



House of Representatives

File No. 648

General Assembly

February Session, 2000

(Reprint of File No. 122)

Substitute House Bill No. 5184
As Amended by House
Amendment Schedules "A" and "B"

Approved by the Legislative Commissioner
April 19, 2000

An Act Concerning The Certification Of Water Treatment Plant And Water Distribution System Operators.

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 25-32 of the general statutes, as amended by
2 section 63 of public act 99-2 of the June special session, is repealed and
3 the following is substituted in lieu thereof:

4 (a) The Department of Public Health shall have jurisdiction over all
5 matters concerning the purity and adequacy of any water supply
6 source [of water supply] used by any municipality, public institution
7 or water company for obtaining water, the safety of any distributing
8 plant and system for public health purposes, the adequacy of methods
9 used to assure water purity, and such other matters relating to the
10 construction and operation of such distributing plant and system as
11 may affect public health. [The qualifications of the operators of water
12 treatment plants or water distribution systems which treat or supply
13 water used or intended for use by the public shall be subject to the
14 approval of said department pursuant to regulations adopted by the
15 commissioner in accordance with chapter 54.]

16 (b) No water company shall sell, lease, assign or otherwise dispose
17 of or change the use of any watershed lands, except as provided in
18 section 25-43c, as amended by [this act] public act 99-2 of the June
19 special session, without a written permit from the Commissioner of
20 Public Health. [Said] The commissioner shall not grant a permit for the
21 sale, lease or assignment of class I land, except as provided in
22 subsection (d) of this section, and shall not grant a permit for a change
23 in use of class I land unless the applicant demonstrates that such
24 change will not have a significant adverse impact upon the present and
25 future purity and adequacy of the public drinking water supply and is
26 consistent with any water supply plan filed and approved pursuant to
27 section 25-32d. The commissioner may reclassify class I land only upon
28 determination that such land no longer meets the criteria established
29 by subsection (a) of section 25-37c because of abandonment of a water
30 supply source or a physical change in the watershed boundary. Not
31 more than fifteen days before filing an application for a permit under
32 this section, the applicant shall provide notice of such intent, by
33 certified mail, return receipt requested, to the chief executive officer
34 and the chief elected official of each municipality in which the land is
35 situated.

36 (c) The [Commissioner of Public Health] commissioner may grant a
37 permit for the sale, lease, assignment or change in use of any land in
38 class II subject to any conditions or restrictions in use which the
39 commissioner may deem necessary to maintain the purity and
40 adequacy of the public drinking water supply, giving due
41 consideration to: (1) The creation and control of point or nonpoint
42 sources of contamination; (2) the disturbance of ground vegetation; (3)
43 the creation and control of subsurface sewage disposal systems; (4) the
44 degree of water treatment provided; (5) the control of watershed land
45 by the applicant through ownership, easements or use restrictions or
46 other water supply source protection measures; (6) the effect of
47 development of any such land; and (7) any other significant potential
48 source of contamination of the public drinking water supply. The
49 commissioner may reclassify class II land only upon determination

50 that such land no longer meets the criteria established by subsection
51 (b) of section 25-37c because of abandonment of a water supply source
52 or a physical change in the watershed boundary.

53 (d) The commissioner may grant a permit for the sale of class I or II
54 land to another water company, to a state agency or to a municipality
55 if the purchasing entity agrees to maintain the land subject to the
56 provisions of this section, any regulations adopted pursuant to this
57 section and the terms of any permit issued pursuant to this section.
58 Such purchasing entity may not sell, lease, assign or change the use of
59 such land without obtaining a permit pursuant to this section.

60 (e) The commissioner shall not grant a permit for the sale, lease,
61 assignment or change in use of any land in class II unless (1) the land
62 in class II is being sold, leased or assigned as part of a larger parcel of
63 land also containing land in class III and use restrictions applicable to
64 the land in class II will prevent the land in class II from being
65 developed, or (2) the applicant demonstrates that the proposed sale,
66 lease, assignment or change in use will not have a significant adverse
67 impact upon the purity and adequacy of the public drinking water
68 supply and that any use restrictions which the commissioner requires
69 as a condition of granting a permit can be enforced against subsequent
70 owners, lessees and assignees, and (3) the commissioner determines,
71 after giving effect to any use restrictions which may be required as a
72 condition of granting the permit, that such proposed sale, lease,
73 assignment or change in use will not have a significant adverse effect
74 on the public drinking water supply, whether or not similar permits
75 have been granted.

76 (f) [The term "public water supply source"] As used in this section,
77 (1) "water supply source" includes all springs, streams, watercourses,
78 brooks, rivers, lakes, ponds, wells or underground waters from which
79 water is taken, and all springs, streams, watercourses, brooks, rivers,
80 lakes, ponds, wells or aquifer protection areas, as defined in section
81 22a-354h, thereto and all lands drained thereby; and [the term] (2)
82 "watershed land" means land from which water drains into a public

83 drinking water supply.

84 (g) The [Commissioner of Public Health] commissioner shall adopt
85 and from time to time may amend the following: (1) Physical,
86 chemical, radiological and microbiological standards for the quality of
87 public drinking water; (2) minimum treatment methods, taking into
88 account the costs [thereof] of such methods, required for all sources of
89 drinking water, including guidelines for the design and operation of
90 treatment works and water sources, which guidelines shall serve as the
91 basis for approval of local water supply plans by [said] the
92 commissioner; (3) minimum standards to assure the long-term purity
93 and adequacy of the public drinking water supply to all residents of
94 this state; and (4) classifications of water treatment plants and water
95 distribution systems which treat or supply water used or intended for
96 use by the public. On or after October 1, 1975, any water company
97 which requests approval of any drinking water source shall provide
98 for such treatment methods as specified by the [Commissioner of
99 Public Health] commissioner, provided any water company in
100 operation prior to October 1, 1975, and having such source shall
101 comply with regulations adopted by [said] the commissioner, in
102 accordance with chapter 54, in conformance with The Safe Drinking
103 Water Act, Public Law 93-523, and shall submit on or before February
104 1, 1976, a statement of intent to provide for treatment methods as
105 specified by [said] the commissioner, to [said] the commissioner for
106 approval. The commissioner shall adopt regulations, in accordance
107 with chapter 54, requiring water companies to report elevated levels of
108 copper in public drinking water.

109 (h) The [Department of Public Health] department may perform the
110 collection and testing of water samples required by regulations
111 adopted by the commissioner pursuant to this section, in accordance
112 with chapter 54, when requested to do so by [the] a water company.
113 The department shall collect a fee equal to the cost of such collection
114 and testing. Water companies serving one thousand or more persons
115 shall not request routine bacteriological or physical tests under this
116 subsection.

117 (i) The condemnation by a state department, institution or agency of
118 any land owned by a water company shall be subject to the provisions
119 of this section.

120 (j) The commissioner may issue an order declaring a moratorium on
121 the expansion or addition to any existing public water system that the
122 commissioner deems incapable of providing new services with a pure
123 and adequate water supply.

124 (k) The commissioner may issue, modify or revoke orders as needed
125 to carry out the provisions of part III of this chapter. Except as
126 [provided] otherwise provided in this part, such order shall be issued,
127 modified or revoked in accordance with procedures set forth in
128 subsection (b) of section 25-34.

129 (l) The [Commissioner of Public Health] commissioner shall adopt
130 regulations, in accordance with the provisions of chapter 54, to include
131 local health departments in the notification process when a water
132 utility reports a water quality problem.

133 (m) (1) On and after the effective date of regulations adopted under
134 this subsection, no person may operate any water treatment plant or
135 water distribution system that treats or supplies water used or
136 intended for use by the public without a certificate issued by the
137 commissioner under this subsection. The commissioner shall adopt
138 regulations, in accordance with chapter 54, to provide: (A) Standards
139 for the operation of such water treatment plants and water distribution
140 systems; (B) standards and procedures for the issuance of certificates to
141 operators of such water treatment plants and water distribution
142 systems; (C) procedures for the renewal of such certificates every three
143 years; and (D) standards for training required for the issuance or
144 renewal of a certificate. Such regulations shall be consistent with
145 applicable federal law and guidelines for operator certification
146 programs promulgated by the United States Environmental Protection
147 Agency, and shall be adopted and filed with the Secretary of the State
148 pursuant to section 4-172 not later than February 1, 2001.

149 (2) The commissioner may take any disciplinary action set forth in
150 section 19a-17, except for the assessment of a civil penalty under
151 subdivision (6) of subsection (a) of said section, against an operator
152 holding a certificate issued under this subsection for any of the
153 following reasons: (A) Fraud or material deception in procuring a
154 certificate, the renewal of a certificate or the reinstatement of a
155 certificate; (B) fraud or material deception in the performance of the
156 certified operator's professional activities; (C) incompetent, negligent
157 or illegal performance of the certified operator's professional activities;
158 (D) conviction of the certified operator for a felony; or (E) failure of the
159 certified operator to complete the training required under subdivision
160 (1) of this subsection.

161 Sec. 2. Section 25-32e of the general statutes, as amended by section
162 24 of public act 99-215, is repealed and the following is substituted in
163 lieu thereof:

164 (a) If, upon review, investigation or inspection, the Commissioner of
165 Public Health determines that a water company has violated any
166 provision of section 25-32, as amended by this act, section 25-32d or
167 any regulation adopted [thereunder] under section 25-32d, or any
168 regulation in the Public Health Code relating to the purity and
169 adequacy of water supplies or to the testing of water supplies or any
170 report of such testing, [he] the commissioner may impose a civil
171 penalty not to exceed five thousand dollars per violation per day upon
172 such water company. Governmental immunity shall not be a defense
173 against the imposition of any civil penalty imposed pursuant to this
174 section. The [Commissioner of Public Health] commissioner shall
175 adopt regulations, in accordance with the provisions of chapter 54,
176 establishing a schedule or schedules of the amounts, or the ranges of
177 amounts, of civil penalties which may be imposed under this section.
178 In adopting such regulations, the commissioner shall consider the size
179 of or the number of persons served by the water company, the level of
180 assessment necessary to insure immediate and continued compliance
181 with such provision, and the character and degree of injury or
182 impairment to or interference with or threat thereof to: (1) The purity

183 of drinking water supplies; (2) the adequacy of drinking water
184 supplies; and (3) the public health, safety or welfare. No such civil
185 penalty may be imposed until the regulations required by this
186 subsection have been adopted.

187 (b) In setting a civil penalty in a particular case, the commissioner
188 shall consider all factors which [he] the commissioner deems relevant,
189 including, but not limited to, the following: (1) The amount of
190 assessment necessary to insure immediate and continued compliance
191 with such provision; (2) the character and degree of impact of the
192 violation on the purity and adequacy of drinking water supplies; (3)
193 whether the water company incurring the civil penalty is taking all
194 feasible steps or procedures necessary or appropriate to comply with
195 such provisions or to correct the violation; (4) any prior violations by
196 such water company of statutes, regulations, orders or permits
197 administered, adopted or issued by the commissioner; (5) the character
198 and degree of injury to, or interference with, public health, safety or
199 welfare which has been or may be caused by such violation.

200 (c) If the commissioner has reason to believe that a violation has
201 occurred, [he] the commissioner may impose a penalty if compliance is
202 not achieved by a specified date and send to the violator, by certified
203 mail, return receipt requested, or personal service, a notice which shall
204 include: (1) A reference to the sections of the statute or regulation
205 involved; (2) a short and plain statement of the matters asserted or
206 charged; (3) a statement of the amount of the civil penalty or penalties
207 to be imposed; (4) the initial date of the imposition of the penalty, and
208 (5) a statement of the party's right to a hearing.

209 (d) The civil penalty shall be payable for noncompliance on the date
210 specified in subsection (c) of this section and for each day thereafter
211 until the water company against [whom] which the penalty was issued
212 notifies the commissioner that the violation has been corrected. Upon
213 receipt of such notification, the commissioner shall determine whether
214 or not the violation has been corrected and shall notify the water
215 company, in writing, of such determination. The water company may,

216 within twenty days after such notice is sent by the commissioner,
217 request a hearing to contest an adverse determination. If, after such
218 hearing, the commissioner finds that the violation still exists, or if the
219 water company fails to request a hearing, the penalty shall continue in
220 force from the original date of imposition.

221 (e) The water company to [whom] which the notice is addressed
222 shall have twenty days from the date of mailing of the notice to make
223 written application to the commissioner for a hearing to contest the
224 imposition of the penalty. All hearings under this section shall be
225 conducted pursuant to sections 4-176e to 4-184, inclusive. Any civil
226 penalty may be mitigated by the commissioner upon such terms and
227 conditions as [he in his] the commissioner, in the commissioner's
228 discretion, deems proper or necessary upon consideration of the
229 factors set forth in subsection (b) of this section.

230 (f) A final order of the commissioner assessing a civil penalty shall
231 be subject to appeal as set forth in section 4-183, as amended, after a
232 hearing before the commissioner pursuant to subsection (e) of this
233 section, except that any such appeal shall be taken to the superior court
234 for the judicial district of New Britain and shall have precedence in the
235 order of trial as provided in section 52-191. Such final order shall not
236 be subject to appeal under any other provision of the general statutes.
237 No challenge to any such final order shall be allowed as to any issue
238 which could have been raised by an appeal of an earlier order, notice,
239 permit, denial or other final decision by the commissioner.

240 (g) If any water company fails to pay any civil penalty, the Attorney
241 General, upon request of the [Commissioner of Public Health]
242 commissioner, may bring an action in the superior court for the
243 judicial district of Hartford to obtain enforcement of the penalty by the
244 court. All actions brought by the Attorney General pursuant to the
245 provisions of this section shall have precedence in the order of trial as
246 provided in section 52-191.

247 (h) The provisions of this section are in addition to and not in

248 derogation of any other enforcement provisions of any statute
249 administered by the commissioner. The powers, duties and remedies
250 provided in such other statutes, and the existence of or exercise of any
251 powers, duties or remedies under this section or under such other
252 statute shall not prevent the commissioner from exercising any other
253 powers, duties or remedies available to [him] the commissioner at law
254 or in equity.

255 Sec. 3. This act shall take effect from its passage.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Revenue Loss Avoidance (Federal Funds)

Affected Agencies: Department of Public Health

Municipal Impact: Minimal Future Cost

Explanation

State Impact:

Passage of this bill is necessary to ensure continued receipt of significant federal funding. Connecticut receives approximately \$7 million annually from the federal Safe Drinking Water Act program. These dollars are deposited to a Drinking Water Revolving Loan Program, which provides low interest loans for drinking water projects. States must implement water operator certification programs meeting new federal standards by February 1, 2001 in order to avoid a twenty percent (\$1.4 million) withholding of these funds after that date.

The Department of Public Health currently certifies approximately 1,000 water operators who are employed by community water supply systems (generally serving more than 1,000 persons). An additional 500 - 600 persons acting as water operators for another 950 water systems will be newly certified after February 1, 2001. One federally funded full-time equivalent position will be filled by the DPH to oversee the expanded certification program.

As water operators do not pay any fees for certification, no revenue impact will result from the program expansion. A minimal state revenue gain will result to the extent that civil penalties of up to \$5,000 per violation are imposed upon water companies.

No fiscal impact is associated with a provision of the bill that requires the DPH to adopt regulations requiring water companies to report elevated levels of copper.

Municipal Impact:

A water operator will be required to complete training every three years in order to renew his or her certification. It is estimated that required training courses will cost between \$75 - \$300 per person. To the extent that employees of municipally operated water companies participate in this mandatory training, a minimal cost to affected municipalities will result (commencing in FY 04).

House "A" makes technical changes and has no associated fiscal impact.

House "B" adds a requirement that the DPH adopt regulations requiring water companies to report elevated levels of copper in public drinking water. This results in no fiscal impact.

OLR Amended Bill Analysis

sHB 5184 (File 122 as amended by House "A" and "B")*

AN ACT CONCERNING THE CERTIFICATION OF WATER TREATMENT PLANT AND WATER DISTRIBUTION SYSTEM OPERATORS.**SUMMARY:**

This bill broadens and specifies the Department of Public Health (DPH) commissioner's authority to adopt regulations governing the operation of public water supply facilities and the qualifications, certification, and training of plant operators. The regulations must be adopted by February 1, 2001, and must be consistent with federal law and regulations regarding plant operators.

The bill bars operators from operating a water supply plant or distribution system without DPH certification. It authorizes DPH to discipline plant operators for certain acts of fraud, deception, incompetence, and illegal activity in the same way the professional health licensure boards can discipline members of their professions, other than imposing a civil penalty.

The bill specifies that DPH can impose a maximum civil penalty of a \$5,000 per violation rather than \$5,000 in total on a water company for certain health code and water supply planning violations. It expands the types of violations subject to such penalties to include violations of water standards, testing requirements, plant operation standards, water company land sales requirements, and other operator training and certification requirements. It also requires DPH to include consideration of the number of people served by or the size of a water company when developing regulations with a penalty matrix. By law, DPH cannot impose any civil penalties until it adopts these regulations.

The bill requires DPH to adopt regulations requiring water companies to report elevated copper levels in public drinking water and makes minor and technical changes.

*House Amendment "A" changes the underlying bill by requiring DPH to include consideration of a water company's size and number of people it serves, rather than only its size, when establishing a penalty matrix for water company penalty. It also makes minor changes.

*House Amendment "B" requires DPH to adopt regulations requiring water companies to report elevated copper levels in public drinking water.

EFFECTIVE DATE: Upon passage

PUBLIC WATER SUPPLY

Certification and Regulation of Plant Operators

Current law authorizes DPH to adopt regulations approving the qualifications of water treatment plants and distribution system operators. The bill broadens DPH's authority by specifying that it may adopt regulations governing (1) plant and system operation standards, (2) operator certification standards and procedures, (3) operator training standards, and (4) procedures for certification renewal every three years. Operators must have a DPH certificate to operate a plant or system. DPH must adopt the regulations by February 1, 2001.

The regulations must be consistent with federal law and Environmental Protection Agency regulations regarding water facility operator certification.

Discipline of Certified Operators

The bill authorizes DPH to discipline a certified operator if he:

1. obtains, renews, or reinstates a certificate fraudulently or with material deception;
2. performs his professional activities incompetently, negligently, illegally, fraudulently, or with material deception;
3. is convicted of a felony; or

4. fails to complete the required operator training.

DPH may discipline operators with any of the statutory measures available to a professional health licensure board to discipline members of their profession, except imposing a civil penalty. It can:

1. revoke or suspend an operator’s license or permit;
2. censure an operator;
3. issue a letter of reprimand;
4. place an operator on probation and require him to regularly report to DPH, limit his professional activities, or complete continuing professional education requirements; or
5. summarily take any of the above actions upon proof that the operator has been found guilty of an act that constitutes a felony under state law or is subject to disciplinary action similar to the above in any other jurisdiction.

BACKGROUND

Legislative History

The bill (File 122) was referred to the Judiciary, Appropriations, Planning and Development, and Energy and Technology committees on March 23 and 31 and April 7 and 13 respectively. The committees favorably reported the bill unchanged on March 28 and April 4, 11, and 17 respectively.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
 Yea 21 Nay 4

Judiciary Committee

Joint Favorable Report
 Yea 26 Nay 1

Appropriations Committee

Joint Favorable Report

Yea 44 Nay 0

Planning and Development Committee

Joint Favorable Report

Yea 16 Nay 0

Energy and Technology Committee

Joint Favorable Report

Yea 13 Nay 0