



House of Representatives

General Assembly

File No. 427

February Session, 2018

Substitute House Bill No. 5151

House of Representatives, April 12, 2018

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 CONNECTICUT'S SAFE
DRINKING WATER.***

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

1 Section 1. (NEW) (*Effective October 1, 2018*) (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) "Unaccounted for water loss" means water that the small
7 community water system supplies to its distribution system, but that
8 never reaches its consumers;

9 (3) "Useful life" means a manufacturer's recommended life or the
10 estimated lifespan of a water company's capital asset, taking into
11 consideration the service history and the condition of such capital asset
12 at the time a fiscal and asset management plan is prepared; and

13 (4) "Water company" has the same meaning as provided in section
14 25-32a of the general statutes.

15 (b) Each small community water system shall prepare a fiscal and
16 asset management plan for all of the capital assets that comprise such
17 system. The fiscal and asset management plan shall include, but need
18 not be limited to, (1) a list of all capital assets of the small community
19 water system, (2) the useful life of such capital assets, which shall be
20 based on the current condition of such capital assets, (3) the
21 maintenance and service history of such capital assets, (4) the
22 manufacturer's recommendation regarding such capital assets, and (5)
23 the small community water system's plan for the reconditioning,
24 refurbishment or replacement of such capital assets. Such fiscal and
25 asset management plan shall also provide information regarding
26 whether the small community water system has any unaccounted for
27 water loss, the amount of such unaccounted for water loss, what is
28 causing such unaccounted for water loss and the measures the small
29 community water system is taking to reduce such unaccounted for
30 water loss. Each small community water system shall make the
31 assessment of its hydropneumatic pressure tanks its initial priority in
32 its preparation of the fiscal and asset management plan.

33 (c) Each small community water system shall complete the fiscal
34 and asset management plan for all of its capital assets not later than
35 January 1, 2021. Following the completion of the initial fiscal and asset
36 management plan, each small community water system shall update
37 such fiscal and asset management plan annually and make such fiscal
38 and asset management plan available to the department upon request.

39 (d) Each small community water system shall complete, on a form
40 developed by the Department of Public Health, the fiscal and asset
41 management plan assessment review of its hydropneumatic pressure
42 tanks not later than May 2, 2019.

43 (e) This section shall not apply to a small community water system
44 that is (1) regulated by the Public Utilities Regulatory Authority, (2)
45 subject to the requirements set forth in section 25-32d of the general

46 statutes, or (3) a state agency.

47 (f) The provisions of this section shall be deemed to relate to the
48 purity and adequacy of water supplies for the purposes of the
49 imposition of a penalty under section 25-32e of the general statutes, as
50 amended by this act.

51 (g) The Commissioner of Public Health may adopt regulations, in
52 accordance with the provisions of chapter 54 of the general statutes, to
53 carry out the provisions of this section.

54 Sec. 2. Subsections (a) to (e), inclusive, of section 25-32e of the
55 general statutes are repealed and the following is substituted in lieu
56 thereof (*Effective October 1, 2018*):

57 (a) If, upon review, investigation or inspection, the Commissioner of
58 Public Health determines that a water company has violated any
59 provision of section 25-32, section 25-32d or any regulation adopted
60 under section 25-32d, or any [regulation in the Public Health Code
61 relating] provision of title 19 or 25 or any regulation promulgated
62 pursuant to said titles that relate to the purity and adequacy of water
63 supplies or to the testing of water supplies or any report of such
64 testing, the commissioner may impose a civil penalty not to exceed five
65 thousand dollars per violation per day upon such water company.
66 Governmental immunity shall not be a defense against the imposition
67 of any civil penalty imposed pursuant to this section. [The
68 commissioner shall adopt regulations, in accordance with the
69 provisions of chapter 54,] In establishing a schedule or schedules of the
70 amounts, or the ranges of amounts, of civil penalties which may be
71 imposed under this section, [. In adopting such regulations,] the
72 commissioner shall consider the size of or the number of persons
73 served by the water company, the level of assessment necessary to
74 insure immediate and continued compliance with such provision, and
75 the character and degree of injury or impairment to or interference
76 with or threat thereof to: (1) The purity of drinking water supplies; (2)
77 the adequacy of drinking water supplies; and (3) the public health,
78 safety or welfare. [No such civil penalty may be imposed until the

79 regulations required by this subsection have been adopted.] The
80 commissioner shall publish annually, or as the commissioner deems
81 necessary in response to any guidelines or ruling promulgated by the
82 United States Environmental Protection Agency, a schedule of the
83 amounts, or ranges of amounts, of civil penalties that may be imposed
84 under this section on the Department of Public Health's Internet web
85 site if the civil penalty for a violation under this section has not been
86 established by statute. Notwithstanding the provisions of chapter 54,
87 the commissioner shall not be required to adopt or revise any
88 regulations regarding the imposition of civil penalties when
89 publishing such schedule. Not less than six months prior to publishing
90 such schedule, the commissioner shall publish notice in the
91 Connecticut Law Journal of his or her intention to publish such
92 schedule on the department's Internet web site. Such notice shall
93 include such schedule and the date on which the commissioner intends
94 to hold a public hearing on such schedule and indicate that public
95 comment on such schedule shall be provided to the commissioner not
96 later than thirty days after the date of publication of such notice. The
97 commissioner shall hold the public hearing on such schedule not later
98 than thirty days after the date of publishing such notice. The
99 commissioner shall take any public comments received under this
100 subsection into consideration in establishing such schedule. The
101 commissioner shall publish a document responding to such comments
102 on the department's Internet web site not less than one month prior to
103 publishing such schedule.

104 (b) In setting a civil penalty in a particular case, where the civil
105 penalty has not been established by statute or pursuant to the schedule
106 in subsection (a) of this section, the commissioner shall consider all
107 factors which the commissioner deems relevant, including, but not
108 limited to, the following: (1) The amount of assessment necessary to
109 [insure] ensure immediate and continued compliance with such
110 provision; (2) the character and degree of impact of the violation on the
111 purity and adequacy of drinking water supplies; (3) whether the water
112 company incurring the civil penalty is taking all feasible steps or
113 procedures necessary or appropriate to comply with such provisions

114 or to correct the violation; (4) any prior violations by such water
115 company of statutes, regulations, orders or permits administered,
116 adopted or issued by the commissioner; (5) the character and degree of
117 injury to, or interference with, public health, safety or welfare which
118 has been or may be caused by such violation; and (6) [after the
119 adoption of the federal Safe Drinking Water Act Public Notification
120 Rule pursuant to section 5 of public act 01-185,] whether the consumers
121 of the water company have been notified of such violation pursuant to
122 [such rule] section 19-13-B102 of the regulations of Connecticut state
123 agencies.

124 (c) If the commissioner has reason to believe that a violation has
125 occurred, the commissioner may impose a penalty if compliance is not
126 achieved by a specified date and send to the suspected violator, by
127 certified mail, return receipt requested, or personal service at the
128 address filed with the department by the water company as required
129 under subsection (a) of section 25-33 or, if the water company did not
130 file an address as required under said subsection, to the last known
131 address of the water company on file at the department, a notice which
132 shall include: (1) A reference to the sections of the statute or regulation
133 involved; (2) a short and plain statement of the [matters asserted or
134 charged] violation; (3) a statement of the amount of the civil penalty or
135 penalties [to be] imposed; (4) the initial date of the imposition of the
136 penalty when the penalty is imposed for a continuing violation, or the
137 date for which the penalty is imposed when the penalty is imposed for
138 an isolated violation; and (5) a statement of the [party's] water
139 company's right to a hearing. The commissioner shall send a copy of
140 such notice to the local director of health in the municipality or
141 municipalities in which such violation occurred or that utilize such
142 water.

143 (d) The civil penalty shall be payable for noncompliance on the date
144 specified in subsection (c) of this section and for each day thereafter
145 until the water company against which the penalty was issued
146 [notifies] demonstrates to the commissioner that the violation has been
147 corrected. [Upon receipt of such notification, the commissioner shall

148 determine whether or not the violation has been corrected and shall
 149 notify the water company, in writing, of such determination. The water
 150 company may, within twenty days after such notice is sent by the
 151 commissioner, request a hearing to contest an adverse determination.
 152 If, after such hearing, the commissioner finds that the violation still
 153 exists, or if the water company fails to request a hearing, the penalty
 154 shall continue in force from the original date of imposition.]

155 (e) The water company to which the notice is addressed shall have
 156 twenty days from the date of mailing of the notice to make written
 157 application to the commissioner for a hearing to contest the imposition
 158 of the penalty. The application shall include a detailed statement of all
 159 of the grounds for contesting the imposition of the penalty. The water
 160 company shall send a copy of such application to the local director of
 161 health in the municipality or municipalities in which such violation
 162 occurred or that utilize such water. All hearings under this section
 163 shall be conducted pursuant to sections 4-176e to 4-184, inclusive,
 164 except that the presiding officer shall automatically grant each local
 165 director of health in the municipality or municipalities in which such
 166 violation occurred or that utilize such water the right to be heard in the
 167 proceeding. Any civil penalty may be mitigated by the commissioner
 168 upon such terms and conditions as the commissioner, in the
 169 commissioner's discretion, deems proper or necessary upon
 170 consideration of the factors set forth in subsection (b) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	New section
Sec. 2	October 1, 2018	25-32e(a) to (e)

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 that do not result in a fiscal impact to the state or municipalities. Requirements of the Department of Public Health can be fulfilled by the agency's Drinking Water Section, which includes sanitary engineers, environmental analysts, and health program personnel.

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

OLR Bill Analysis**sHB 5151*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS REGARDING CONNECTICUT'S SAFE DRINKING WATER.*****SUMMARY**

This bill makes various changes affecting public water systems and the oversight of small community water systems (i.e., those regularly serving between 25 and 1,000 year-round residents). Among other things, the bill:

1. requires, by January 1, 2021, small community water systems to submit to the Department of Public Health (DPH) a fiscal and asset management plan for all their capital assets;
2. requires such systems, before completing their fiscal asset management plan, to complete an assessment review of their hydropneumatic pressure tanks by May 2, 2019;
3. requires the DPH commissioner to publish on the department's website a schedule of civil penalties imposed against water companies under the safe drinking water statutes, rather than adopting them in regulations as under current law; and
4. requires the DPH commissioner to notify the public at least six months before publishing the civil penalties and hold a public hearing within 30 days after such notification.

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 plant or system that supplies water to two or more consumers or to 25 or more people on a regular basis.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2018

§ 1 — FISCAL AND ASSET MANAGEMENT PLANS

Plan Contents

The bill requires each small community water system to prepare a fiscal and asset management plan for all of the system's capital assets. The fiscal and asset management plan must include:

1. a list of all of the system's capital assets;
2. the assets' (a) useful life, based on their current condition, (b) maintenance and service history, and (c) manufacturer's recommendation;
3. the small community water system's plan for reconditioning, refurbishing, or replacing the assets; and
4. information on (a) whether the small community water system has any unaccounted for water loss (i.e. water supplied to its distribution system that never reached consumers), (b) the amount and cause of such unaccounted water loss, and (c) measures the system is taking to reduce it.

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

Under the bill, the "useful life" of a water system's capital asset means the manufacturer's recommended life or the estimated lifespan, taking into consideration the asset's service history and condition when the fiscal and asset management plan is prepared.

Deadline

The bill requires small community water systems to complete the fiscal and asset management plan by January 1, 2021. But they must first complete an assessment review of their hydropneumatic pressure tanks by May 2, 2019 on a form DPH prepares.

The bill also requires small community water systems 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 small community water system that is (1) regulated by the Public Utilities Regulatory Authority (i.e., investor-owned water companies), (2) required to submit a water supply plan to DPH (e.g., generally, those serving 1,000 or more people or 250 or more customers), 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 described further below.

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***

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 (UAPA), 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 (1) the civil penalty schedule, (2) the date the commissioner intends to hold a public hearing on the matter, and (3) when the commissioner will receive public comments on the schedule. He must hold the hearing and receive public comments on the civil penalty schedule within 30 days after publishing the notice.

The bill requires the commissioner to consider the public comments he receives when establishing the civil penalty schedule and publish his response to these comments on the department's website at least one month before publishing the schedule.

Notice of Violations

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

By law, a water company can contest the penalty by applying to the DPH commissioner for an administrative hearing under the UAPA 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.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/26/2018)