

WEST VIRGINIA LEGISLATURE

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Committee Substitute

for

House Bill 2612

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[Originating in the Committee on Health and Human

Resources; January 29, 2019.]

A BILL to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, to authorize that the Secretary of the Department of Health and Human Resources to propose rules related to source water protection plans; and staggering the timeframes of source water protection plan reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9c. Required update or completion of source water protection plans.

1 (a) ~~On or before July 1, 2016, each~~ An existing public water utility ~~which~~ that draws and
2 treats water from a surface water supply source or a surface water influenced groundwater supply
3 source shall submit to the commissioner an updated or completed source water protection plan
4 for each of its public water system plants with such intakes to protect its public water supplies
5 from contamination. Every effort shall be made to inform and engage the public, local
6 governments, local emergency planners, local health departments, and affected residents at all
7 levels of the development of the protection plan.

8 (b) The completed or updated plan for each affected plant, at a minimum, shall include the
9 following:

10 (1) A contingency plan that documents each public water utility's planned response to
11 contamination of its public surface water supply source or its public surface water influenced
12 groundwater supply source;

13 (2) An examination and analysis of the public water system's ability to isolate or divert
14 contaminated waters from its surface water intake or groundwater supply and the amount of raw
15 water storage capacity for the public water system's plant;

16 (3) An examination and analysis of the public water system's existing ability to switch to
17 an alternative water source or intake in the event of contamination of its primary water source;

18 (4) An analysis and examination of the public water system's existing ability to close its
19 water intake in the event the system is advised that its primary water source has become

20 contaminated due to a spill or release into a stream and the duration of time it can keep that water
21 intake closed without creating a public health emergency;

22 (5) The following operational information for each plant receiving water supplies from a
23 surface water source:

24 (A) The average number of hours the plant operates each day, and the maximum and
25 minimum number of hours of operation in one day at that plant during the past year; and

26 (B) The average quantities of water treated and produced by the plant per day, and the
27 maximum and minimum quantities of water treated and produced at that plant in one day during
28 the past year;

29 (6) An analysis and examination of the public water system's existing available storage
30 capacity on its system, how its available storage capacity compares to the public water system's
31 normal daily usage and whether the public water system's existing available storage capacity can
32 be effectively utilized to minimize the threat of contamination to its system;

33 (7) The calculated level of unaccounted for water experienced by the public water system
34 for each surface water intake, determined by comparing the measured quantities of water which
35 are actually received and used by customers served by that water plant to the total quantities of
36 water treated at the water plant over the past year. If the calculated ratio of those two figures is
37 less than 85 percent, the public water system is to describe all of the measures it is actively taking
38 to reduce the level of water loss experienced on its system;

39 (8) A list of the potential sources of significant contamination contained within the zone of
40 critical concern as provided by the Department of Environmental Protection, the Bureau for Public
41 Health and the Division of Homeland Security and Emergency Management. The exact location
42 of the contaminants within the zone of critical concern is not subject to public disclosure in
43 response to a Freedom of Information Act request under §29B-1-1 *et seq.* of this code. However,
44 the location, characteristics and approximate quantities of potential sources of significant
45 contamination within the zone of critical concern shall be made known to one or more designees

46 of the public water utility, and shall be maintained in a confidential manner by the public water
47 utility. Disclosure is permitted on any location, characteristics and approximate quantities of
48 potential sources of significant contamination within the zone of critical concern to the extent they
49 are in the public domain through a state or federal agency. In the event of a chemical spill, release
50 or related emergency, information pertaining to any spill or release of contaminant shall be
51 immediately disseminated to any emergency responders responding to the site of a spill or
52 release, and the general public shall be promptly notified in the event of a chemical spill, release
53 or related emergency;

54 (9) If the public water utility's water supply plant is served by a single-source intake to a
55 surface water source of supply or a surface water influenced source of supply, the submitted plan
56 shall also include an examination and analysis of the technical and economic feasibility of each
57 of the following options to provide continued safe and reliable public water service in the event its
58 primary source of supply is detrimentally affected by contamination, release, spill event, or other
59 reason:

60 (A) Constructing or establishing a secondary or backup intake which would draw water
61 supplies from a substantially different location or water source;

62 (B) Constructing additional raw water storage capacity ~~and/or~~ or treated water storage
63 capacity or both, to provide at least two days of system storage, based on the plant's maximum
64 level of production experienced within the past year;

65 (C) Creating or constructing interconnections between the public water system with other
66 plants on the public water utility system or another public water system, to allow the public water
67 utility to receive its water from a different source of supply during a period its primary water supply
68 becomes unavailable or unreliable due to contamination, release, spill event, or other
69 circumstance;

70 (D) Any other alternative which is available to the public water utility to secure safe and
71 reliable alternative supplies during a period its primary source of supply is unavailable or
72 negatively impacted for an extended period; and

73 (E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this
74 subdivision is determined to be technologically or economically feasible, the public water utility
75 shall submit an analysis of the comparative costs, risks, and benefits of implementing each of the
76 described alternatives;

77 (10) A management plan that identifies specific activities that will be pursued by the public
78 water utility, in cooperation and in concert with the Bureau for Public Health, local health
79 departments, local emergency responders, local emergency planning committee, and other state,
80 county, or local agencies and organizations to protect its source water supply from contamination,
81 including, but not limited to, notification to and coordination with state and local government
82 agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic
83 surveys of the system, the adoption of best management practices, the purchase of property or
84 development rights, conducting public education or the adoption of other management techniques
85 recommended by the commissioner or included in the source water protection plan;

86 (11) A communications plan that documents the manner in which the public water utility,
87 working in concert with state and local emergency response agencies, shall notify the local health
88 agencies and the public of the initial spill or contamination event and provide updated information
89 related to any contamination or impairment of the source water supply or the system's drinking
90 water supply, with an initial notification to the public to occur, in any event, no later than 30 minutes
91 after the public water system becomes aware of the spill, release or potential contamination of
92 the public water system;

93 (12) A complete and comprehensive list of the potential sources of significant
94 contamination contained within the zone of critical concern, based upon information which is
95 directly provided or can otherwise be requested and obtained from the Department of

96 Environmental Protection, the Bureau for Public Health, the Division of Homeland Security, and
97 Emergency Management and other resources; and

98 (13) An examination of the technical and economic feasibility of implementing an early
99 warning monitoring system.

100 (c) ~~Any~~ A public water utility's public water system with a primary surface water source of
101 supply or a surface water influenced groundwater source of supply ~~that comes into existence on~~
102 ~~or after the effective date of this article~~ shall submit, prior to the commencement of its operations,
103 a source water protection plan satisfying the requirements of subsection (b) of this section.

104 (d) The commissioner shall review a plan submitted pursuant to this section and provide
105 a copy to the Secretary of the Department of Environmental Protection. Thereafter, within 180
106 days of receiving a plan for approval, the commissioner may approve, reject, or modify the plan
107 as may be necessary and reasonable to satisfy the purposes of this article. The commissioner
108 shall consult with the local public health officer and conduct at least one public hearing when
109 reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to
110 this section is a violation of this article.

111 (e) The commissioner may request a public water utility to conduct one or more studies to
112 determine the actual risk and consequences related to any potential source of significant
113 contamination identified by the plan, or as otherwise made known to the commissioner.

114 (f) Any public water utility required to file a complete or updated plan in accordance with
115 the provisions of this section shall submit an updated source water protection plan at least every
116 three years or when there is a substantial change in the potential sources of significant
117 contamination within the identified zone of critical concern.

118 ~~(g) Any public water utility required to file a complete or updated plan in accordance with~~
119 ~~the provisions of this section shall review any source water protection plan it may currently have~~
120 ~~on file with the bureau and update it to ensure it conforms with the requirements of subsection (b)~~
121 ~~of this section on or before July 1, 2016~~

122 ~~(h)~~ (g) The commissioner’s authority in reviewing and monitoring compliance with a source
123 water protection plan may be transferred by the bureau to a nationally accredited local board of
124 public health.

125 (h) The secretary is authorized to propose legislative rules for promulgation pursuant to
126 §29A-3-1 et seq. of this code to implement the provisions of this section. The rules shall include
127 a staggered schedule by hydrologic regions for the submission of source water protection plans
128 by public water utilities. The first report submitted pursuant to a staggered schedule is exempt
129 from the reporting interval set forth in §16-1-9c(f) of this code. Subsequent reports shall be
130 submitted pursuant to the provisions of §16-1-9c(f) of this code.

NOTE: The purpose of this bill is to authorize the secretary to propose rules related to the completion or updating of source water protection plans.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.