modify or expand a public water system without obtaining departmental approval are subject to a fine of no more than \$10,000 per water service connection. If the water system services a transitory population, the maximum fine is \$400 per person.

Remission or mitigation of fines assessed by the department are no longer available as a separate administrative process.

Penalties imposed by final administrative order are due at the time of service of the final order. Persons failing to pay the penalty within 30 days of service will be charged 1 percent interest per month on the unpaid balance.

Persons seeking judicial review of a final administrative order must place the full amount of the penalty assessed in an interest bearing account in the registry of the reviewing court. Depending on the outcome of the judgment, the court will return the penalty to the person appealing or the court will use the money in the account to satisfy the judgment.

If no appeal is sought against the final administrative order, the Department of Health may file a certified copy of the administrative order with the superior court.

All penalties are to be deposited into the safe drinking water account.

The Secretary of the Department of Health is granted authority to enter premises under control of a public water system. In appropriate cases the secretary is authorized to apply for an administrative search warrant to a judicial officer.

EFFECT OF PROPOSED SUBSTITUTE:

Money collected from penalties that are deposited in the safe drinking water account will be used by the Department of Health for water system training, technical assistance and other assistance relating to water system needs.

The Department of Health may not impose monetary penalties unless prior efforts have been made to resolve the violation informally.

The collection of attorney fees incurred in securing a final administrative order when a penalty is imposed and the party fails to pay the penalty assessed is allowed.

Attorney's fees are allowed in judicial proceedings of a final administrative order for the cost of the Attorney General's office in representing the Department of Health.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Establishing maximum fines rather than minimum fines gives the Department of Health greater flexibility in the assessment of fines.

TESTIMONY AGAINST: None

TESTIFIED: Harold Dygert, Office of the Attorney General (pro); Dave Clark, Department of Health (pro); Dave Siberg, Kitsap Public Utility Council (pro); Kathleen Collins, Association of Washington Cities (pro)