

# MAINE STATE LEGISLATURE

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1976

REPORT OF THE PUBLIC UTILITIES COMMITTEE

STUDY OF THE SAFE DRINKING WATER ACT

L.D. 812

Senate

Sen. Minette Cummings  
Sen. Edwin Greeley  
Sen. Edward Cyr

House

Rep. Edward Kelleher  
Rep. Philip Berry  
Rep. David Leonard  
Rep. Richard Nadeau  
Rep. Emily Saunders  
Rep. Richard Spencer  
Rep. Lloyd Littlefield  
Rep. Frederick Lunt  
Rep. Wayne C. Gray  
Rep. Gail Tarr

Legislative Assistant - Jonathan Hull

11 1976

## INTRODUCTION

The 107th Legislature, during its Regular Session, ordered the Joint Standing Committee on Public Utilities to study the state regulation of water companies and water utilities and the subject matter of L. D. 812, "AN ACT to Establish the Maine Safe Drinking Water Act." This bill, concerning the comprehensive regulation of the public drinking water supply, was sponsored by Representative Wayne L. Kennedy of Gray, and was introduced in the Session, given a public hearing, and granted "Leave to Withdraw" by the Committee, which was accepted by the sponsor. The order to study state regulation of water companies, a copy of which is attached, was sponsored by Senator Minnette Cummings, chairwoman of the Public Utilities Commission. That study order also ordered the study of the Public Utility Commission regulation of sanitary, sewerage, sewer utility and water districts, which the committee unanimously voted should be studied and reported separately from the drinking water study.

Under present law, the Department of Human Services has general authority to regulate the quality of water sold or furnished for domestic purposes (22 MRSA chaps. 559 and 560). Under this general authority the Department has set specific contaminant levels for drinking water, and standards for monitoring water purity, construction of facilities, and the operation and maintenance of water treatment plants and pumping facilities. This general grant of authority, however, is insufficient, because of its lack of detailed provisions and certain omissions, to meet

the requirements of "state primary enforcement" under the Federal Safe Drinking Water Act of 1974 (P.L. 93-523, Dec. 16, 1974). The bill, L.D. 812, a copy of which is attached, was intended to provide the detail and to add provisions necessary to allow the state to become a "primary enforcer" under the Federal Act, and thus to avoid direct Federal regulation of the State's drinking water quality. After the public hearing on the bill, the Committee concluded that more work was necessary to insure compliance with the Federal requirements without imposing undue burdens on the public. In addition, the federal regulations and guidelines governing State "primacy" were subject to future changes, and thus did not provide sufficient guidance to draft legislation at that point. The Committee thus decided to offer "Leave to Withdraw" to the sponsor to enable further study of the bill.

#### COMMITTEE PROCEDURE

The Committee held six meetings on the proposed Safe Water Drinking Act. The first two meetings dealt with the federal statute and regulations and the present Maine statutes and regulations governing drinking water. As part of these meetings, Mr. Stephen Lathrop of the Environmental Protection Agency explained the requirements under the Federal Act for "state primacy" and the choices open to Maine, and Mr. Don Hoxie and Mr. Elwin Howard of the Department of Human Services explained the present Maine statutes and regulations governing drinking water, the changes and additions required to Maine law to comply with the federal statutes and regulations, and the difficulties and costs of such compliance.

The last four meetings of the Committee were spent reviewing proposed drafts of the Maine Safe Drinking Water Act and correcting and refining it to meet the federal requirements and the needs of

the public. During these meetings, the concerns of the Maine Water Utilities Association, the Maine Municipal Association, the Department of Human Services and the Board of Certification were considered. In addition, the staff of the Committee met with Mr. Hoxie and Mr. Howard on several occasions during the study and drafting processes to secure additional information and review specific proposals.

The Committee reviewed the final proposed draft at its meeting on February 2, 1976, and after discussion, voted to submit the draft, with this report, for legislative action during the 107th Special Session.

#### MAJORITY REPORT

A majority of the Committee believes that the State should seek "primary enforcement" powers under the Federal Safe Drinking Water Act of 1974 (P.L. 93-523) and thus avoid direct federal regulation of water quality within the state. The proposed legislation, a copy of which is attached, will allow the state to do this, while protecting the interest of the public and not creating an undue economic burden on either the taxpayers or consumers.

Under the Federal Safe Drinking Water Act, the federal government has authority to begin direct enforcement of federal drinking water standards and regulations in December 1976, if the state has not begun a program of regulation that equals or exceeds the federal requirement. Under present statutes, the Department of Human Services has adopted and enforced regulations governing allowable contaminant levels in drinking water that in most cases

equal or exceed the federal requirements. Thus the most important federal criteria for state "primary enforcement" has already been met to a large extent. However, the authority for these Department regulations is general and vague, and many other federal requirements are not met in the present statutory provisions. Thus, the Committee was presented with four major policy choices under the Federal statute:

1. The State could cease its present regulation of drinking water quality and allow the federal government to enforce federal standards directly within the state;

2. The State could continue its present regulation of drinking water quality without seeking "primary enforcement" status, and allow the federal government to enforce the federal standards directly within the State;

3. The State could seek "primary enforcement" status and directly enforce the federal standards as part of State law, and abandon state standards or requirements that exceed the federal minimum standards; or

4. The State could seek "primary enforcement" status and directly enforce the federal standards as part of State law, but where state standards or requirements exceed federal standards, the higher state standards would be continued.

A majority of the Committee decided that the state should seek "primary enforcement" status under the Federal Act. As the regulatory provisions of the Act apply to the State regardless of its choice on primary enforcement, the only decision was to who would directly enforce the provisions within the state. The Committee felt that state enforcement would provide greater responsiveness

to the needs of the people, ensure better compliance with the requirements of the Act, and provide more influence in the decision-making process on the federal level, than would direct federal enforcement.

In seeking "primacy" the state is already very close to meeting the central requirement, the establishment and enforcement of specific contaminant levels allowable in drinking water. Except for mercury levels and turbidity, where federal standards are more restrictive than state standards, and pesticide levels, where Maine has no set standards of permissible levels, the state standards equal or exceed federal standards. In addition, the State limits the permissible levels of many contaminants the federal regulations do not limit. Thus, in complying with the federal standards, and in meeting the central requirement for "primacy", the State will not have to alter most of its current standards.

However, the requirements for "primacy" primarily require thorough statutory authorization and centralized and detailed regulatory and enforcement provisions. To meet the requirements for state primary enforcement status, clear statutory authorization is required in the following areas:

1. Departmental regulations governing contaminant levels and quality control of drinking water that are no less stringent than the federal regulations;

2. Departmental enforcement of those regulations, including monitoring methods and testing frequencies no less stringent than the federal regulations;

3. Record keeping and reports by water suppliers to ensure compliance;

4. Specific provisions for variances and exemptions from the regulations;

5. Departmental planning for water supplies during emergencies and for methods of handling potential emergency situations;

6. Methods and criteria for approving laboratories for testing and analyzing water samples; and

7. Methods of handling non-compliance by water suppliers and penalties and procedures.

Though some of these requirements are met under present statutes, the detailed and comprehensive statutory authorization is not present in the statutes. Thus, the Committee decided to propose legislation that would include these provisions, and would also integrate into such provisions the present statutory provisions governing drinking water.

The Committee also decided that the proposed legislation should allow the state to set more stringent standards than the federal standards for the purity of drinking water, where such standards are necessary to the health and welfare of the public. The Federal Act allows states to adopt more stringent standards, and the Committee believes that the federal standards are nationwide minimums that may not be sufficient to the particular requirements of Maine. Thus, the Department should have the authority to continue or adopt standards for the state that exceed the federal minimum standards.



Finally, the Committee decided that the proposed legislation should integrate the present provisions of Maine law governing drinking water with the new provisions required to assume "primacy". In this manner consistent terminology and organization could be used in place of the inconsistency and confusion presently existing. Thus, the proposed bill repeals the two current chapters regulating drinking water and enacts a single consistent and comprehensive chapter. (See attached bill analysis.) However, the Committee directed that the present statutes governing the fluoridation of water remain unchanged, except for renumbering and non-substantive terminology changes in a new sub-section.

The Committee recognizes that this proposed bill appears to radically change the state regulation of drinking water quality. However, the proposed bill really does no more than provide express, detailed and comprehensive authorization for the present state program of insuring drinking water fit for human consumption. The substantive changes that are made in the current state regulation of water quality, such as emergency planning, are required under the Federal Act. Thus, the basic purpose and intent of this bill is to provide the express authority required by the Federal Act for the state to assume "primary enforcement status."

The Committee recognizes that the requirements under the Federal Act, especially those that are more stringent than Maine's present statutes and regulations, such as the frequency of testing requirements and turbidity standard, may increase the cost of water to consumers. However, these requirements will apply to the state whether or not it seeks "primary enforcement" status. By seeking "primary enforcement" status, the state will be able to deal with

the impact of the requirements more directly and effectively, and thus assure a minimum in disruption and cost, with the continued assurance of pure drinking water.

MINORITY REPORT

A minority of the Committee, Rep. David Leonard of Woolwich, believes that the State should not seek "primary enforcement" powers under the Federal Act, and also believes that this proposed legislation is premature.

The minority believes that the State should not involve itself in enforcing a federally mandated and controlled program that is unresponsive to State needs or requirements. This is especially important when the State presently has adequate measures to insure the purity of its drinking water. Enforcing the Federal program will only increase the burden on the State and on public utilities, and thus on the consumer and taxpayer. Such increased regulation in this State is unnecessary, burdensome and expensive. If the federal government wishes to impose these additional requirements, it should do so directly, and not through the State.

Further, the minority believes that even if State "primacy" is desired, this legislation is premature. The provisions of the Federal Act will not be in effect until June of 1977, and will probably not be enforced until well after that date. Thus, this bill and study should not be reported on at this time. Further time would allow for further discussion and refinement of the bill; and, more importantly, would allow for further detailed study of the ramifications of State "primacy."

Thus, the minority of the Committee believes that the present statutes should remain unchanged, and this proposed bill should not be reported out at this time.

Attachments:

1. Study Order S.P. 540
2. L.D. 812, 107th Regular Session
3. Proposed Legislation
4. Analysis of proposed legislation