

FINAL BILL REPORT

ESHB 1332

C 258 L 11
Synopsis as Enacted

Brief Description: Providing for the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Eddy, Anderson, Goodman, Takko, Liias, Springer, Rodne, Hurst and Tharinger).

House Committee on Local Government
Senate Committee on Government Operations, Tribal Relations & Elections

Background:

Provision of Water-Related Utility Services by Local Governments.

General purpose and selected special purpose local governments are authorized to provide water-related utility services. Cities and towns, for example, may provide for the sewerage, drainage, and water supply of the city or town, and may establish, construct, and maintain water supply systems and systems of sewers and drains within or outside their corporate limits. In addition to broad provision, control and regulation powers, cities and towns may participate in and expend revenue on cooperative watershed management actions related to water supply, water quality, and water resource protection and management.

Interlocal Cooperation Act/Watershed Management Partnerships.

Under the Interlocal Cooperation Act (ICA), public agencies are authorized to contract with one another to provide services either through cooperative action or when one or more agencies pay another for a service. A "public agency," for purposes of interlocal agreements, includes any agency, political subdivision, or unit of local government. The term specifically includes municipal corporations, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, and political subdivisions of other states.

In addition to provisions governing general cooperative actions between public agencies, the ICA authorizes counties, cities, and selected special purpose districts to enter into agreements to form watershed management partnerships. The participating entities may expend 10 percent of their water-related revenues for watershed management plan projects or activities that are in addition to the existing water-related services or activities of the county, city, or district.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Actions Against Political Subdivisions, Municipal, and Quasi-Municipal Corporations.

All local governmental entities, whether acting in a governmental or proprietary capacity, are liable for damages arising out of tortious (wrongful) conduct by their officers, employees, or volunteers while performing, or in good faith purporting to perform, official duties. The term "local governmental entities," for purposes of tortious conduct provisions, includes counties, cities, towns, municipal corporations, quasi-municipal corporations, and public hospitals.

Summary:

Joint Municipal Utility Services Authority: Formation, Membership, and Services.

A Joint Municipal Utility Services Authority (Authority) may be formed by two or more members to perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide. A "member" for purposes of Authority provisions, may be a county, city, town, special purpose district, or other unit of local government in Washington or another state that provides utility services and is party to an agreement forming an Authority. The term "member" also includes federally recognized Indian tribes.

"Utility services" is defined to mean any or all of specified functions, including:

- the provision of retail or wholesale water supply and conservation services;
- the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; and
- the management and handling of storm water, surface water, drainage, and flood waters.

With limited exceptions, at the time an agreement to form an Authority is executed, each member must be providing the type of utility service or services that will be provided by the Authority. The agreement, which must be filed with the Secretary of State, must be approved by the legislative authority of each member organization. The date of filing is the date of formation, and the formation and activities of an Authority, including the admission or withdrawal of members, are not subject to review by a boundary review board.

Formed Authorities are municipal corporations and are authorized to perform or provide any or all of the utility services that all of its members, excepting tribal government members, perform or provide. Authorities are entitled to all immunities and exemptions that apply to local governmental entities under tortious conduct provisions specified in statute. Authorities are subject to Washington's public records and open public meetings acts, and the code of ethics for municipal officers. Authorities may be audited by the State Auditor.

The formation and operation of an Authority does not diminish a member's powers in connection with its provision or management of utility services or its taxing power with respect to its services. The formation and operation of an authority also does not diminish the authority of local governments to enter into agreements under the ICA or agreements formed under the ICA. Additionally, the formation and operation of an Authority does not impair or diminish valid water rights.

Corporate Powers.

For the purpose of providing utility services, Authorities are entitled to exercise numerous powers, including the power to:

- acquire and fully control property and property rights, including water rights and other assets;
- incur liabilities, including issuing bonds;
- employ persons and fix salaries;
- determine fees, rates, and charges for services; and
- exercise eminent domain.

Authorities do not have the power to levy taxes.

Asset Transfer and Availability: Member Authorizations.

Members of an Authority are authorized to transfer or otherwise make available assets of member organizations, including money, real property, and water rights, to an Authority with or without payment or other consideration. The transfer and asset availability provisions are not required to be submitted and approved by the electors of the members.

Formation and Governance Agreements.

A joint municipal utility services agreement that forms and governs an Authority must include numerous provisions, including provisions that:

- identify members and specify terms or conditions for joining or withdrawing from the Authority;
- specify how the number of directors of the Authority's board will be determined and how those directors will be appointed (each director must be an elected official);
- describe how the agreement may be amended; and
- describe how rates and charges imposed by the Authority, if any, will be determined.

Conversion of Existing Entities into Authorities.

Any intergovernmental entity formed under the ICA or other applicable law may be converted into an Authority and is entitled to all powers and privileges available to Authorities if delineated eligibility and procedural requirements are met.

Tortious Conduct, Taxation, and Miscellaneous Provisions.

Tortious conduct provisions are amended to specify that Authorities and entities created by public agencies under the ICA are considered "local governmental entities" and are subject to statutes governing tortious conduct claims involving these entities.

Payments between or any transfers of assets to or from an Authority and its members are exempted from business and occupation taxes and public utility taxes. Additionally, Authority property is exempt from taxation, and retail sales and use tax provisions do not apply to any sales or transfers made to or from an Authority and its members.

Flood control districts and flood control zone districts are expressly authorized to participate in watershed management arrangements and actions, rather than watershed management partnerships, including those authorized under the ICA and provisions governing Authorities.

Votes on Final Passage:

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| House | 92 | 2 | |
| Senate | 40 | 8 | (Senate amended) |
| House | 95 | 1 | (House concurred) |

Effective: July 22, 2011