

2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 54

BY REPRESENTATIVE HOFFMANN

A CONCURRENT RESOLUTION

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

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

WHEREAS, after the cause of the illness was determined to be the amoeba *Naegleria fowleri* which was present in the drinking water supply, officials with the Department of Health and Hospitals, referred to hereafter as "the department", took swift action to safeguard public health across the state by testing public water supplies and working closely with local officials to ensure that water systems used chlorine at levels sufficient to eliminate 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 diving, and that infection cannot result from drinking water contaminated with the amoeba; and

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

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

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

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

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

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

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

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

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

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby clarify that the intent of R.S. 40:4.15(C), as enacted by Act No. 573 of the 2014 Regular Session, 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 the department shall review any such variance request and may grant approval if not inconsistent with applicable federal statute, rule, or regulation.

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE