

CHAPTER 271

[Substitute House Bill No. 1458]

PUBLIC WATER SUPPLY SYSTEMS—PENALTY AND COMPLIANCE
PROVISIONS

AN ACT Relating to local boards of health and the department of social and health services enforcing laws relating to public water supply systems; adding a new section to chapter 34.12 RCW; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The purpose of this chapter is to authorize local boards of health and the department of social and health services to impose civil penalties for specified acts or omissions or for disobeying an order to comply with regulations relating to public water supply systems. Conformance with laws and regulations to preserve and protect the purity of drinking water in our public water systems is of utmost importance.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

- (1) "Department" means the department of social and health services.
- (2) "Local board of health" has the meaning in RCW 70.05.010.
- (3) "Public water supply system" has the meaning in RCW 70.119.020.
- (4) "Order" means a written direction to comply with a provision of the regulations or to take an action or a series of actions to comply with the regulations, allowing a reasonable time to comply without penalty and shall consider the ability of the public water supply system to prevent or correct the violation.

(5) "Regulations" means the provisions of chapter 248-54 WAC, as it may be amended, or any regulations that supersede chapter 248-54 WAC and are adopted under the authority of RCW 43.20.050(2)(a).

NEW SECTION. Sec. 3. (1) As limited by section 4 of this act, the department may impose penalties for violations of laws or regulations that are determined by the health officer to be an imminent or actual public health emergency.

(2) As limited by section 4 of this act, the department may impose penalties for failure to comply with an order of the department, or of an authorized local board of health, when the order:

(a) Directs any person to stop work on the construction or alteration of a public water supply system when plans and specifications for the construction or alteration have not been approved as required by the regulations, or when the work is not being done in conformity with approved plans and specifications;

(b) Requires any person to eliminate a cross-connection to a public water supply system by a specified time; or

(c) Directs the owner or operator of a public water supply system to cease violating any other regulation relating to public water supply systems, or to take specific actions within a specified time to place a public water supply system in compliance with any other regulations.

NEW SECTION. Sec. 4. (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 section 3 of this act shall be subjected to a penalty in an amount of 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, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen 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 have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper. Any penalty imposed by this section shall be subject to review by the office of administrative hearings in accordance with chapter 34.12 RCW.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review is filed directly to the office of administrative hearings within thirty days of the imposition of the penalty. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the office of administrative hearings shall become due and payable thirty days after receipt of the notice setting forth the decision.

(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the secretary of the department, shall bring an action in the name of the state

of Washington in the superior court of Thurston county, or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided.

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

NEW SECTION. Sec. 5. Each local board of health that is enforcing the regulations under an agreement with the department allocating state and local responsibility is authorized to impose civil penalties for violations within the area of its responsibility under the same limitations and requirements as imposed upon the department in sections 3 and 4 of this act, except that the penalties shall be placed into the general fund of the county, city, or town operating the local board of health, and the prosecuting attorney, or city, or town attorney shall bring the actions to collect the unpaid penalties.

***NEW SECTION.** Sec. 6. *A new section is added to chapter 34.12 RCW to read as follows:*

Appeals from penalties imposed by the department of social and health services or a local board of health under chapter 70.-- RCW (sections 1 through 5 of this act) shall be made directly to the office of administrative appeals within thirty days of the imposition of the penalty. Decisions by an administrative law judge shall be directly appealable to the Thurston county superior court or the superior court of the county in which the public water supply system is located. Such appeals must be filed within thirty days of the decision by the administrative law judge.

The costs incurred by the office of administrative hearings in hearing such appeals and rendering such opinions shall be paid by the department of social and health services for appeals from penalties imposed by the department, and by the local board of health for appeals from penalties imposed by the local board of health.

*Sec. 6 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall constitute a new chapter in Title 70 RCW.

Passed the House January 28, 1986.

Passed the Senate March 6, 1986.

Approved by the Governor April 3, 1986, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State April 3, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Substitute House Bill No. 1458, entitled:

"AN ACT Relating to local boards of health and the department of social and health services enforcing laws relating to public water supply systems."

Section 6 of this bill would significantly expand the authority of administrative law judges, turning them into a new arm of the judiciary. These judges now have the authority to issue a proposed decision. This section would give them authority to make a final decision which could be appealed only to the courts.

This new authority is not necessary or justified. Section 6 would also create a new appeals process outside the provisions of the state's Administrative Procedure Act. The Administrative Procedure Act has made agency actions more uniform and this uniformity is more understandable to the state's citizens. For these reasons, I have vetoed section 6.

With the exception of section 6, Substitute House Bill No. 1458 is approved.*

CHAPTER 272

[House Bill No. 1647]

PUBLIC DISCLOSURE COMMISSION—SUNSET PROVISIONS MODIFIED

AN ACT Relating to the sunset termination and repeal of the public disclosure commission, of the powers and duties of the commission, and of the programs administered or enforced by the commission; amending RCW 43.131.269 and 43.131.270; and reenacting and amending RCW 42.17.240.

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

Sec. 1. Section 8, chapter 197, Laws of 1983 and RCW 43.131.269 are each amended to read as follows:

The public disclosure commission and its powers and duties shall be terminated on June 30, (~~(+1986)~~) 1992, as provided in RCW 43.131.270.

Sec. 2. Section 34, chapter 197, Laws of 1983 and RCW 43.131.270 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~(+1987)~~) 1993:

(1) Section 1, chapter 1, Laws of 1973, section 1, chapter 294, Laws of 1975 1st ex. sess. and RCW 42.17.010;

(2) Section 3, chapter 1, Laws of 1973, section 2, chapter 313, Laws of 1977 ex. sess., section 2, chapter 367, Laws of 1985 and RCW 42.17.030;

(3) Section 4, chapter 1, Laws of 1973, section 3, chapter 294, Laws of 1975 1st ex. sess., section 1, chapter 336, Laws of 1977 ex. sess., section 1, chapter 147, Laws of 1982 and RCW 42.17.040;

(4) Section 5, chapter 1, Laws of 1973, section 2, chapter 147, Laws of 1982, section 3, chapter 367, Laws of 1985 and RCW 42.17.050;

(5) Section 6, chapter 1, Laws of 1973, section 4, chapter 294, Laws of 1975 1st ex. sess., section 3, chapter 313, Laws of 1977 ex. sess., section 3, chapter 147, Laws of 1982, section 4, chapter 367, Laws of 1985 and RCW 42.17.060;

(6) Section 5, chapter 294, Laws of 1975 1st ex. sess., section 4, chapter 147, Laws of 1982 and RCW 42.17.065;

(7) Section 9, chapter 112, Laws of 1975-'76 2nd ex. sess., section 5, chapter 147, Laws of 1982 and RCW 42.17.067;