



Senate

General Assembly

File No. 473

January Session, 2001

Substitute Senate Bill No. 1129

Senate, April 26, 2001

The Committee on Public Health reported through SEN. HARP of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING RIGHTS OF WATER COMPANY CONSUMERS.

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

1 Section 1. Section 25-32e of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) If, upon review, investigation or inspection, the Commissioner of
4 Public Health determines that a water company has violated any
5 provision of section 25-32, section 25-32d or any regulation adopted
6 under section 25-32d, or any regulation in the Public Health Code
7 relating to the purity and adequacy of water supplies or to the testing
8 of water supplies or any report of such testing, the commissioner may
9 impose a civil penalty not to exceed five thousand dollars per violation
10 per day upon such water company. Governmental immunity shall not
11 be a defense against the imposition of any civil penalty imposed
12 pursuant to this section. The commissioner shall adopt regulations, in
13 accordance with the provisions of chapter 54, establishing a schedule
14 or schedules of the amounts, or the ranges of amounts, of civil

15 penalties which may be imposed under this section. In adopting such
16 regulations, the commissioner shall consider the size of or the number
17 of persons served by the water company, the level of assessment
18 necessary to insure immediate and continued compliance with such
19 provision, and the character and degree of injury or impairment to or
20 interference with or threat thereof to: (1) The purity of drinking water
21 supplies; (2) the adequacy of drinking water supplies; and (3) the
22 public health, safety or welfare. No such civil penalty may be imposed
23 until the regulations required by this subsection have been adopted.

24 (b) In setting a civil penalty in a particular case, the commissioner
25 shall consider all factors which the commissioner deems relevant,
26 including, but not limited to, the following: (1) The amount of
27 assessment necessary to insure immediate and continued compliance
28 with such provision; (2) the character and degree of impact of the
29 violation on the purity and adequacy of drinking water supplies; (3)
30 whether the water company incurring the civil penalty is taking all
31 feasible steps or procedures necessary or appropriate to comply with
32 such provisions or to correct the violation; (4) any prior violations by
33 such water company of statutes, regulations, orders or permits
34 administered, adopted or issued by the commissioner; (5) the character
35 and degree of injury to, or interference with, public health, safety or
36 welfare which has been or may be caused by such violation; and (6)
37 whether the consumers of the water company have been notified of
38 each violation.

39 (c) If the commissioner has reason to believe that a violation has
40 occurred, the commissioner may impose a penalty if compliance is not
41 achieved by a specified date and send to the violator, by certified mail,
42 return receipt requested, or personal service, a notice which shall
43 include: (1) A reference to the sections of the statute or regulation
44 involved; (2) a short and plain statement of the matters asserted or
45 charged; (3) a statement of the amount of the civil penalty or penalties
46 to be imposed; (4) the initial date of the imposition of the penalty; and

47 (5) a statement of the party's right to a hearing. The commissioner shall
48 require the water company to send a copy of such notice to its
49 consumers and to the news organizations that are designated by the
50 commissioner.

51 (d) The civil penalty shall be payable for noncompliance on the date
52 specified in subsection (c) of this section and for each day thereafter
53 until the water company against which the penalty was issued notifies
54 the commissioner that the violation has been corrected and that notice
55 of such violation has been sent to its consumers. Upon receipt of such
56 notification, the commissioner shall determine whether or not the
57 violation has been corrected and shall notify the water company, in
58 writing, of such determination. The water company may, within
59 twenty days after such notice is sent by the commissioner, request a
60 hearing to contest an adverse determination. If, after such hearing, the
61 commissioner finds that the violation still exists, or if the water
62 company fails to request a hearing, the penalty shall continue in force
63 from the original date of imposition.

64 (e) The water company to which the notice is addressed shall have
65 twenty days from the date of mailing of the notice to make written
66 application to the commissioner for a hearing to contest the imposition
67 of the penalty. The water company shall send a copy of such
68 application to its consumers. All hearings under this section shall be
69 conducted pursuant to sections 4-176e to 4-184, inclusive, except that
70 the presiding officer shall automatically grant each consumer of the
71 water company intervenor status in the proceeding. Any civil penalty
72 may be mitigated by the commissioner upon such terms and
73 conditions as the commissioner, in the commissioner's discretion,
74 deems proper or necessary upon consideration of the factors set forth
75 in subsection (b) of this section.

76 (f) A final order of the commissioner assessing a civil penalty shall
77 be subject to appeal as set forth in section 4-183 after a hearing before

78 the commissioner pursuant to subsection (e) of this section, except that
79 any such appeal shall be taken to the superior court for the judicial
80 district of New Britain and shall have precedence in the order of trial
81 as provided in section 52-191. Such final order shall not be subject to
82 appeal under any other provision of the general statutes. No challenge
83 to any such final order shall be allowed as to any issue which could
84 have been raised by an appeal of an earlier order, notice, permit, denial
85 or other final decision by the commissioner. The consumers of the
86 water company against which the order was assessed shall have the
87 right to be heard on such appeal.

88 (g) If any water company fails to pay any civil penalty, the Attorney
89 General, upon request of the commissioner, may bring an action in the
90 superior court for the judicial district of Hartford to obtain
91 enforcement of the penalty by the court. All actions brought by the
92 Attorney General pursuant to the provisions of this section shall have
93 precedence in the order of trial as provided in section 52-191.

94 (h) The provisions of this section are in addition to and not in
95 derogation of any other enforcement provisions of any statute
96 administered by the commissioner or the rights of consumers,
97 including, but not limited to, their common law rights. The powers,
98 duties and remedies provided in such other statutes, and the existence
99 of or exercise of any powers, duties or remedies under this section or
100 under such other statute shall not prevent the commissioner from
101 exercising any other powers, duties or remedies available to the
102 commissioner at law or in equity.

103 Sec. 2. Section 25-32g of the general statutes is repealed and the
104 following is substituted in lieu thereof:

105 If the Commissioner of Public Health finds after investigation that
106 any person is causing, engaging in or maintaining, or is about to cause,
107 engage in or maintain, any condition or activity which violates any
108 provision of sections 19a-36 to 19a-39, inclusive, or sections 25-32 to 25-

109 54, inclusive, as amended by this act, or any regulation or permit
110 adopted or issued thereunder and constitutes an immediate threat to
111 the quality or adequacy of any source of water supply, [he] the
112 commissioner may, without prior hearing, issue an order in writing to
113 such person to discontinue, abate, alleviate or correct such condition or
114 activity. Upon receipt of such an order such person shall immediately
115 discontinue, abate, alleviate or correct such condition or activity. The
116 commissioner shall, within ten days after such order, hold a hearing to
117 provide the person an opportunity to be heard and show that such
118 condition, activity or violation does not exist. A consumer of a water
119 company that utilizes such water supply shall have the right to be
120 heard in such proceeding. Such order shall remain in effect until ten
121 days after the hearing within which time a new decision based on the
122 hearing shall be made.

123 Sec. 3. Subsection (a) of section 25-36 of the general statutes is
124 repealed and the following is substituted in lieu thereof:

125 (a) Except as provided otherwise in this part, any person or
126 corporation aggrieved by any order of the Department of Public
127 Health made under the provisions of part III of this chapter, may
128 appeal therefrom in accordance with the provisions of section 4-183,
129 except venue shall be in the judicial district in which the source of the
130 water or ice supply is located. If such source is located in more than
131 one judicial district, the appeal shall be taken to the court for that
132 judicial district containing the part of such source nearest the mouth of
133 the stream or river forming the main portion of the source of supply. If
134 a water company is subject to such an order and such water company
135 takes an appeal in accordance with this subdivision, the water
136 company shall provide notice to its consumers of such appeal, and
137 such consumers shall have the right to be heard in such appeal. Each
138 order of the Department of Public Health issued under the foregoing
139 provisions to any person or corporation shall specify the time within
140 which such person or corporation shall comply with the terms thereof.

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: Potential Indeterminate Revenue Gain

Affected Agencies: Department of Public Health, Office of the Attorney General

Municipal Impact: Potential Indeterminate Cost

Explanation

State and Municipal Impact:

Extending to water company consumers the right to participate in administrative hearings held by the Department of Public Health (DPH) and judicial appeals of orders issued by DPH may lengthen the amount of time devoted to these activities. It is anticipated that any resulting workload increase for the department or the Office of the Attorney General can be accommodated within their normally budgeted resources.

Under current law a penalty of up to \$5,000 a day may be assessed upon water companies found in violation of water supplies law. To the extent that failure by a water company to notify its consumers about violations leads to the assessment of greater financial penalties than would otherwise be assessed, a potential indeterminate revenue gain will ensue.

Over the 1998 - 2000 time period, the agency sought to impose a

civil penalty upon 234 water companies (an average of 78 companies per year). Five of these companies subsequently appealed the penalty during the same time period. In the past six years (1995 - 2001) the agency has issued only two (2) cease and desist orders to water companies.

Municipal Impact:

Municipally affiliated water companies found in violation of water supplies law will incur costs associated with providing copies of DPH notices as well as copies of applications to appeal the department's findings to both their consumers and news organizations. These costs, which would vary with the number of parties notified, would be associated with duplication and mailing of documents. There are currently a total of 422 municipally affiliated water systems.

OLR BILL ANALYSIS

sSB 1129

AN ACT CONCERNING RIGHTS OF WATER COMPANY CONSUMERS.**SUMMARY:**

This bill requires water utilities to notify their consumers when (1) the Department of Public Health (DPH) seeks to impose civil penalties on them for violating water quality laws and regulations, (2) the utility appeals a penalty, or (3) DPH issues cease and desist orders. It entitles consumers to participate in administrative proceedings and judicial appeals regarding these violations.

The bill requires the DPH commissioner to consider whether the utility notified its consumers of each violation in determining the amount of the penalty. It requires that the penalty run until the utility notifies its consumers. It specifies that the civil penalty provisions do not limit the rights of consumers, including their rights under common law.

The bill applies to any privately or publicly owned water utility that serves two or more consumers (premises) or 25 or more individuals on a regular basis.

EFFECTIVE DATE: October 1, 2001

ADMINISTRATIVE PROCEEDINGS***Notice of Violations***

By law, DPH can impose civil penalties for violations of laws and regulations governing water utilities regarding water quality and supply, including related provisions of the Public Health Code. DPH must send a notice of the proposed penalty to the utility.

Under the bill, DPH must require the utility to send a copy of the

penalty notice to its consumers and to news organizations designated by the DPH commissioner (presumably those could include print, radio, or TV organizations). By law, a consumer is a premises served by the utility, such as a home or apartment building, rather than an individual end user. In the case of an apartment building with a single water meter, it appears that the notice required by the bill would go to the landlord rather than the tenants.

Administrative Hearings

By law, the utility can contest the penalty by applying to the commissioner for a hearing, which is conducted by a person called the presiding officer. The bill requires the utility to notify its consumers of its application for this administrative appeal.

Under current law, the presiding officer can grant intervenor status to a person who petitions the department, which allows him to participate in the proceeding. The petitioner must demonstrate that his participation is in the interests of justice and will not impair the orderly conduct of the proceeding. He also must provide written notice of the petition to the parties in the case at least five days before the hearing, although the presiding officer can waive this requirement for good cause. These provisions apply to all agencies under the Uniform Administrative Procedure Act (UAPA).

The bill requires the presiding officer in a proceeding regarding a proposed penalty for water quality and supply law violations to grant each consumer intervenor status. It is unclear whether this requirement supersedes provisions of the UAPA that allow the presiding officer to (1) limit the intervenor's participation to the issues in which he has demonstrated a particular interest and (2) restrict the intervenor's right to introduce evidence, conduct cross-examinations, and inspect and copy evidence.

Cease and Desist Order

By law, the commissioner can order a person to immediately discontinue an activity that he has found is causing a condition that violates DPH laws in a way that immediately threatens a water supply source. The commissioner can issue the order without holding a

hearing first, but must hold one within 10 days of issuing the order. The bill gives a consumer of a utility that uses the source a right to be heard in this proceeding.

JUDICIAL APPEALS

By law, any person or corporation aggrieved by a DPH order under its water supply laws can appeal to the Superior Court. This provision covers appeals of DPH orders in several areas in addition to those discussed above. Among other things, these include orders issued under the Water Utility Coordinating Committee process, which assigns exclusive service areas to water utilities.

Under the bill, if a water utility chooses to appeal an order, the utility must notify its consumers. The bill gives the consumers a right to be heard in the court case.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute Change of Reference
Yea 16 Nay 0

Public Health Committee

Joint Favorable Report
Yea 25 Nay 0