

SENATE BILL No. 530

By Committee on Ways and Means

2-17

9 AN ACT concerning public water supply; requiring fluoridation in cer-
10 tain public water supply systems; amending K.S.A. 65-162a, 65-171m
11 and 65-171p and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) In order to promote the public health through
15 the protection and maintenance of dental health, the secretary shall adopt
16 rules and regulations requiring the fluoridation of public water supply
17 systems. By October 1, 2004, each public water supply system with at
18 least 10,000 service connections shall provide to the secretary an estimate
19 of the total capital costs to install fluoridation treatment. The secretary
20 shall adopt the rules and regulations required by this section on or before
21 June 1, 2005.

22 (b) The rules and regulations shall include, but not be limited to:

23 (1) Minimum and maximum permissible concentrations of fluoride
24 to be maintained by fluoridation of public water supply systems.

25 (2) Requirements and procedures necessary for maintaining proper
26 concentrations of fluoride, including equipment, testing, recordkeeping
27 and reporting.

28 (3) Requirements for the addition of fluorides to public water supply
29 systems in which the natural level of fluorides is less than the minimum
30 level established in the regulations.

31 (4) A schedule for the fluoridation of public water supply systems
32 with at least 10,000 service connections, based on the lowest capital cost
33 per connection for each system.

34 (c) For the purposes of this section, "secretary" shall have the mean-
35 ing ascribed to it in section 3 and amendments thereto.

36 New Sec. 2. (a) (1) A public water supply system shall not be re-
37 quired to comply with section 1, and amendments thereto, or any rule
38 and regulation promulgated thereunder by the secretary, if such public
39 water supply system:

40 (A) (i) Is scheduled to implement a fluoridation program pursuant
41 to paragraph (4) of subsection (b) of section 1, and amendments thereto;
42 and

43 (ii) funds sufficient to pay the capital and associated costs are not

1 available to the public water supply system from any source other than
2 the system's ratepayers, shareholders, local taxpayers, bondholders or any
3 fees or charges levied by the water system; or

4 (B) has obtained the capital and associated funds necessary for fluor-
5 idation as set forth in subparagraph (A), however, in any given fiscal year,
6 as such term is defined in K.S.A. 75-3002, and amendments thereto,
7 funding sufficient to pay the noncapital operation and maintenance costs
8 described in subsection (g) is not available to such public water supply
9 system from any source other than the system's ratepayers, shareholders,
10 local taxpayers, bondholders or any fees or charges levied by the water
11 system.

12 (2) Each year the secretary shall prepare and distribute a list of those
13 water systems that do not qualify under this section for exemption from
14 the fluoridation requirements of section 1, and amendments thereto.
15 Such list shall include any public water supply system that has received,
16 or is expected to receive, sufficient funding for capital and associated costs
17 so as to not qualify for exemption under subparagraph (A) of paragraph
18 (1), and have received, or anticipate receiving, sufficient noncapital main-
19 tenance and operation funding pursuant to subsection (g), so that such
20 public water supply system does not qualify for exemption under sub-
21 paragraph (B) of paragraph (1).

22 (3) Any public water supply system that has acquired the funds nec-
23 essary for fluoridation as set forth in subparagraph (A) of paragraph (1),
24 and that is not included in the list pursuant to paragraph (2), may elect
25 to exercise the option pursuant to subparagraph (B) of paragraph (1) not
26 to fluoridate during the following fiscal year by so notifying the secretary
27 by certified mail on or before June 1.

28 (4) The permit issued by the secretary for a public water supply sys-
29 tem that is scheduled to implement fluoridation pursuant to paragraph
30 (4) of subsection (b) of section 1, and amendments thereto, shall specify
31 whether such public water supply system:

32 (A) Is required to fluoridate pursuant to section 1 and amendments
33 thereto; or

34 (B) has been granted an exemption pursuant to either subparagraph
35 (A) or subparagraph (B) of paragraph (1).

36 (b) The secretary shall enforce section 1, and amendments thereto,
37 and this section, and all regulations adopted pursuant to these sections.

38 (c) If the owner or operator of any public water supply system that
39 is subject to the provisions of section 1, and amendments thereto, fails,
40 or refuses, to comply with any rule and regulation adopted pursuant to
41 section 1, and amendments thereto, or any order of the secretary imple-
42 menting these rules and regulations, the attorney general shall, upon the
43 request of the secretary, institute mandamus proceedings or other ap-

1 appropriate proceedings, in order to compel compliance with the order,
2 rule or regulation. This remedy shall be in addition to all remedies pro-
3 vided by law.

4 (d) Neither this section nor section 1, and amendments thereto, shall
5 supersede subsection (b) of section 1, and amendments thereto.

6 (e) The secretary shall seek all sources of funding for enforcement of
7 the standards and capital cost requirements established pursuant to this
8 section and section 1, and amendments thereto, including, but not limited
9 to, all of the following:

10 (1) Federal block grants.

11 (2) Donations from private foundations.

12 Expenditures from governmental sources shall be subject to specific
13 appropriation by the legislature for these purposes.

14 (f) A public water supply system with less than 10,000 service con-
15 nections may elect to comply with the standards, compliance require-
16 ments and regulations for fluoridation established pursuant to this section
17 and section 1, and amendments thereto.

18 (g) Costs, other than capital costs, incurred in complying with this
19 section and section 1, and amendments thereto, including any rule and
20 regulation thereunder, may be paid from federal grants, or donations
21 from private foundations, for these purposes. Each public water supply
22 system that will incur costs, other than capitalization costs, as a result of
23 compliance with this section and section 1, and amendments thereto, shall
24 provide an estimate to the secretary of the anticipated total annual op-
25 erations and maintenance costs related to fluoridation treatment by Jan-
26 uary 1 of each year.

27 (h) For the purposes of this section, “secretary” shall have the mean-
28 ing ascribed to it in section 3 and amendments thereto.

29 Sec. 3. K.S.A. 65-162a is hereby amended to read as follows: 65-
30 162a. As used in K.S.A. 65-163 and 65-163a, and in K.S.A. 65-171m to
31 65-171t, inclusive, *and section 1 and section 2, and amendments thereto*,
32 unless the context clearly requires otherwise, the following words and
33 phrases shall have the meanings respectively ascribed to them in this
34 section:

35 (a) “Person” means an individual, corporation, company, association,
36 partnership, state, municipality or federal agency.

37 (b) “Public water supply system” means a system for the provision to
38 the public of piped water for human consumption, if such system has at
39 least ~~ten (10)~~ 10 service connections or regularly serves an average of at
40 least ~~twenty five (25)~~ 25 individuals daily at least ~~sixty (60)~~ 60 days out of
41 the year. Such term includes any source, treatment, storage or distribu-
42 tion facilities under control of the operator of the system and used pri-
43 marily in connection with the system, and any source, treatment, storage

1 or distribution facilities not under such control but which are used in
2 connection with such system.

3 (c) “Secretary” means the secretary of health and environment.

4 (d) “Supplier of water” means any person who owns or operates a
5 public water supply system.

6 Sec. 4. K.S.A. 65-171m is hereby amended to read as follows: 65-
7 171m. The secretary of health and environment shall adopt rules and
8 regulations for the implementation of this act [*]. In addition to proce-
9 dural rules and regulations, the secretary may adopt rules and regulations
10 providing for but not limited to: (a) Primary drinking water standards
11 applicable to all public water supply systems in the state. The primary
12 drinking water standards may (1) identify contaminants which may have
13 an adverse effect on the health of persons; (2) specify for each contami-
14 nant either a maximum contaminant level that is acceptable in water for
15 human consumption, if it is economically and technologically feasible to
16 ascertain the level of such contaminant in water in public water supply
17 systems; or the treatment techniques or methods which lead to a reduc-
18 tion of the level of the contaminant sufficient to protect the public health,
19 if it is not economically or technologically feasible to ascertain the level
20 of the contaminant in the water in the public water supply system; and
21 (b) establish the requirements for adequate monitoring, maintenance of
22 records and submission of reports, sampling and analysis of water, citing
23 criteria and review and inspections to insure compliance with the contam-
24 inant levels or methods of treatment and to insure proper operation and
25 maintenance of the public water supply system; and (c) the definition of
26 different categories of public water supply systems such as community
27 water supply systems and noncommunity water supply systems and may
28 provide for varying requirements for monitoring, maintenance of records
29 and reporting, sampling and analysis of water, citing criteria, and review
30 and inspections based on numbers of persons served, source of supply
31 whether surface or groundwater or other conditions as the secretary may
32 determine to be in the interest of public health and welfare and economic
33 benefits.

34 The standards established under this section shall be at least as strin-
35 gent as the national primary drinking water regulations adopted under
36 public law 93-523. ~~No~~ *Except as provided in section 1, and amendments*
37 *thereto, no* primary drinking water standard or rule and regulation may
38 require the addition of fluorides to public water supplies.

39 Sec. 5. K.S.A. 65-171p is hereby amended to read as follows: 65-
40 171p. (a) The secretary of health and environment may grant a variance
41 from an applicable primary drinking water standard to a public water
42 supply system where the variance will not result in an unreasonable risk
43 to the public health and where, because of the characteristics of the raw

1 water sources reasonably available to the public water supply system, the
2 public water supply system cannot meet the maximum contaminant levels
3 of the primary drinking water standards despite application of the best
4 technology, treatment techniques or other means which the secretary
5 finds are generally available, taking costs into consideration *except that*
6 *no variance granted under this subsection shall be construed to waive or*
7 *modify any requirement of section 1, and amendments thereto.*

8 (b) Prior to granting a variance, the secretary shall provide notice in
9 a newspaper of general circulation serving the area served by the public
10 water supply system of the proposed variance and that interested persons
11 may request a public hearing on the proposed variance. If a public hearing
12 is requested the secretary shall set a time and place for the hearing. The
13 hearing shall be conducted in accordance with the provisions of the Kan-
14 sas administrative procedure act. Frivolous or insubstantial requests for
15 a hearing may be denied by the secretary.

16 (c) A variance shall be conditioned on monitoring, testing, analyzing
17 or other requirements to insure the protection of the public health. A
18 variance granted shall include a schedule of compliance under which the
19 public water supply system is required to meet each contaminant level
20 for which a variance is granted within a reasonable time as specified by
21 the secretary.

22 Sec. 6. K.S.A. 65-162a, 65-171m and 65-171p are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.