

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 1198

Bill #: HB 261 HCS

Bill Subject/Title: AN ACT relating to water utilities

Sponsor: Representative Linda L. Belcher

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local Government

Office(s) Impacted: None

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

The purpose of the original HB 261 was to foster financial stability of all utilities and to ensure continuity of service for customers when a private utility fails or is abandoned by the owner. The bill, as introduced, would amend KRS 278.020 to require a person wanting to acquire ownership or control of *any* Public Service Commission (PSC)-regulated utility to obtain insurance coverage sufficient to replace any plant, equipment, property, or facility required to ensure continuity of service in the event of utility failure. Section 2 of the original bill would amend KRS 278.021 to require that *all* utilities provide twenty-four months' notice to PSC of intention to abandon. For a water and sewer utility the notice period would be shortened if it enters into a written agreement with a **public** wastewater utility for assumption of the private utilities' services, agrees to accept financial liability for its prior operation of the utility, and agrees to transfer rights to facility assets.

HB 261 HCS makes substantial changes to the original bill. It would amend KRS 278.020 only as it applies to private sewage service utilities. HB 261 HCS retains the notice of abandonment requirement for all utilities. The committee substitute seeks to accomplish the same goals as the original bill but would put responsibility more directly on the PSC to accomplish those goals, as follows:

Section 1 of the committee substitute would amend KRS 278.020(3) to prohibit the PSC from issuing a certificate of public convenience and necessity to construct wastewater facilities unless the applicant provides a **surety bond** or other “reasonable guaranty” the applicant will operate the facility in a reasonable and reliable manner for at least 5 years. The committee substitute would specifically except from the surety bond requirement water districts and water associations and any applicant the PSC finds has sufficient assets to ensure continuity of sewage service. Section 1 of the committee substitute would also prohibit the PSC from approving an application for transfer of control or ownership of a utility unless the applicant provides evidence of financial integrity to ensure continuity of sewage service in the event the acquirer cannot continue providing service. Section 2 of the committee substitute would impose the same twenty-four months’ notice requirement before abandonment as the original bill, and the same exception to that requirement for water and sewer utilities that enter into an agreement with a public water and sewage utility. Unlike the original bill the committee substitute would prohibit the PSC from accepting an application to abandon a water or sewer utility unless the applicant has provided written notice to the Kentucky Division of Water and other state and local offices, **and** until the PSC has held a hearing on the application.

Sections 3 and 4 of HB 261 HCS are new and would simply make conforming amendments to other statutes. Section 5 of the committee substitute would declare an emergency and provide that the bill would take effect on its passage and approval of the Governor.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

HB 261 HCS would have little or no direct fiscal impact on local governments, but could have a positive fiscal impact if a privately-owned utility is abandoned without notice or otherwise fails.

Publicly-owned utilities generally are not under the jurisdiction of the PSC, therefore neither the surety bond requirement nor the notice of abandonment requirements of HB 261 HCS would apply to local governments that provide utility services. While the bill would impact a private utility’s obligation to provide notice of abandonment to the PSC and would give private water and wastewater utilities some relief from the notice obligations if the private water and wastewater utility contracts with a publicly-owned wastewater utility to assume the private utilities’ services, the bill would not *require* the publicly-owned utility to assume responsibility for the private utility or the service it provided. For these reasons HB 261 HCS would have little or no direct fiscal impact on local governments. However, on several occasions in Kentucky a private wastewater utility has been abandoned or otherwise failed to provide services, without notice, resulting in a loss of wastewater treatment services to customers and catastrophic impacts to the local environment. When this happens, the local city or county government is usually called on to take action. Action required may include emergency repairs to the abandoned/failed facility, temporary operation of the facility, and environmental clean-up, using local money, personnel, and other resources. While the surety bond and other

financial assurance requirements of HB 261 HCS would only apply to newly-constructed or newly-purchased wastewater utilities, those requirements could make it more likely, one, that privately-owned wastewater utilities would be sufficiently capitalized and, two, in the event of abandonment or catastrophic failure of a wastewater utility money would be available to fund repairs, clean-up, and temporary operation of the facility.

Data Source(s): Kentucky League of Cities; Kentucky Association of Counties; LRC Staff

Preparer: Mary Stephens **Reviewer:** JWN **Date:** 2/19/16