

Act No. 165
Public Acts of 1993
Approved by the Governor
September 16, 1993
Filed with the Secretary of State
September 16, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Rep. Bankes

ENROLLED HOUSE BILL No. 4906

AN ACT to amend the title and sections 2, 7, 9, 10, 13, 15, and 17 of Act No. 399 of the Public Acts of 1976, entitled "An act to protect the public health; to provide for supervision and control over public water supplies; to prescribe the powers and duties of the department of public health; to provide for the submission of plans and specifications for waterworks systems and the issuance of construction permits therefor; to provide for the classification of public water supplies and the examination, certification and regulation of persons operating those systems; to provide for continuous, adequate operation of privately owned, public water supplies; to authorize the promulgation of rules to carry out the intent of the act; and to provide penalties," section 2 as amended by Act No. 34 of the Public Acts of 1989, being sections 325.1002, 325.1007, 325.1009, 325.1010, 325.1013, 325.1015, and 325.1017 of the Michigan Compiled Laws; and to add sections 5a, 11a, 11b, 11c, and 11d.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 7, 9, 10, 13, 15, and 17 of Act No. 399 of the Public Acts of 1976, section 2 as amended by Act No. 34 of the Public Acts of 1989, being sections 325.1002, 325.1007, 325.1009, 325.1010, 325.1013, 325.1015, and 325.1017 of the Michigan Compiled Laws, are amended and sections 5a, 11a, 11b, 11c, and 11d are added to read as follows:

TITLE

An act to protect the public health; to provide for supervision and control over public water supplies; to prescribe the powers and duties of the department of public health; to provide for the submission of plans and specifications for waterworks systems and the issuance of construction permits therefor; to provide for the classification of public water supplies and the examination, certification and regulation of persons operating those systems; to provide for continuous, adequate operation of privately owned, public water supplies; to authorize the promulgation of rules to carry out the intent of the act; to create the water supply fund; to provide for the administration of the water supply fund; and to provide penalties.

Sec. 2. As used in this act:

(a) "Bottled drinking water" means water that is ultimately sold, provided, or offered for human consumption in a closed container.

(b) "Community supply" means a public water supply that provides year-round service to not fewer than 15 living units or which regularly provides year-round service to not fewer than 25 residents.

- (c) "Contaminant" means a physical, chemical, biological, or radiological substance or matter in water.
- (d) "Customer service connection" means the pipe between a water main and customer site piping or building plumbing system.
- (e) "Customer site piping" means an underground piping system owned or controlled by the customer that conveys water from the customer service connection to building plumbing systems and other points of use on lands owned or controlled by the customer. Customer site piping does not include any system that incorporates treatment to protect public health.
- (f) "Department" means the department of public health or its authorized agent or representative.
- (g) "Director" means the director of public health or his or her authorized agent or representative.
- (h) "Imminent hazard" means that in the judgment of the director there is a violation, or a condition that may cause a violation, of the state drinking water standards at a public water supply requiring immediate action to prevent endangering the health of people.
- (i) "Living unit" means a house, apartment, or other domicile occupied or intended to be occupied on a day to day basis by an individual, family group, or equivalent.
- (j) "Noncommunity supply" means a public water supply that is not a community supply, but that has not less than 15 service connections or that serves not fewer than 25 individuals on an average daily basis for not less than 60 days per year.
- (k) "Nontransient noncommunity water supply" means a noncommunity public water supply that serves not fewer than 25 of the same individuals on an average daily basis over 6 months per year. This definition includes water supplies in places of employment, schools, and day-care centers.
- (l) "Person" means an individual, partnership, copartnership, cooperative, firm, company, public or private association or corporation, political subdivision, agency of the state, agency of the federal government, trust, estate, joint structure company, or any other legal entity, or their legal representative, agent, or assigns.
- (m) "Plans and specifications" means drawings, data, and a true description or representation of an entire waterworks system or parts of the system as it exists or is to be constructed, and a statement on how a waterworks system is to be operated.
- (n) "Political subdivision" means a city, village, township, charter township, county, district, authority or portion or combination thereof.
- (o) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, and does not include either of the following:
- (i) A waterworks system that supplies water to only 1 living unit.
 - (ii) A waterworks system that consists solely of customer site piping.
- (p) "State drinking water standards" means quality standards setting limits for contaminant levels or establishing treatment techniques to meet standards necessary to protect the public health.
- (q) "Service connection" means a direct connection from a distribution water main to a living unit or other site to provide water for drinking or household purposes.
- (r) "Supplier of water" or "supplier" means a person who owns or operates a public water supply, and includes a water hauler.
- (s) "Transient noncommunity water supply" means a noncommunity supply that does not meet the definition of nontransient noncommunity water supply.
- (t) "Water hauler" means a person engaged in bulk vehicular transportation of water to other than the water hauler's own household which is intended for use or used for drinking or household purposes. Excluded from this definition are those persons providing water solely for employee use.
- (u) "Water main" means a pipe owned or controlled by a supplier that may convey water to a customer service connection or to a fire hydrant.
- (v) "Waterworks system" or "system" means a system of pipes and structures through which water is obtained and distributed, including but not limited to wells and well structures, intakes and cribs, pumping stations, treatment plants, storage tanks, pipelines and appurtenances, or a combination thereof, actually used or intended for use for the purpose of furnishing water for drinking or household purposes.
- (w) "Year-round service" means the ability of a supplier of water to provide drinking water on a continuous basis to a living unit or facility.

Sec. 5a. (1) A supplier of water for a community supply shall not use customer site piping as a means to convey water to other portions of the supplier's system.

(2) A supplier of water for a community supply shall not provide water service to customer site piping if an impact on the water quality of the public water supply has occurred or could reasonably be expected to occur as a result of the service. A supplier of water may discontinue water service to customer site piping as the supplier of water or the department considers necessary to protect the health of the public water supply customers.

Sec. 7. (1) The supplier of water shall collect water samples or have them collected on a schedule at least equal to that outlined in the rules, shall cause those samples to be analyzed in the state laboratory or a laboratory certified by the department or by the United States environmental protection agency for contaminants listed in the state drinking water standards, and shall report the results of the analyses to the department in a timely manner as specified in the rules. If the supplier fails to meet this responsibility, the department may do any of the following:

(a) Impose against that supplier a civil fine of \$200.00 for each failure to collect and have analyzed a water sample required under this act.

(b) For each failure to collect and have analyzed a water sample required under this act within the 12-month period following a failure described in subdivision (a), impose against that supplier a civil fine of \$400.00.

(c) In addition to a penalty described in subdivision (a) or (b), obtain a sampling or analysis or both required under this act at the supplier's cost.

(d) Proceed pursuant to section 22.

(2) A supplier may appeal a civil penalty pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 9. (1) The department shall classify water treatment and distribution systems with regard to size, type, location, and other physical conditions for the purpose of establishing the skill, knowledge, and experience that individuals need to maintain and operate the systems effectively.

(2) The director shall appoint an advisory board of examiners which shall assist the department in the examination of individuals as to their competency to operate water treatment systems and water distribution systems. The advisory board shall make recommendations to the department relative to the certification of those individuals.

(3) The membership of the advisory board shall consist of 2 certified water treatment operators, 2 certified water distribution operators, 1 superintendent or manager of a supplier of water, 1 representative of the administrative branch of a local governmental agency, 2 members of the public at large, and 1 professor of sanitary or environmental engineering at a university in the state. A representative of the department shall be the nonvoting secretary for the board.

(4) For individuals meeting the requirements, the department shall issue certificates acknowledging their competency to operate a specified class of waterworks system or portion of waterworks system. The department may suspend or revoke a certificate as specified by rule.

(5) A water treatment and distribution system shall be under the supervision of a properly certified operator as specified in the rules.

(6) Those individuals now certified to operate water treatment systems under the existing mandatory certification rules being R325.551 through R325.572 of the Michigan administrative code, and those meeting the requirements of the voluntary distribution system operator certification program administered by the department, shall be considered to meet the requirements of this section and shall be issued a certificate in an appropriate class in accordance with the certifications system established under this act.

(7) Those individuals who are superintendents of distribution systems shall be considered to meet the requirements of this section only for the waterworks system by which they are now employed, and shall be issued a certificate for continuing operation of that distribution system upon receipt by the department of a completed application by January 4, 1978.

(8) Operators certified under this act shall be required to renew their certificates in accordance with rules promulgated under this act, including mandatory continuing education or competency demonstration.

Sec. 10. (1) The department shall not approve a privately owned public water supply that serves a group of living units, unless by resolution of its governing body the city, village, or township in which the water supply is to be located refuses to accept ownership and operational responsibility of the public water supply.

(2) If a local governmental agency does not accept ownership and operational responsibility of a public water supply that serves a group of living units, the department may issue a construction permit or other approval for an acceptable project requiring as a condition of the permit an appropriate amount, but not more than \$50,000.00, based on the size, type, and complexity of the waterworks system, to be placed in escrow by the developer or private owner. The department may remove funds from this escrow account to cause deficiencies to be corrected if the public water supply is not operated, maintained, and expanded as necessary to protect the public health. If it is necessary for the

department to withdraw funds from an escrow account, the funds shall be replaced within 90 days by the developer, private owner, or organization then responsible for the public water supply.

(3) The department may reduce or eliminate any escrow account established under this section after 5 years of operation and maintenance considered satisfactory by the department.

(4) Before the transfer of ownership of a privately owned public water supply, a private purchaser shall comply with subsections (1) and (2) of this section.

Sec. 11a. (1) The department shall impose an annual fee on each community supply provider in accordance with the following fee schedule:

<u>Number of Residents Served</u>	<u>Annual Fee</u>
More than 500,000	\$83,800.00
100,001 - 500,000	\$17,400.00
50,001 - 100,000	\$11,000.00
25,001 - 50,000	\$ 6,500.00
10,001 - 25,000	\$ 3,500.00
5,001 - 10,000	\$ 1,900.00
1,001 - 5,000	\$ 800.00
401 - 1,000	\$ 500.00
101 - 400	\$ 400.00
25 - 100	\$ 250.00

(2) The annual fee in this section shall be adjusted on October 1 each year following the effective date of this section by applying a percentage adjustment using the Detroit consumer price index. The fee may also be adjusted as the result of increased federal funding or a reduction in actual costs, as determined by the department.

(3) Each community supply provider shall pay the annual fee by November 30 each year. Failure to submit timely payment will result in assessment of a penalty of 9% per annum until the fee and assessment are paid in full. The department of treasury shall collect each penalty.

Sec. 11b. (1) The department shall impose an annual fee on each noncommunity supply provider in accordance with the following fee schedule:

<u>Type of Noncommunity Supply</u>	<u>Annual Fee</u>
Nontransient noncommunity supply	\$360.00
Transient noncommunity supply	\$ 85.00

(2) The annual fee in this section shall be adjusted on October 1 each year following the effective date of this section by applying the percentage adjustment using the Detroit consumer price index.

(3) For 5 or more noncommunity supplies under the same ownership on contiguous properties, the annual fee per noncommunity supply is 75% of the fee identified in subsection (1).

(4) A noncommunity supply provider shall pay the annual fee by November 30 each year. After November 30 of each year that a fee is not paid, the department of treasury shall collect from the nonpaying noncommunity supply provider a penalty of \$25.00 for each month or portion of a month.

(5) A noncommunity supply provider that has completed construction of a new well or replacement well in compliance with a construction permit issued by a local health department is exempt from paying the first annual fee described in subsection (1) after final approval of the well is received.

(6) The department is not required to perform sanitary surveys or other services to maintain compliance with this act on behalf of a noncommunity supply provider who has not paid the current annual fee or appropriate penalties.

Sec. 11c. (1) The department shall review and certify laboratories used or intended for use in the testing of water from public water supplies where analyses are used to determine compliance with state drinking water standards. The department shall impose a fee for this service in accordance with the following fee schedule:

<u>Type of Laboratory Certification Service</u>	<u>Fee Per Laboratory</u>
Bacteriology, including chlorine residual and turbidity	\$1,625.00
Inorganic chemistry	\$2,435.00
Organic chemistry	\$2,435.00
Inorganic and organic chemistry (both), or either combined with bacteriology	\$3,045.00
Bacteriology, inorganic chemistry, and organic chemistry (all 3)	\$4,285.00
Nitrate, nitrite, sulfate, cyanide, and fluoride only	\$ 520.00
Lead and copper	\$1,220.00
Laboratory water suitability test (required annually)	\$ 260.00

(2) The fees in this section shall be adjusted on October 1 each year following the effective date of this section by applying a percentage adjustment using the Detroit consumer price index.

(3) Unless otherwise noted, a certification under this section is valid for 3 years from the date of certification and the fee per laboratory is for the entire 3-year period.

Sec. 11d. (1) The water supply fund is created in the state treasury and shall be administered by the department. The fund is capitalized by revenues collected pursuant to sections 11a, 11b, and 11c. The fund shall additionally receive money as otherwise provided by law, and shall receive any gift or contribution to the fund.

(2) The state treasurer shall retain money in the fund at the close of the fiscal year, and shall not return that money to the general fund.

(3) The department shall expend 75% of money in the fund at the close of the fiscal year to offset, on a pro rata basis, each fee described in sections 11a, 11b, and 11c for the following year.

(4) The department shall expend money in the water supply fund only to implement this act and the administrative rules promulgated under this act.

Sec. 13. (1) As used in this section, "product" means any chemical or substance added to a public water supply, any materials used in the manufacture of public water supply components or appurtenances, or any pipe, storage tank, valve, fixture, or other materials which come in contact with water intended for use in a public water supply.

(2) The department may promulgate rules setting standards of quality, composition, safety, or design of products. Until the department promulgates rules setting standards for products, all products that may come in contact with water intended for use in a public water supply shall meet American national standards institute/national sanitation foundation standards, specifically ANSI/NSF standard 60-1988 and ANSI/NSF standard 61-1988 which are hereby incorporated by reference. Adoption of a product standard by rule supersedes the standard incorporated by reference in this section.

(3) Only products that meet the standards provided for in subsection (2) shall be used by a supplier of water in a public water supply. Certification that a product meets the standards provided for in subsection (2) by a laboratory accredited by American national standards institute to test and certify products shall be prima facie evidence that a product meets the standards. The department shall make a list of products meeting the standards available at no charge.

(4) A supplier of water shall compile and maintain on file for inspection by the department a list of all products used by the supplier of water. Prior to using a product not previously listed, a supplier of water shall either determine that the product has been certified in accordance with subsections (2) and (3) or shall notify the department of the type, name, and manufacturer of a product.

(5) Upon request of the department, a supplier of water shall, prior to making use of a product, supply to the department all documents and materials, including samples of a product, needed to review the type, quality, and nature of a product that will come in contact with the public water supply. The supplier of water shall provide sufficient information to enable the department to determine whether a product meets the standard provided for in subsection (2).

(6) If a product is reviewed by the department and found not to comply with the standards provided for in subsection (2), the department shall notify the supplier of water and shall be given an opportunity to request a hearing on whether the product meets the standards. At a hearing, the supplier of water must demonstrate that the product meets the standards before the product can be used by the supplier of water.

(7) A person shall not willfully introduce or permit or allow the introduction of a product into a public water supply that has not first been determined by the department to meet standards provided for in subsection (2).

Sec. 15. (1) When considered necessary for protection of the public health, the department shall notify a supplier of water of the need to make changes in operations, to provide treatment, to make structural changes in existing systems, or to add additional capacity as necessary to produce and distribute an adequate quantity of water meeting the state drinking water standards.

(2) The department shall inspect a waterworks system or a part of a waterworks system, and the manner of operation of the system or part. If upon inspection the department determines the waterworks system to be inadequate or so operated as to not adequately protect the public health, the department may order the supplier of water to make alterations in the waterworks system or its method of operation as may be required or considered advisable by the department to assure the public water supply is adequate, healthful, and in conformance with state drinking water standards. If the supplier does not request a public hearing within 30 days after receipt of the order, the order shall be final and binding on the supplier of water. If the department receives a request for a public hearing within the specified 30 days, the public hearing shall be immediately arranged. A supplier of water shall comply with a final order of the department.

(3) If a public water supply poses an imminent hazard to the public health, the department may issue an emergency order immediately, without notice or hearing, requiring such action as the department determines is necessary to protect the public health. Normal administrative procedures as required by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, shall proceed concurrently with an emergency order upon written request of the supplier of water received within 15 days. An emergency order shall be effective immediately and binding until modified or rescinded by the department or a court of competent jurisdiction.

(4) The department may take appropriate action to limit water system expansion or limit water use from a public water supply until such time as satisfactory improvements are made in the system or operation to provide for a continuous, adequate supply of water meeting the state drinking water standards.

Sec. 17. (1) A person engaged in producing bottled drinking water shall utilize a water source meeting the requirements of this act. Bottling or packaging facilities and their operation shall remain under the supervision of the Michigan department of agriculture as provided for in the Michigan food law of 1968, Act No. 39 of the Public Acts of 1968, as amended, being sections 289.701 to 289.727 of the Michigan Compiled Laws and regulation no. 549, being sections R285.549.1 through R285.549.29 of the Michigan administrative code, and other pertinent rules and laws.

(2) A person producing bottled drinking water from an out-of-state source shall submit proof to the director that the source and bottling facilities were approved by the agency having jurisdiction. The director may withhold approval of the bottled water if the other agency's inspection, surveillance, and approval procedures and techniques are determined to be inadequate.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.

