

CHAPTER 133

[Substitute Senate Bill No. 6447]

FAILING PUBLIC WATER SYSTEMS

AN ACT Relating to failing public water systems; amending RCW 36.94.140, 43.70.190, 43.70.200, 43.155.070, 43.155.065, 70.119A.040, and 70.05.070; adding a new section to chapter 8.25 RCW; adding a new section to chapter 43.70 RCW; creating new sections; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds the best interests of the citizens of the state are served if:

- (1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;
- (2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use regulation and public health and safety;
- (3) Public water systems in violation of health and safety standards adopted under RCW 43.20.050 remain in operation and continue providing water service providing that public health is not compromised, assuming a suitable replacement purveyor is found and deficiencies are corrected in an expeditious manner consistent with public health and safety; and
- (4) The state address, in a systematic and comprehensive fashion, new operating requirements which will be imposed on public water systems under the federal Safe Drinking Water Act.

Sec. 2. Section 14, chapter 72, Laws of 1967 as amended by section 2, chapter 188, Laws of 1975 1st ex. sess. and RCW 36.94.140 are each amended to read as follows:

Every county, in the operation of a system of sewerage and/or water, shall have full jurisdiction and authority to manage, regulate and control it and to fix, alter, regulate and control the rates and charges for the service to those to whom such county service is available, and to levy charges for connection to such system. The rates for availability of service and connection charges so charged must be uniform for the same class of customers or service.

In classifying customers served, service furnished or made available by such system of sewerage and/or water, or the connection charges, the board may consider any or all of the following factors:

- (1) The difference in cost of service to the various customers within or without the area;
- (2) The difference in cost of maintenance, operation, repair and replacement of the various parts of the systems;
- (3) The different character of the service furnished various customers;

(4) The quantity and quality of the sewage and/or water delivered and the time of its delivery;

(5) Capital contributions made to the system or systems, including, but not limited to, assessments; (~~and~~)

(6) The cost of acquiring the system or portions of the system in making system improvements necessary for the public health and safety; and

(7) Any other matters which present a reasonable difference as a ground for distinction.

Such rates shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for the efficient and proper operation of the system.

Sec. 3. Section 5, chapter 102, Laws of 1967 ex. sess. as last amended by section 258, chapter 9, Laws of 1989 1st ex. sess. and RCW 43.70.190 are each amended to read as follows:

The secretary of health or local health officer may bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health or the department of health pursuant to said laws, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. Upon the filing of any action, the court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte.

NEW SECTION. Sec. 4. A new section is added to chapter 43.70 RCW to read as follows:

(1) In any action brought by the secretary of health or by a local health officer pursuant to chapter 7.60 RCW to place a public water system in receivership, the petition shall include the names of one or more suitable candidates for receiver who have consented to assume operation of the water system. The department shall maintain a list of interested and qualified individuals, municipal entities, special purpose districts, and investor-owned water companies with experience in the provision of water service and a history of satisfactory operation of a water system. If there is no other person willing and able to be named as receiver, the court shall appoint the county in which the water system is located as receiver. The county may designate a county agency to operate the system, or it may contract with another individual or public water system to provide management for the system. If the county is appointed as receiver, the secretary of health and the county health officer shall provide regulatory oversight for the agency or other person responsible for managing the water system.

(2) In any petition for receivership under subsection (1) of this section, the department shall recommend that the court grant to the receiver full

authority to act in the best interests of the customers served by the public water system. The receiver shall assess the capability, in conjunction with the department and local government, for the system to operate in compliance with health and safety standards, and shall report to the court its recommendations for the system's future operation, including the formation of a water district or other public entity, or ownership by another existing water system capable of providing service.

(3) If a petition for receivership and verifying affidavit executed by an appropriate departmental official allege an immediate and serious danger to residents constituting an emergency, the court shall set the matter for hearing within three days and may appoint a temporary receiver ex parte upon the strength of such petition and affidavit pending a full evidentiary hearing, which shall be held within fourteen days after receipt of the petition.

(4) A bond, if any is imposed upon a receiver, shall be minimal and shall reasonably relate to the level of operating revenue generated by the system. Any receiver appointed pursuant to this section shall not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the court's orders.

(5) The court shall authorize the receiver to impose reasonable assessments on a water system's customers to recover expenditures for improvements necessary for the public health and safety.

Sec. 5. Section 6, chapter 102, Laws of 1967 ex. sess. as last amended by section 259, chapter 9, Laws of 1989 1st ex. sess. and RCW 43.70.200 are each amended to read as follows:

Upon the request of a local health officer, the secretary of health is hereby authorized and empowered to take legal action to enforce the public health laws and rules and regulations of the state board of health or local rules and regulations within the jurisdiction served by the local health department, and may institute any civil legal proceeding authorized by the laws of the state of Washington, including a proceeding under Title 7 RCW.

Sec. 6. Section 12, chapter 446, Laws of 1985 as last amended by section 3, chapter 93, Laws of 1988 and RCW 43.155.070 are each amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a long-term plan for financing public works needs; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is located in an area of high unemployment, compared to the average state unemployment; ~~((and))~~

(f) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system; and

(g) Other criteria that the board considers advisable.

(3) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(4) Before November 1 of each year, the board shall develop and submit to the chairs of the ways and means committees of the senate and house of representatives a description of the emergency loans made under RCW 43.155.065 during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(5) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has

appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(6) Subsections (4) and (5) of this section do not apply to loans made for emergency public works projects under RCW 43.155.065.

Sec. 7. Section 1, chapter 93, Laws of 1988 and RCW 43.155.065 are each amended to read as follows:

The board may make low-interest or interest-free loans to local governments for emergency public works projects. Emergency public works projects shall include the construction, repair, reconstruction, replacement, rehabilitation, or improvement of a public water system that is in violation of health and safety standards and is being operated by a local government on a temporary basis. The loans may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following sources: (1) Federal disaster or emergency funds, including funds from the federal emergency management agency; (2) state disaster or emergency funds; (3) insurance settlements; or (4) litigation. Emergency loans may be made only from those funds specifically appropriated from the public works assistance account for such purpose by the legislature. The amount appropriated from the public works assistance account for emergency loan purposes shall not exceed five percent of the total amount appropriated from this account in any biennium.

Sec. 8. Section 4, chapter 271, Laws of 1986 as amended by section 135, chapter 175, Laws of 1989 and RCW 70.119A.040 are each amended to read as follows:

(1) In addition to or as an alternative to any other penalty provided by law, every person who commits any of the acts or omissions in RCW 70.119A.030 shall be subjected to a penalty in an amount of not less than five hundred dollars. The maximum penalty shall be not more than five thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for remission or mitigation is made as

provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall not mitigate the fines below the minimum penalty prescribed in subsection (1) of this section. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner as it may deem proper. When an application for remission or mitigation is made, a penalty incurred under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) A penalty imposed by a final order after an adjudicative proceeding is due upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county, or of any county in which such violator may do business, to collect a penalty.

(7) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund.

NEW SECTION. Sec. 9. A new section is added to chapter 8.25 RCW to read as follows:

Consistent with standard appraisal practices, the valuation of a public water system as defined in RCW 70.119A.020 shall reflect the cost of system improvements necessary to comply with health and safety rules of the state board of health and applicable regulations developed under chapter 43.20, 43.20A, or 70.116 RCW.

Sec. 10. Section 12, chapter 51, Laws of 1967 ex. sess. as last amended by section 7, chapter 25, Laws of 1984 and RCW 70.05.070 are each amended to read as follows:

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040, if any, shall:

(1) Enforce the public health statutes of the state, rules and regulations of the state board of health and the secretary of social and health services, and all local health rules, regulations and ordinances within his or her

jurisdiction including imposition of penalties authorized under RCW 70-119A.030 and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of social and health services or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules and regulations of the state board of health((-));

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

NEW SECTION. Sec. 11. The department shall prepare a report for the legislature no later than December 1, 1990, with regard to the problems of small water systems and proposed solutions. Such a report shall be prepared in consultation with the utilities and transportation commission, the department of community development, department of ecology, public works assistance board, and associations of cities, counties, public and private utilities, water districts, local health directors, and other interested groups. The report shall address, at a minimum, the following topics, with alternative approaches or solutions:

(1) The number and locations of existing public systems that do not meet public health and safety standards;

(2) Costs associated with state enforcement of new federal standards under the 1986 amendments to the Safe Drinking Water Act, including expenses and potential financing mechanisms for the operating costs of receivers of water systems when the system revenue is otherwise inadequate to cover the costs;

(3) Available financing for capital improvements for both publicly owned and privately owned water systems;

(4) Legal and regulatory barriers to improved delivery of safe and reliable drinking water supplies to the state's residents and in particular regulating and enforcement overlap between the department and the utilities and transportation commission;

(5) The effect of failing or inadequate water supplies on the ability of an owner to sell, or a buyer to obtain financing to buy, residential real estate in this state;

(6) Staffing levels for both state and local agencies responsible for enforcing the state's drinking water laws, including mechanisms for funding such staff;

(7) Revisions to requirements relating to certification of operators for public water systems, including the utilization state-wide of a system of satellite operators; and

(8) Such other topics as are significant and relevant.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 3, 1990.

Passed the House March 1, 1990.

Approved by the Governor March 21, 1990.

Filed in Office of Secretary of State March 21, 1990.

CHAPTER 134

[Substitute Senate Bill No. 6453]

AGRICULTURAL LENDERS—FARMERS HOME ADMINISTRATION LOAN GUARANTY PROGRAM PARTICIPATION

AN ACT Relating to the use of farmers home administration guaranty loan funds; adding a new chapter to Title 31 RCW; prescribing penalties; making an appropriation; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that nondepository agricultural lenders can enhance their access to working capital for the purpose of financing agricultural borrowers by using the United States farmers home administration loan guaranty program. The farmers home administration loan guaranty program provides financing to agricultural borrowers needing working capital and longer term financing for the purchase of real estate, agricultural production expenses, debt refinancing,