

2021 Regular Session

SENATE BILL NO. 129

BY SENATORS FRED MILLS, BARROW AND MIZELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WATER QUALITY. Creates and provides for the Community Drinking Water Infrastructure Sustainability Act. (8/1/21)

1 AN ACT

2 To amend and reenact R.S. 40:5.9(C)(4) and (5), to enact R.S. 40:5.9(C)(6), 5.9.1, and 5.9.2,

3 and to repeal R.S. 36:259(B)(9) and R.S. 40:4.13, relative to public drinking water;

4 to create and provide for the Community Drinking Water Infrastructure

5 Sustainability Act; to provide for public purpose; to provide for a statewide system

6 of community water system accountability; to provide for rulemaking; to provide for

7 development of a letter grade schedule reflective of community water system quality

8 and performance; to provide for publication of quality and performance scores and

9 letter grades; to provide for requirement of an improvement plan; to provide for

10 penalties; to provide for the use of federal funds; to repeal certain provisions relative

11 to rulemaking; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 40:5.9(C)(4) and (5) are hereby amended and reenacted and R.S.
14 40:5.9(C)(6), 5.9.1, and 5.9.2 are hereby enacted to read as follows:

15 §5.9. Enforcement of drinking water regulations; administrative compliance orders;
16 civil actions; receiverships

17 * * *

1 C. * * *

2 (4) No later than ninety days after appointment, the receiver shall
 3 develop and submit an improvement plan to the Louisiana Department of
 4 Health for approval. The improvement plan shall include the ability to increase
 5 rates paid by users of the community water system based on a fair assessment
 6 of the community water system compared to comparable water systems, the
 7 consolidation of the community water system with a neighboring system or
 8 systems, or other measure which may be proposed by the receiver or the
 9 Louisiana Department of Health to ensure the sustainability of the system for
 10 the benefit of the customers who rely on the community water system for their
 11 drinking water. The receiver shall include in the improvement plan any
 12 additional measures proposed by the Louisiana Department of Health necessary
 13 to bring the community water system into technical and operational compliance
 14 and financial sustainability. The appointing court shall grant authority to the
 15 receiver necessary to implement the improvement plan as approved by the
 16 Louisiana Department of Health.

17 ~~(4)~~(5) The receiver shall carry out the orders specified and directed by the
 18 court until discharged.

19 ~~(5)~~(6) The court may dissolve the receivership if the person owning or
 20 operating the defendant public water system requests that the receivership be
 21 dissolved and such owner or operator can show good cause for the dissolution of the
 22 receivership.

23 §5.9.1. Community water system accountability process; creation of letter
 24 grade schedule; penalties for failing systems

25 A. This Section shall be known and may be cited as "The Community
 26 Drinking Water Infrastructure Sustainability Act" which has been enacted by
 27 the legislature to provide:

28 (1) For the development and implementation of a community water
 29 system accountability process which requires and supports drinking water

1 infrastructure sustainability for the citizens of Louisiana.

2 (2) Assurance to the citizens that the quality of drinking water is
3 monitored and maintained at levels essential for health, safety, welfare, and
4 long-term sustainability.

5 (3) Clear standards and expectations for community water systems so
6 that assessment of their quality, performance, and sustainability will be
7 understood.

8 (4) Information that will assist community water systems and citizens in
9 understanding expectations, outcomes, and consequences for failing community
10 water systems.

11 (5) For consequences and penalties for community water systems that do
12 not achieve minimum standards.

13 B. "Community water system" has the same meaning as provided for in
14 R.S. 40:5.8.

15 C. The Louisiana Department of Health, referred to in this Section as the
16 "department", shall provide for a statewide system of accountability for
17 community water systems and establish a letter grade schedule reflective of
18 community water system quality, performance, and sustainability based on, at
19 a minimum, the following standards:

20 (1) Federal water quality violation history.

21 (2) State violation history.

22 (3) Water system financial sustainability.

23 (4) Operation and maintenance performance history.

24 (5) Infrastructure violations.

25 (6) Customer satisfaction.

26 (7) Level of secondary contaminants.

27 D.(1) The department shall promulgate rules and regulations to establish
28 and implement the community water system letter grade schedule provided for
29 in this Section. The rules and regulations shall provide clear and appropriate

1 point values for each standard set forth in Subsection C of this Section and
2 other assessed criteria as determined by the department that is used to calculate
3 the community water system's letter grade. Point values shall be based on
4 objective criteria so that each community water system is assessed equally and
5 fairly. Community water systems shall be assigned a letter grade of "A", "B",
6 "C", "D", or "F".

7 (2) The department shall publish scores and letter grades earned by each
8 community water system on its website in a frequency and duration established
9 by rule.

10 E. Any community water system that receives a letter grade of "D" or
11 "F" shall be considered operationally unacceptable and may be subject to the
12 following:

13 (1) Enforcement actions as provided for in R.S. 40:5.9.

14 (2) Oversight of all federal or state funding by an auditor approved by
15 the Louisiana legislative auditor who has experience with fiscal management of
16 local government. The oversight provided for in this Paragraph shall include
17 the authority to make decisions regarding the expenditure of funding.

18 (3) Notice being submitted to the State Bond Commission, Public Service
19 Commission, and attorney general to prohibit the community water system or
20 the local governing authority operating the community water system from
21 incurring any additional debt for anything not directly related to the
22 improvement and sustainability of the community drinking water system
23 pursuant to a plan approved by the department.

24 F. Notwithstanding any provision of law to the contrary, no local
25 governing authority that operates a community water system that receives a
26 grade of "D" or "F" shall expend any money raised through payment by
27 customers for access to water or other water system revenue for any item, debt
28 payment, or public purpose other than the improvement and sustainability of
29 the community water system. A violation of this Subsection shall be grounds for

1 **a court to appoint a receiver or fiscal administrator or to order the mandatory**
 2 **safe water purchase from another system determined to be available by the**
 3 **Louisiana Department of Health. The provisions of this Subsection shall not be**
 4 **construed to prohibit the payment of bonded indebtedness secured by the water**
 5 **system's revenue prior to August 1, 2021.**

6 **G. The department shall publish the first letter grades issued pursuant**
 7 **to this Section no later than January 1, 2023.**

8 **§5.9.2. Community water system accountability; federal funds**

9 **A community water system or local governing authority operating a**
 10 **community water system receiving federal funds, including stimulus or relief**
 11 **payments or grants, for the upgrade, repair, or otherwise replacement of the**
 12 **water system infrastructure shall submit a detailed plan describing how the**
 13 **federal funds will be used to the Louisiana Department of Health.**

14 Section 2. R.S. 36:259(B)(9) and R.S. 40:4.13 are hereby repealed.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Brandi Cannon.

DIGEST

SB 129 Engrossed

2021 Regular Session

Fred Mills

Present law provides for the remedies available to the state health officer for the enforcement of public drinking water laws and regulations relative to public water including administrative compliance orders, civil penalties, and civil actions for injunctions and to place a public water system in receivership. Proposed law requires a receiver, within 90 days after appointment, to develop and submit an improvement plan to the La. Dept. of Health (LDH) for approval, and provides for the content of the improvement plan.

Proposed law creates the "Community Drinking Water Infrastructure Sustainability Act" and provides for legislative intent for development of a community water system accountability process to provide public assurance that drinking water is of high quality with clear standards and expectations of the community water system.

Proposed law defines "community water system" as a public water system that serves year-round residents within a residential setting including systems serving municipalities, water districts, subdivisions, and mobile home parks.

Proposed law provides that LDH will implement a statewide accountability system that assesses letter grades to community water systems based on a clear and appropriate point value assigned, at a minimum, for federal water quality violation history, state violation history, water system financial sustainability, operation and maintenance performance history, infrastructure violations, customer satisfaction, and level of secondary contaminants. Proposed law provides for the assignment of a letter grade of "A", "B", "C", "D", or "F".

Proposed law provides that LDH shall publish scores and letter grades earned by each community water system on its website in a frequency and duration established by LDH in rulemaking.

Proposed law provides that any community water system that receives a letter grade of "D" or "F" shall be considered operationally unacceptable and may be subject to present law enforcement actions including administrative compliance orders, civil actions, and court appointed receivership, oversight of federal or state grant funding by an auditor approved by the Louisiana legislative auditor, or being placed on notice to the State Bond Commission, Public Service Commission, and attorney general to prohibit the incurring of any additional debt for anything not directly related to the water system.

Proposed law provides that no local governing authority that operates a community water system that receives a grade of "D" or "F" shall expend any money raised through payment by customers for access to water or other water system revenue for any item, debt payment, or public purpose other than the improvement and sustainability of the community water system. Proposed law shall not be construed to prohibit the payment of bonded indebtedness secured by the water system's revenue incurred prior to the effective date of proposed law.

Proposed law provides that LDH shall publish the first letter grades no later than January 1, 2023.

Proposed law provides that a community water system or local governing authority operating a community water system receiving federal funds, including stimulus or relief payments or grants, for the upgrade, repair, or otherwise replacement of the water system infrastructure shall submit a detailed plan describing how the federal funds will be used to LDH.

Present law provides that LDH shall promulgate a rule or take action requiring the modification of an existing community water system in operation before August 1, 2013, only if LDH demonstrates that the public water system is incapable of attaining compliance with the National Primary Drinking Water Regulations without the modification and provides for permits for a new public water supply system or in connection with the modification of an existing public water system. Present law establishes the Louisiana Standards for Water Works Construction, Operation, and Maintenance Committee and provides for the duties, membership, and meetings of the committee. Proposed law repeals present law.

Effective August 1, 2021.

(Amends R.S. 40:5.9(C)(4) and (5); adds R.S. 40:5.9(C)(6), 5.9.1, and 5.9.2; repeals R.S. 36:259(B)(9) and R.S. 40:4.13)