



House of Representatives

General Assembly

File No. 593

January Session, 2017

Substitute House Bill No. 7220

House of Representatives, April 13, 2017

The Committee on Public Health reported through REP. STEINBERG of the 136th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING SAFE DRINKING WATER.

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

1 Section 1. (NEW) (*Effective October 1, 2017*) (a) As used in this
2 section:

3 (1) "Small community water system" means a water company that
4 regularly serves at least twenty-five, but not more than one thousand,
5 year-round residents;

6 (2) "Useful life" means a manufacturer's recommended or estimated
7 lifespan of a water company's capital asset, taking into consideration
8 the service history and current condition of such capital asset; and

9 (3) "Water company" has the same meaning as provided in section
10 25-32a of the general statutes.

11 (b) Each water company shall prepare a fiscal and asset
12 management plan for all of the capital assets that comprise each of the

13 water company's small community water systems. The fiscal and asset
14 management plan shall include, but need not be limited to, (1) a list of
15 all capital assets of the small community water system, (2) the useful
16 life of such capital assets, which shall be based on the current condition
17 of such capital assets, (3) the maintenance and service history of such
18 capital assets, (4) the manufacturer's recommendation regarding such
19 capital assets, and (5) the water company's plan for the reconditioning,
20 refurbishment or replacement of such capital assets. Each water
21 company shall commence the creation of the fiscal and asset
22 management plan with the assessment of its hydropneumatic pressure
23 tanks as its initial priority. Each water company shall complete the
24 fiscal and asset management plan for all of the capital assets of each of
25 its small community water systems not later than January 1, 2020,
26 except that each water company shall complete on a form prepared by
27 the Department of Public Health the asset and fiscal management plan
28 assessment review of the hydropneumatic pressure tanks at each of its
29 small community water systems not later than May 1, 2018. Following
30 the completion of the initial fiscal and asset management plan, a water
31 company shall update such fiscal and asset management plan annually
32 and shall make such fiscal and asset management plan available to the
33 department upon request.

34 (c) This section shall not apply to a water company that is (1) a
35 water company, as defined in section 16-1 of the general statutes, (2)
36 subject to the requirements in section 25-32d of the general statutes, or
37 (3) a state agency.

38 (d) The provisions of this section shall be deemed to relate to the
39 purity and adequacy of water supplies for the purposes of the
40 imposition of a penalty under section 25-32e of the general statutes, as
41 amended by this act.

42 (e) The Commissioner of Public Health may adopt regulations, in
43 accordance with the provisions of chapter 54 of the general statutes, to
44 carry out the provisions of this section.

45 Sec. 2. Subsections (a) to (e), inclusive, of section 25-32e of the

46 general statutes are repealed and the following is substituted in lieu
47 thereof (*Effective October 1, 2017*):

48 (a) If, upon review, investigation or inspection, the Commissioner of
49 Public Health determines that a water company has violated any
50 provision of section 25-32, section 25-32d or any regulation adopted
51 under section 25-32d, or any [regulation in the Public Health Code]
52 provision of the general statutes or regulations of Connecticut state
53 agencies relating to the purity and adequacy of water supplies or to the
54 testing of water supplies or any report of such testing, the
55 commissioner may impose a civil penalty not to exceed five thousand
56 dollars per violation per day upon such water company.
57 Governmental immunity shall not be a defense against the imposition
58 of any civil penalty imposed pursuant to this section. The
59 commissioner shall [adopt regulations, in accordance with the
60 provisions of chapter 54, establishing a schedule or schedules of the
61 amounts, or the ranges of amounts, of civil penalties which may be
62 imposed under this section. In adopting such regulations, the
63 commissioner shall consider the size of or the number of persons
64 served by the water company, the level of assessment necessary to
65 insure immediate and continued compliance with such provision, and
66 the character and degree of injury or impairment to or interference
67 with or threat thereof to: (1) The purity of drinking water supplies; (2)
68 the adequacy of drinking water supplies; and (3) the public health,
69 safety or welfare. No such civil penalty may be imposed until the
70 regulations required by this subsection have been adopted] publish
71 annually, or as the commissioner deems necessary in response to any
72 guidelines or ruling promulgated by the United States Environmental
73 Protection Agency, a schedule of the amounts, or ranges of amounts, of
74 civil penalties that may be imposed under this section on the
75 Department of Public Health's Internet web site if the civil penalty for
76 a violation under this section has not been established by statute.
77 Notwithstanding the provisions of chapter 54, the commissioner shall
78 not be required to adopt or revise any regulations regarding the
79 imposition of civil penalties. Not less than six months prior to
80 publishing such schedule, the commissioner shall publish notice in the

81 Connecticut Law Journal of his or her intention to publish such
82 schedule on the department's Internet web site. Such notice shall
83 include such schedule and the date on which the commissioner intends
84 to hold a public hearing on such schedule. The commissioner shall
85 hold the public hearing on such schedule not later than thirty days
86 after the date of publishing such notice.

87 (b) In setting a civil penalty in a particular case, the commissioner
88 shall consider all factors which the commissioner deems relevant,
89 including, but not limited to, the following: (1) The amount of
90 assessment necessary to insure immediate and continued compliance
91 with such provision; (2) the character and degree of impact of the
92 violation on the purity and adequacy of drinking water supplies; (3)
93 whether the water company incurring the civil penalty is taking all
94 feasible steps or procedures necessary or appropriate to comply with
95 such provisions or to correct the violation; (4) any prior violations by
96 such water company of statutes, regulations, orders or permits
97 administered, adopted or issued by the commissioner; (5) the character
98 and degree of injury to, or interference with, public health, safety or
99 welfare which has been or may be caused by such violation; and (6)
100 [after the adoption of the federal Safe Drinking Water Act Public
101 Notification Rule pursuant to section 5 of public act 01-185,] whether
102 the consumers of the water company have been notified of such
103 violation pursuant to [such rule] section 19-13-B102 of the regulations
104 of Connecticut state agencies.

105 (c) If the commissioner has reason to believe that a violation has
106 occurred, the commissioner may impose a penalty if compliance is not
107 achieved by a specified date and send to the violator, by certified mail,
108 return receipt requested, or personal service at the address filed with
109 the department by the water company as required under subsection (a)
110 of section 25-33 or, if the water company did not file an address as
111 required under subsection (a) of said section, to the last known address
112 of the water company on file at the department, a notice which shall
113 include: (1) A reference to the sections of the statute or regulation
114 involved; (2) a short and plain statement of the [matters asserted or

115 charged] violation; (3) a statement of the amount of the civil penalty or
116 penalties [to be] imposed; (4) the initial date of the imposition of the
117 penalty when the penalty is imposed for a continuing violation, or the
118 dates for which the penalty is imposed when the penalty is imposed
119 for an isolated violation; and (5) a statement of the [party's] water
120 company's right to a hearing. The commissioner shall send a copy of
121 such notice to the local director of health in the municipality or
122 municipalities in which such violation occurred or that utilize such
123 water.

124 (d) The civil penalty shall be payable for noncompliance on the date
125 specified in subsection (c) of this section and for each day thereafter
126 until the water company against which the penalty was issued
127 [notifies] demonstrates to the commissioner that the violation has been
128 corrected or has otherwise ceased to occur. [Upon receipt of such
129 notification, the commissioner shall determine whether or not the
130 violation has been corrected and shall notify the water company, in
131 writing, of such determination. The water company may, within
132 twenty days after such notice is sent by the commissioner, request a
133 hearing to contest an adverse determination. If, after such hearing, the
134 commissioner finds that the violation still exists, or if the water
135 company fails to request a hearing, the penalty shall continue in force
136 from the original date of imposition.]

137 (e) The water company to which the notice is addressed shall have
138 twenty days from the date of mailing of the notice to make written
139 application to the commissioner for a hearing to contest the imposition
140 of the penalty. The application shall include a detailed statement of all
141 of the grounds for contesting the imposition of the penalty. The water
142 company shall send a copy of such application to the local director of
143 health in the municipality or municipalities in which such violation
144 occurred or that utilize such water. All hearings under this section
145 shall be conducted pursuant to sections 4-176e to 4-184, inclusive,
146 except that the presiding officer shall automatically grant each local
147 director of health in the municipality or municipalities in which such
148 violation occurred or that utilize such water the right to be heard in the

149 proceeding. Any civil penalty may be mitigated by the commissioner
150 upon such terms and conditions as the commissioner, in the
151 commissioner's discretion, deems proper or necessary upon
152 consideration of the factors set forth in subsection (b) of this section.

153 Sec. 3. (NEW) (*Effective October 1, 2017*) As used in this section and
154 sections 4 to 15, inclusive, of this act:

155 (1) "Abandoned operations" includes, but is not limited to, the
156 failure of a small water company to:

157 (A) Provide water to consumers of the small water company for at
158 least five days during the preceding three months or two or more
159 repeated service interruptions during the preceding three months;

160 (B) Meet the standards adopted under section 25-32 of the general
161 statutes for the quantity and quality of public drinking water and such
162 failure constitutes an immediate threat to the quality or adequacy of
163 any source of water supply;

164 (C) Have the financial, managerial and technical resources needed
165 to operate the small water company in a reliable and efficient manner
166 and to provide continuous, adequate service to the persons served by
167 the small water company;

168 (D) Adequately maintain the small water company's facilities,
169 resulting in a potential threat to the quality or adequacy of the small
170 water company's public water supply; and

171 (E) Provide consumers adequate notice of a public health threat or
172 potential public health threat;

173 (2) "Consumer" has the same meaning as provided in section 25-32a
174 of the general statutes;

175 (3) "Small water company" means a water company, other than a
176 state agency, that is not required to submit a water supply plan
177 pursuant to section 25-32d of the general statutes; and

178 (4) "Water company" has the same meaning as provided in section
179 25-32a of the general statutes.

180 Sec. 4. (NEW) (*Effective October 1, 2017*) (a) A motion to appoint a
181 receiver for a small water company may be filed in the Superior Court
182 by the Commissioner of Public Health. The court shall hold a hearing
183 not later than ten days after the date the motion is filed. Notice of such
184 hearing shall be given to the owner of such small water company, or
185 such owner's agent for service of process, not less than five days prior
186 to such hearing and shall be posted by the Department of Public
187 Health in conspicuous locations throughout the distribution system of
188 the small water company for not less than three days prior to such
189 hearing. The notice and hearing requirements in this subsection may
190 be waived by the owner of the small water company.

191 (b) Notwithstanding the provisions of subsection (a) of this section,
192 the court may appoint a receiver upon an ex parte motion filed by the
193 department when affidavits, testimony or any other evidence
194 presented indicate that there is a reasonable likelihood a condition
195 exists at such small water company that must be remedied
196 immediately to ensure the health, safety and welfare of the consumers
197 of such small water company. Notice of the ex parte motion and order
198 shall be served on the owner or the owner's agent for service of process
199 and shall be posted in a conspicuous place at such small water
200 company not later than twenty-four hours after issuance of such order.
201 A hearing on the motion shall be held not later than five days after the
202 issuance of such order unless the owner consents to a later hearing
203 date. The notice and hearing requirements in this subsection may be
204 waived by the owner of the small water company.

205 Sec. 5. (NEW) (*Effective October 1, 2017*) The court shall grant a
206 motion for the appointment of a receiver made under section 4 of this
207 act for a small water company upon a finding of any of the following:
208 (1) Such small water company has abandoned operations; or (2) such
209 small water company failed to comply with an order issued in
210 response to a violation under sections 19a-36 to 19a-39, inclusive, or 25-

211 32 to 23-53, inclusive, of the general statutes or any regulation or
212 permit adopted or issued thereunder, and such violation constitutes an
213 immediate threat to the quality or adequacy of any source of water
214 supply.

215 Sec. 6. (NEW) (*Effective October 1, 2017*) It shall be a sufficient
216 defense to a motion for the appointment of a receiver under section 4
217 of this act that (1) the owner of a small water company did not have a
218 reasonable time in which to correct a violation described in section 5 of
219 this act, or (2) such violation listed in the motion does not, in fact, exist.

220 Sec. 7. (NEW) (*Effective October 1, 2017*) (a) Except as provided in
221 subsection (c) of this section, a receiver appointed pursuant to the
222 provisions of this section and sections 4 to 6, inclusive, and 8 to 13,
223 inclusive, of this act shall (1) have the same powers in operating a
224 small water company as a receiver of a corporation under section 52-
225 507 of the general statutes, (2) exercise such powers to remedy the
226 conditions that constituted grounds for the imposition of receivership,
227 (3) ensure the availability and potability of water and the provision of
228 water at an adequate volume and pressure to the consumers of the
229 small water company, and (4) preserve the assets and property of the
230 owner. If such small water company is placed in receivership, it shall
231 be the duty of the receiver to notify each consumer of such
232 receivership. Such receiver may correct or eliminate any condition or
233 violation that is prejudicial to public health while the receiver remains
234 at such small water company, provided the total cost of correction or
235 elimination does not exceed three thousand dollars. The court may
236 order expenditures for such correction or elimination in excess of three
237 thousand dollars upon a motion made by such receiver.

238 (b) Not later than ninety days after the date of appointment as a
239 receiver, the receiver shall take all necessary steps to stabilize the
240 operation of the small water company in order to ensure the
241 availability and potability of water and the provision of water at
242 adequate volume and pressure to the consumers of such small water
243 company.

244 (c) The court may limit the powers of a receiver appointed pursuant
245 to the provisions of this section and sections 4 to 6, inclusive, and 8 to
246 13, inclusive, of this act to those necessary to solve a specific problem.

247 (d) Any action filed against a small water company that is in
248 receivership pursuant to this section shall be transferred to the court
249 supervising the receiver of such small water company. Except as
250 otherwise ordered by the court, the appointment of a receiver pursuant
251 to this section shall act as a stay of such actions until such time as the
252 court terminates the stay.

253 Sec. 8. (NEW) (*Effective October 1, 2017*) (a) A receiver may not be
254 required to honor any lease, mortgage, secured transaction or other
255 contract entered into by the owner of a small water company if, upon a
256 motion made to the Superior Court, said court determines that (1) the
257 person seeking payment under the lease, mortgage, secured
258 transaction or other contract was an owner or controlling stockholder
259 of such small water company or was an affiliate of such owner or
260 controlling stockholder at the time the lease, mortgage, secured
261 transaction or other contract was effectuated, or (2) the rental, price or
262 rate of interest required to be paid under the lease, mortgage, secured
263 transaction or other contract was substantially in excess of a reasonable
264 rental, price or rate of interest at the time the lease, mortgage, secured
265 transaction or other contract was entered into.

266 (b) If the receiver is in possession of real estate or goods subject to a
267 lease, mortgage or security interest that the receiver is permitted to
268 avoid under subsection (a) of this section and if the real estate or goods
269 are necessary for the continued operation of the small water company
270 under this section, the receiver may apply to the court to set a
271 reasonable rental, price or rate of interest to be paid by the receiver for
272 the duration of the receivership. The court shall hold a hearing not
273 later than fifteen days after a motion is made. Any known owners of
274 the property involved shall receive notice of such motion made by the
275 receiver not later than ten days prior to the hearing. Payment by the
276 receiver of the amount determined by the court to be reasonable is a

277 defense to any action against the receiver for payment or for
278 possession of the goods or security interest or real estate subject to the
279 lease or mortgage involved by any person who received such notice,
280 but the payment does not relieve the owner of the small water
281 company of any liability for the difference between the amount paid
282 by the receiver and the amount due under such lease, mortgage,
283 secured transaction or other contract involved.

284 (c) The provisions of this section shall not apply to a lease,
285 mortgage, secured transaction or other contract entered into with any
286 financial institution regulated by a state or federal agency.

287 Sec. 9. (NEW) (*Effective October 1, 2017*) (a) The Department of Public
288 Health shall maintain and publish on the department's Internet web
289 site a list of interested and qualified individuals, corporations,
290 associations and partnerships, with experience in the provision of
291 water service and a history of satisfactory operation of a water
292 company. The Superior Court may appoint any responsible individual,
293 corporation, association or partnership whose name is proposed by the
294 Commissioner of Public Health to act as receiver. If no such individual,
295 corporation, association or partnership consents to assume operation
296 of the small water company, the Superior Court shall appoint a
297 receiver. No state employee, owner of the small water company or
298 other person with a financial interest in the small water company may
299 serve as a receiver for such small water company. No person
300 appointed to act as a receiver shall be permitted to have a current
301 financial interest in the small water company or to acquire a financial
302 interest in the small water company for a period of five years from the
303 date his or her receivership terminates.

304 (b) The court, in its discretion, may require a bond of such receiver
305 in accordance with the provisions of section 52-506 of the general
306 statutes.

307 Sec. 10. (NEW) (*Effective October 1, 2017*) The court may remove a
308 receiver appointed pursuant to sections 4 to 9, inclusive, and 11 to 13,
309 inclusive, of this act, in accordance with section 52-513 of the general

310 statutes. A small water company receiver appointed pursuant to
311 sections 4 to 9, inclusive, and 11 to 13, inclusive, of this act shall be
312 entitled to a reasonable receiver's fee as determined by the court. The
313 receiver shall be liable only in the receiver's official capacity for injury
314 to person and property by reason of the conditions of the small water
315 company. The receiver shall not be personally liable, except for acts or
316 omissions constituting gross, wilful or wanton negligence.

317 Sec. 11. (NEW) (*Effective October 1, 2017*) (a) The receiver may,
318 subject to the approval of the Superior Court and the Commissioner of
319 Public Health, use the rates collected from the consumers of the small
320 water company, or sell or otherwise dispose of all or part of the real
321 and personal property of the small water company, or both, to pay the
322 costs incurred in the operation of the receivership. The costs shall
323 include, but not be limited to: (1) Payment of fees to the receiver for the
324 receiver's services; (2) payment of fees of attorneys, accountants,
325 certified operators, engineers or any other person or entity that
326 provides goods or services necessary to the operation of the
327 receivership; and (3) any other fee deemed necessary by the Superior
328 Court and the commissioner.

329 (b) Subject to the approval of the Superior Court and the
330 commissioner, the receiver may increase the rates collected from the
331 consumers of the small water company to pay the costs incurred in the
332 operation of the receivership.

333 Sec. 12. (NEW) (*Effective October 1, 2017*) Each receiver shall, during
334 the first week in January, April, July and October in each year, sign,
335 swear to and file with the clerk of the Superior Court in which the
336 receiver was appointed a full and detailed account of his or her doings
337 as the receiver for the three months next preceding, together with a
338 statement of all court orders passed during such three-month period
339 and the present condition and prospects of the small water company in
340 the receiver's charge, and cause a motion for a hearing and approval of
341 the same to be placed on the short calendar.

342 Sec. 13. (NEW) (*Effective October 1, 2017*) The Superior Court, upon a

343 motion by the receiver appointed under sections 4 to 12, inclusive, of
344 this act or the owner of the small water company, may terminate the
345 receivership if it finds that such small water company has been
346 rehabilitated so that the violations or other conditions complained of
347 no longer exist. Upon such finding, the court may terminate the
348 receivership and return such small water company to its owner. In its
349 termination order, the court may include such terms as it deems
350 necessary to prevent the violations or other conditions complained of
351 from recurring.

352 Sec. 14. (NEW) (*Effective October 1, 2017*) (a) (1) If a small water
353 company has abandoned operations of the small water company, or (2)
354 the Commissioner of Public Health has filed or is filing a motion in a
355 Superior Court for the appointment of a receiver under section 4 of this
356 act, the commissioner, after providing notice and an opportunity for a
357 hearing to the owner of the small water company, may authorize a
358 person to temporarily manage and operate a small water company.

359 (b) The commissioner may appoint a person under this section by
360 emergency order. Notice of such appointment shall be deemed
361 adequate if the notice is mailed or hand-delivered to the last known
362 address of the small water company.

363 (c) A temporary manager appointed under this section has the
364 powers and duties necessary to ensure the continued operation of the
365 small water company, the availability and potability of water and the
366 provision of water at adequate volume and pressure to the consumers
367 of the small water company, including the powers and duties to (1)
368 read meters, (2) bill consumers for water services, (3) collect revenues,
369 (4) disburse funds, (5) increase rates charged to consumers if such rate
370 increase is necessary and approved by the commissioner, (6) access all
371 small water company components, (7) conduct sampling of water, (8)
372 make necessary repairs, as determined by the temporary manager in
373 consultation with the commissioner, and (9) perform other acts
374 necessary to assure continuous and adequate water service as
375 authorized by the commissioner.

376 (d) The commissioner may require a bond of such temporary
377 manager in accordance with section 52-506 of the general statutes.

378 (e) A temporary manager shall serve a term of one year, unless (1)
379 specified otherwise by the commissioner, (2) an extension is requested
380 by the Department of Public Health or the temporary manager and the
381 commissioner grants such extension, (3) the temporary manager is
382 discharged from such temporary manager's responsibilities by the
383 commissioner, or (4) a receiver is appointed pursuant to the provisions
384 of sections 4 to 13, inclusive, of this act.

385 (f) Not later than sixty days after appointment, the temporary
386 manager shall provide to the commissioner an accounting of the assets
387 and property the small water company received.

388 (g) The source of compensation for the temporary manager shall be
389 the rates collected from the consumers of the small water company.
390 The commissioner shall set the compensation at the time of
391 appointment.

392 (h) The temporary manager shall report to the commissioner on a
393 monthly basis. Such report shall include, but need not be limited to (1)
394 an income statement for the relevant reporting period, (2) a summary
395 of small water company activities, including, but not limited to, all
396 repairs made to the water company, and (3) any other information
397 deemed necessary by the commissioner.

398 (i) This section shall not affect the authority of the department to
399 pursue enforcement against a small water company.

400 Sec. 15. (NEW) (*Effective October 1, 2017*) The Commissioner of
401 Public Health, or an agent authorized by the commissioner to conduct
402 any inquiry, investigation or hearing under the provisions of this
403 section and sections 4 to 14, inclusive, of this act, shall have the power
404 to inspect the premises of a water company, issue subpoenas, order the
405 production of books, records or documents, administer oaths and take
406 testimony under oath relative to the matter of such inquiry,

407 investigation or hearing. At any hearing ordered by the Department of
 408 Public Health, the commissioner or such agent may subpoena
 409 witnesses and require the production of records, papers and
 410 documents pertinent to such inquiry. If any person disobeys such
 411 subpoena or, having appeared in obedience thereto, refuses to answer
 412 any pertinent question put to such person by the commissioner or such
 413 agent or to produce any records and papers pursuant to the subpoena,
 414 the commissioner or such agent may apply to the superior court for the
 415 judicial district of Hartford or for the judicial district wherein the
 416 person resides or wherein the business has been conducted, setting
 417 forth such disobedience or refusal, and the court shall cite such person
 418 to appear before the court to answer such question or to produce such
 419 records and papers.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	25-32e(a) to (e)
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	New section
Sec. 5	<i>October 1, 2017</i>	New section
Sec. 6	<i>October 1, 2017</i>	New section
Sec. 7	<i>October 1, 2017</i>	New section
Sec. 8	<i>October 1, 2017</i>	New section
Sec. 9	<i>October 1, 2017</i>	New section
Sec. 10	<i>October 1, 2017</i>	New section
Sec. 11	<i>October 1, 2017</i>	New section
Sec. 12	<i>October 1, 2017</i>	New section
Sec. 13	<i>October 1, 2017</i>	New section
Sec. 14	<i>October 1, 2017</i>	New section
Sec. 15	<i>October 1, 2017</i>	New section

Statement of Legislative Commissioners:

In Section 7(c), "sections 3 to 6, inclusive" was changed to "sections 4 to 6, inclusive"; in Section 10, "sections 3 to 9, inclusive" was changed to "sections 4 to 9, inclusive"; and in Section 15, "sections 3 to 14, inclusive" was changed to "sections 4 to 14, inclusive" for accuracy.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill makes various changes affecting public water systems and the oversight of small water companies that are not anticipated to result in a fiscal impact to the Departments of Public Health and Energy and Environmental Protection or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB-7220*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING SAFE DRINKING WATER.*****SUMMARY**

This bill makes various changes affecting public water systems and the oversight of small water companies. Among other things, the bill:

1. requires, by January 1, 2020, certain water companies to submit to the Department of Public Health (DPH) a fiscal and asset management plan for all capital assets of each of their small community public water systems serving 1,000 or fewer residents;
2. requires the DPH commissioner to publish on the department's website a schedule of civil penalties imposed under the safe drinking water statutes, rather than adopting them in regulations as under current law;
3. requires the DPH commissioner to notify the public at least six months before publishing the civil penalty schedule and hold a public hearing within 30 days after such notification;
4. establishes a process for placing certain small water companies in receivership if they (1) abandon operations or (2) fail to correct certain violations that pose an immediate threat to the quality and adequacy of a water supply source;
5. authorizes the DPH commissioner to appoint a temporary manager for a small water company that has abandoned operations or will be placed in receivership, after notifying the owner and providing an opportunity for a hearing; and

6. authorizes DPH to take certain actions in connection with an investigation of a small water company in receivership, such as issuing subpoenas and ordering the production of books, records, or documents.

The bill defines a “small water company” as a water company, other than a state agency, that (1) supplies water to less than 1,000 people or 250 consumers or (2) is not required to submit a water supply plan to DPH (e.g., contingency procedures for public drinking water supply emergencies).

The bill also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2017

§ 1 — FISCAL AND ASSET MANAGEMENT PLANS

Plan Contents

The bill requires each water company to prepare a fiscal and asset management plan for all capital assets of each of the company’s small community water systems (i.e., those regularly serving between 25 and 1,000 year-round residents).

The fiscal and asset management plan must include:

1. a list of all capital assets of the small community water system;
2. the assets’ (a) useful life, based on their current condition; (b) maintenance and service history; and (c) manufacturer’s recommendation; and
3. the water company’s plan for reconditioning, refurbishing, or replacing the assets.

The bill requires the water company to begin creating the plan by assessing its hydropneumatic pressure tanks as its initial priority.

Under the bill, as under existing law, “water company” means any individual, municipality, or entity that owns, maintains, operates,

manages, controls, or employs any pond, lake, reservoir, well, stream, or distributing plan or system that supplies water to two or more consumers or to 25 or more people on a regular basis.

Deadline

The bill requires water companies to complete the fiscal and asset management plan by January 1, 2020. But they must first complete an assessment review of the hydropneumatic pressure tanks at each of their small community water systems by May 1, 2018 on a form DPH prepares.

The bill also requires water companies to update the fiscal and asset management plan annually and make it available to DPH upon request.

Exceptions

The plan requirement does not apply to a water company that is (1) regulated by the Public Utilities Regulatory Authority, (2) required to submit a water supply plan to DPH, or (3) a state agency.

The bill deems the report requirement to relate to the purity and adequacy of water supplies for the purpose of imposing a penalty for violating statutory or regulatory requirements regarding public water supply purity, adequacy, or testing.

Regulations

The bill authorizes the DPH Commissioner to adopt regulations to implement the fiscal and asset management plan requirement.

§ 2 — CIVIL PENALTIES***Publishing Civil Penalty Schedule (§ 2)***

Current law requires the DPH commissioner to adopt regulations establishing a schedule of civil penalties that may be imposed against water companies for violation of state laws and regulations regarding the purity, adequacy, and testing of public water supplies.

The bill instead requires the commissioner to publish the civil

penalty schedule on the department's website if the penalty for a violation has not been established by statute. The commissioner must do this annually, or when he deems it necessary in response to any guidelines or rules issued by the federal Environmental Protection Agency.

Notwithstanding the Uniform Administrative Procedure Act, the bill does not require the commissioner to adopt or revise any regulations for imposing these civil penalties.

Within six months before publishing the civil penalty schedule on the DPH website, the commissioner must publish a notice in the Connecticut Law Journal of his intention to do so. The notice must include the civil penalty schedule and the date the commissioner intends to hold a public hearing on the matter. He must hold the hearing within 30 days after publishing the notice.

Notice of Violations (§ 2)

By law, the DPH commissioner must notify a water company before imposing a civil penalty for failing to correct a violation within a specified date. He may do this by certified mail, return receipt requested, or personal service. The bill specifies that for the latter, the notification must be served to the address the water company filed with the department, or if the water company failed to do so, the company's last known address on file.

If the civil penalty is imposed for a continuing violation, the bill requires the notice to include the initial date the penalty is imposed. For an isolated violation, the notice must include the date for which it is imposed. By law, the notice must include additional information, such as a statement of the violation and the water company's right to a hearing.

Administrative Appeal (§ 2)

By law, a water company can contest the penalty by applying to the DPH commissioner for an administrative hearing under the Uniform Administrative Procedure Act within 20 days after receiving notice of

the penalty. The bill requires the application to include a detailed statement of all the grounds for contesting the penalty.

Existing law, unchanged by the bill, requires the water company to send a copy of the application to the health director of the municipalities in which the violation occurred or that use the water that was the subject of the violation. A water company aggrieved by a DPH order may appeal to Superior Court.

§§ 3-13 — SMALL WATER COMPANY RECEIVERSHIP

Notice and Hearing Requirements (§ 4)

The bill authorizes the DPH commissioner to file a motion in Superior Court to appoint a receiver for a small water company.

The court must hold a hearing within 10 days after the date the motion is filed. The small water company owner or the owner's agent must be notified at least five days before the hearing date. DPH must also post the notice in conspicuous locations throughout the water company's distribution system for at least three days before the hearing date.

The bill also allows the court to appoint a receiver if DPH files an ex parte motion and the affidavits, testimony, or other evidence presented indicates that there is a reasonable likelihood a condition exists at the small water company that must be immediately remedied to ensure consumers' health, safety, and wellbeing.

Under the bill, the owner or the owner's agent must be served notice of the ex parte motion and order and the notice must be posted in a conspicuous place at the water company within 24 hours after the order is issued. (The bill does not specify who must notify the owner and post the notice.)

A hearing on the motion must be held within five days after the order is issued, unless the owner consents to a later hearing date.

The bill allows the owner to waive the above notice and hearing

requirements.

Appointment of Receiver (§ 5)

The bill requires the court to grant a motion to appoint a receiver if it finds the small water company (1) abandoned operations or (2) failed to comply with an order to correct a violation of the public health or environment laws or statutes that poses an immediate threat to the quality and adequacy of a water supply source.

Under the bill, a small water company has “abandoned operations” if it fails to:

1. provide water to consumers for at least five days or has two or more service interruptions during the preceding three months;
2. meet statutory standards for public drinking water quality and quantity and such failure constitutes an immediate threat to the quality or adequacy of a water supply source;
3. have the financial, managerial, and technical resources needed to operate in a reliable and efficient manner and provide continuous, adequate service to consumers;
4. adequately maintain its facilities, resulting in a potential threat to the quality or adequacy of its public water supply; or
5. provide consumers adequate notice of a potential or actual public health threat.

Defense to a Receivership Motion (§ 6)

Under the bill, it is a sufficient defense to a motion to appoint a receiver if the (1) small water company owner did not have reasonable time to correct a violation in an order described above or (2) the violation listed in the motion does not exist.

Receiver’s Powers (§ 7)

Under the bill, a receiver of a small water company must:

1. have the same powers operating the small water company as those of a receiver of a corporation (e.g., to prosecute civil actions; possess the company's books, papers, and property; and receive all evidence of the company's debt and property);
2. exercise powers to remedy the conditions that constituted grounds for appointing a receiver;
3. ensure (a) the availability and potability of water and (b) water that is provided to the water company's consumer's is at an adequate volume and pressure;
4. preserve the water company owner's assets and property; and
5. notify the water company's consumers of the receivership.

The bill specifies that the court may limit a receiver's powers to those necessary to solve a specific problem.

The bill authorizes the receiver to correct or eliminate any condition or violation that is prejudicial to the public health while remaining at the water company, provided the total cost of doing so does not exceed \$3,000. If the receiver files a motion, the court may order expenditures exceeding this amount.

Under the bill, the receiver must, within 90 days after being appointed, take all necessary steps to stabilize the small water company's operation to ensure its consumers have available and potable water that is provided at an adequate volume and pressure.

Actions Filed Against a Small Water Company Under Receivership (§ 7)

Under the bill, any action filed against a water company under receivership must be transferred to the court supervising the receiver. A receiver's appointment must act as a stay of such actions until the court terminates the stay, or orders otherwise.

Leases, Mortgages, and Other Contracts (§ 8)

Under the bill, a receiver may not be required to honor a lease, mortgage, secured transaction, or other contract the small water company's owner entered into if, after a motion is made to the Superior Court, the court determines that the:

1. person seeking payment under the lease, mortgage, secured transaction, or contract was an owner or controlling stockholder of the company or an affiliate of such a person at the time the contract took effect or
2. related rental, price, or interest rate required to be paid was substantially in excess of a reasonable amount at the time the lease, mortgage, secured transaction, or contract was entered into.

In the case of the latter, the receiver may apply to the court to set a reasonable rental, price, or interest rate to be paid for the duration of the receivership. The receiver may do this if he or she possesses real estate or goods necessary for the small water company's continued operation and they are related to the above listed transactions that the receiver is permitted to avoid.

The bill requires the court to hold a hearing within 15 days after the receiver makes such a motion. Any known owners of property involved in the motion must be notified at least 10 days before the hearing.

Under the bill, if the receiver pays an amount the court determines is reasonable, it constitutes a defense to any action against the receiver for (1) payment or (2) possession of the goods, security interest, or real estate subject to the lease or mortgage involved in the motion. But payment does not relieve the small water company owner from any liability for the difference between the amount the receiver paid and the amount due under the lease, mortgage, secured transaction, or contract.

The bill does not apply to a lease, mortgage, secured transaction, or

contract entered into with a state- or federally-regulated financial institution.

List of Qualified Receivers (§ 9)

The bill requires DPH to maintain and post on its website, a list of proposed interested and qualified receivers. The list must include individuals, corporations, associations, and partnerships with experience providing water service and a history of satisfactory water company operations.

The Superior Court may appoint anyone from the department's list to act as a receiver, but if the individual or entity declines, the court must appoint a receiver.

The bill prohibits a state employee, small water company owner, or person with a financial interest in the small water company to serve as its receiver. A person appointed as a receiver is prohibited from acquiring or having a current financial interest in the water company for up to five years after the date the receivership terminates.

The bill authorizes the court, at its discretion, to require the receiver to file a surety bond conditioned upon the receiver's faithful performance of his or her duties.

Removing a Receiver (§ 10)

The bill authorizes the court to remove a small water company receiver at any time. If the receiver is removed, declines to act, or dies, the court that made the appointment may fill the vacancy.

Under the bill, a small water company receiver is entitled to a reasonable receiver's fee the court determines. The receiver is liable only in his or her official capacity for injury to a person or property by reason of the small water company's conditions. The receiver is not personally liable, except for acts or omissions that constitute gross, willful, or wanton negligence.

Receivership Costs (§ 11)

The bill allows the receiver to pay the costs of operating the receivership by (1) using the rates collected from the small water company's consumers, and raising them if necessary; (2) selling or disposing of all or part of the company's real and personal property; or (3) both. The receiver may do this only if the Superior Court and DPH commissioner approve it.

The receivership costs include paying: (1) the receiver's service fees; (2) fees for attorneys, accountants, certified operators, engineers, or other provider of goods and services necessary to the receivership's operation; and (3) any other fees the court and DPH commissioner deem necessary.

Receiver's Filing Requirement (§ 12)

The bill requires a small water company receiver to quarterly sign, swear, and file with the Superior Court clerk a (1) full and detailed account of his or her actions as the receiver for the preceding three months and (2) statement of all court orders passed during the preceding three months and the small water company's present condition and prospects. The receiver must then cause a motion for a hearing and approval to be placed on the short calendar.

The bill requires the receiver to do this the first week of each January, April, July, and October.

Termination of Receivership (§ 13)

The bill authorizes the court to terminate a small water company's receivership and return the company to its owner if the receiver or owner files such a motion. The court must find that the small water company has been rehabilitated so that the violations or other conditions complained of no longer exist. In its termination order, the court must include terms it deems necessary to prevent these violations or conditions from recurring.

§ 14 — TEMPORARY MANAGERS

Appointment

The bill allows the DPH commissioner to appoint a person by emergency order to temporarily manage and operate a small water company if:

1. the company has abandoned operations,
2. DPH has filed or is filing a motion in Superior Court to appoint a receiver, and
3. the company's owner has been notified and provided an opportunity for a hearing (notice is deemed adequate if mailed or hand-delivered to the company's last known address).

The bill specifies that appointing a temporary manager does not affect DPH's authority to pursue enforcement actions against a small water company.

Powers and Duties

The bill grants a temporary manager the powers and duties necessary to ensure the (1) small water company's continued operation, (2) availability and potability of water, and (3) provision of water to consumers at adequate volume and pressure. Specifically, these powers and duties include:

1. reading meters;
2. billing customers for water services;
3. collecting revenues;
4. disbursing funds;
5. increasing rates charged to consumers if the increase is necessary and approved by the DPH commissioner;
6. accessing all small water company components;
7. conducting water sampling;

8. making necessary repairs, determined in consultation with the DPH commissioner; and
9. performing other acts necessary to assure continuous and adequate water service as authorized by the commissioner.

The bill permits the DPH commissioner to require the temporary manager to file a surety bond conditioned upon the manager's faithful performance of his or her duties.

Term Limits and Compensation

Under the bill, the temporary manager must serve a one-year term unless:

1. the DPH commissioner specifies otherwise,
2. DPH or the temporary manager request an extension and the commissioner grants it,
3. the DPH commissioner discharges the temporary manager from his or her responsibilities, or
4. the Superior Court appoints a receiver.

Under the bill, the DPH commissioner must set the temporary manager's compensation at the time he or she is appointed. The temporary manager must be paid using the rates collected from the small water company's consumers.

Reporting Requirements

The bill requires the temporary manager, within 60 days after being appointed, to provide the DPH commissioner an accounting of the small water company's assets and property.

Additionally, the temporary manager must report monthly to the DPH commissioner (1) an income statement for the relevant reporting period, (2) a summary of the small water company's activities, including all repairs made; and (3) any other information the

commissioner deems necessary.

§ 15 — DPH INVESTIGATIONS, INQUIRIES, AND HEARINGS

The bill authorizes the DPH commissioner, or his agent authorized to conduct an inquiry, investigation, or hearing under the bill's provisions to inspect the premises of a small water company; issue subpoenas; order the production of books, records, or documents; and administer oaths and take testimony under oath.

If DPH orders a hearing, the commissioner or his agent may subpoena witnesses and require the production of records, papers, and documents pertaining to the inquiry. If a person disobeys the subpoena, refuses to answer pertinent questions, or fails to produce records and papers pursuant to the subpoena, the bill allows the commissioner or his agent to petition the Superior Court in Hartford to order the person to appear before the court and answer the questions or produce the documents.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 23 Nay 3 (03/27/2017)