

2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 54

BY REPRESENTATIVE HOFFMANN

PUBLIC HEALTH: Clarifies legislative intent regarding regulation of public water systems and directs the Dept. of Health and Hospitals to issue rules for drinking water disinfection that comply with Act No. 573 of the 2014 Regular Session

1 A CONCURRENT RESOLUTION

2 To express the intent of the legislature regarding an exemption from water system
3 regulations provided in R.S. 40:4.15(C), as enacted by Act No. 573 of the 2014
4 Regular Session, and to direct the Department of Health and Hospitals to promulgate
5 rules through the notice of intent process to replace a series of redeclared emergency
6 rules in order to implement the provisions of that Act.

7 WHEREAS, a tragedy occurred in this state in August 2013, when a four-year-old
8 boy contracted amoebic meningoencephalitis in St. Bernard Parish and died shortly
9 thereafter from the illness; and

10 WHEREAS, after the cause of the illness was determined to be the amoeba *Naegleria*
11 *fowleri* which was present in the drinking water supply, officials with the Department of
12 Health and Hospitals, referred to hereafter as "the department", took swift action to
13 safeguard public health across the state by testing public water supplies and working closely
14 with local officials to ensure that water systems used chlorine at levels sufficient to eliminate
15 all risk of exposure to the amoeba; and

WHEREAS, the department performed capably in disseminating vital public health information in the wake of the tragedy, including key information on how infection from *Naegleria fowleri* can and cannot be contracted; specifically, the information that infection can only occur from deep nasal inhalation of water from an activity such as swimming or

1 diving, and that infection cannot result from drinking water contaminated with the amoeba;
2 and

3 WHEREAS, in November 2013, the department issued its first emergency rule
4 relative to minimum disinfection requirements for public water systems in the wake of
5 *Naegleria fowleri* being identified in the St. Bernard Parish water system, and subsequently
6 in a water system in DeSoto Parish; and

7 WHEREAS, this was the first in what would become a series of emergency rules that
8 the department has issued or redeclared since 2013 on public water system disinfection; and

9 WHEREAS, recognizing the need for a more permanent and stable policy than an
10 emergency rule on disinfection of drinking water, as well as the need to delineate which
11 water systems are required to comply with minimum disinfection standards, the legislature
12 passed Senate Bill No. 75 of the 2014 Regular Session, which became Act No. 573, referred
13 to hereafter as "Act No. 573"; and

14 WHEREAS, among other provisions formalizing standards for chlorine levels in
15 public water systems, Act No. 573 set forth a clear exemption from such standards for
16 industrial water users that own, operate, and maintain a water system dedicated to the
17 exclusive use of industrial operations or facilities; and

18 WHEREAS, notwithstanding this exemption, which is codified at R.S. 40:4.15(C),
19 the department has attempted to subject industrial users to chlorination standards set forth
20 in Act No. 573 and in its emergency rules; and

21 WHEREAS, it is uncertain as of the date of filing of this Resolution when the
22 department will consider any final rulemaking on this matter; and

23 WHEREAS, such uncertainty is of particular concern not only because of the
24 regulatory burden it has caused for industrial water users, but also because chlorination of
25 drinking water at levels currently required by the department could actually harm public
26 health, as chlorination at these levels can create carcinogenic byproducts such as
27 trihalomethanes in drinking water; and

28 WHEREAS, the legislature intends for departments and agencies of the state to
29 utilize the emergency rulemaking powers conveyed by the Administrative Procedure Act
30 judiciously, and only in strict conformance with the requirements of R.S. 49:953(B); and

1 WHEREAS, the legislature intends further that departments and agencies of the state
2 engage only in the regulatory functions specified and delegated to them in law.

3 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
4 clarify that the intent of R.S. 40:4.15(C), as enacted by Act No. 573 of the 2014 Regular
5 Session, is to provide that an industrial user that owns, operates, and maintains a water
6 system dedicated to the exclusive use of its operations or facilities may apply for a variance
7 from any requirement to maintain a minimum disinfectant level of free or total chlorine in
8 its water system, and that the department shall review any such variance request and may
9 grant approval if not inconsistent with applicable federal statute, rule, or regulation.

10 BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby direct
11 the secretary of the Department of Health and Hospitals to promulgate rules through the
12 notice of intent process that comport with Act No. 573 to replace the series of redeclared
13 emergency rules that the department has adopted since 2013 relative to disinfection
14 requirements for public water systems.

15 BE IT FURTHER RESOLVED that the secretary of the Department of Health and
16 Hospitals shall cause the notice of intent required by this Resolution to be published in the
17 Louisiana Register no later than December 31, 2015.

18 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
19 secretary of the Department of Health and Hospitals.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HCR 54 Engrossed

2015 Regular Session

Hoffmann

Clarifies the intent of present law (R.S. 40:4.15(C)) relative to industrial water users that own, operate, and maintain a water system dedicated to the exclusive use of industrial operations or facilities.

Directs the secretary of the Dept. of Health and Hospitals (DHH) to promulgate rules through the notice of intent process to replace a series of redeclared emergency rules relative to disinfection requirements for public water systems.

Stipulates that DHH shall publish the requisite notice of intent in the La. Register no later than Dec. 31, 2015.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Delete a provision indicating that the intent of present law is to exempt industrial water users that own, operate, and maintain a water system dedicated to the exclusive use of industrial operations or facilities from chlorination standards for public water systems.
2. Add a provision indicating that the intent of present law is to provide that an industrial user that owns, operates, and maintains a water system dedicated to the exclusive use of its operations or facilities may apply for a variance from any requirement to maintain a minimum disinfectant level of free or total chlorine in its water system, and that DHH shall review any such variance request and may grant approval if not inconsistent with applicable federal statute, rule, or regulation.