

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6428

Chapter 292, Laws of 1994

53rd Legislature
1994 Regular Session

PUBLIC WATER SYSTEMS IN RECEIVERSHIP--ACQUISITION BY
OTHER SYSTEMS

EFFECTIVE DATE: 6/9/94

Passed by the Senate March 8, 1994
YEAS 41 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 8, 1994
YEAS 89 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6428** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:40 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6428

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators M. Rasmussen, Newhouse, Fraser, Gaspard and Winsley)

Read first time 02/04/94.

1 AN ACT Relating to water systems; amending RCW 57.04.050 and
2 43.70.195; reenacting and amending RCW 84.09.030; adding a new section
3 to chapter 35.13A RCW; adding a new section to chapter 35A.21 RCW;
4 adding a new section to chapter 36.94 RCW; adding a new section to
5 chapter 57.24 RCW; adding a new section to chapter 80.28 RCW; adding a
6 new section to chapter 54.16 RCW; adding a new section to chapter 87.03
7 RCW; and creating a new section.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** The legislature finds that the monitoring
10 and treatment requirements of the federal safe drinking water act place
11 increasing burdens and cost on public water supply systems, especially
12 smaller systems and rural systems. Across the state, those systems are
13 turning to existing systems and their county governments for help,
14 which may include assumption of the system.

15 It is the intent of the legislature to encourage larger existing
16 systems to assist or acquire troubled systems or those systems burdened
17 by federal requirements, to provide financial protection for that
18 assistance, and to protect receivers of failed water systems.

1 **Sec. 2.** RCW 57.04.050 and 1990 c 259 s 28 are each amended to read
2 as follows:

3 Upon entry of the findings of the final hearing on the petition if
4 one or more county legislative authorities find that the proposed
5 district will be conducive to the public health, welfare, and
6 convenience and be of special benefit to the land therein, they shall
7 call a special election by presenting a resolution to the county
8 auditor at least forty-five days prior to the proposed election date.
9 A special election will be held on a date decided by the commissioners
10 in accordance with RCW 29.13.010 and 29.13.020. The commissioners
11 shall cause to be published a notice of the election for four
12 successive weeks in a newspaper of general circulation in the proposed
13 district, which notice shall state the hours during which the polls
14 will be open, the boundaries of the district as finally adopted and the
15 object of the election, and the notice shall also be posted for ten
16 days in ten public places in the proposed district. In submitting the
17 proposition to the voters, it shall be expressed on the ballots in the
18 following terms:

19 Water District YES 1
20 Water District NO 1

21 giving the name of the district as provided in the petition.

22 At the same election a proposition shall be submitted to the
23 voters, for their approval or rejection, authorizing the water
24 district, if formed, to levy at the earliest time permitted by law on
25 all property located in the district a general tax for one year, in
26 excess of the limitations provided by law, in the amount specified in
27 the petition to create the district, not to exceed one dollar and
28 twenty-five cents per thousand dollars of assessed value, for general
29 preliminary expenses of the district(~~(, the proposition to)~~). The
30 proposition may not appear at the September or November election. The
31 proposition shall be expressed on the ballots in the following terms:

32 One year dollars and cents per
33 thousand dollars of assessed value tax YES 1
34 One year dollars and cents per
35 thousand dollars of assessed value tax NO 1

36 Such proposition to be effective must be approved (~~(by a majority of at~~
37 ~~least three-fifths of the registered voters thereof voting on the~~

1 proposition)) in the manner set forth in Article VII, section 2(a) of
2 the Constitution of this state, as amended by Amendment 59 and as
3 thereafter amended.

4 **Sec. 3.** RCW 43.70.195 and 1990 c 133 s 4 are each amended to read
5 as follows:

6 (1) In any action brought by the secretary of health or by a local
7 health officer pursuant to chapter 7.60 RCW to place a public water
8 system in receivership, the petition shall include the names of one or
9 more suitable candidates for receiver who have consented to assume
10 operation of the water system. The department shall maintain a list of
11 interested and qualified individuals, municipal entities, special
12 purpose districts, and investor-owned water companies with experience
13 in the provision of water service and a history of satisfactory
14 operation of a water system. If there is no other person willing and
15 able to be named as receiver, the court shall appoint the county in
16 which the water system is located as receiver. The county may
17 designate a county agency to operate the system, or it may contract
18 with another individual or public water system to provide management
19 for the system. If the county is appointed as receiver, the secretary
20 of health and the county health officer shall provide regulatory
21 oversight for the agency or other person responsible for managing the
22 water system.

23 (2) In any petition for receivership under subsection (1) of this
24 section, the department shall recommend that the court grant to the
25 receiver full authority to act in the best interests of the customers
26 served by the public water system. The receiver shall assess the
27 capability, in conjunction with the department and local government,
28 for the system to operate in compliance with health and safety
29 standards, and shall report to the court and the petitioning agency its
30 recommendations for the system's future operation, including the
31 formation of a water district or other public entity, or ownership by
32 another existing water system capable of providing service.

33 (3) If a petition for receivership and verifying affidavit executed
34 by an appropriate departmental official allege an immediate and serious
35 danger to residents constituting an emergency, the court shall set the
36 matter for hearing within three days and may appoint a temporary
37 receiver ex parte upon the strength of such petition and affidavit

1 pending a full evidentiary hearing, which shall be held within fourteen
2 days after receipt of the petition.

3 (4) A bond, if any is imposed upon a receiver, shall be minimal and
4 shall reasonably relate to the level of operating revenue generated by
5 the system. Any receiver appointed pursuant to this section shall not
6 be held personally liable for any good faith, reasonable effort to
7 assume possession of, and to operate, the system in compliance with the
8 court's orders.

9 (5) The court shall authorize the receiver to impose reasonable
10 assessments on a water system's customers to recover expenditures for
11 improvements necessary for the public health and safety.

12 (6) No later than twelve months after appointment of a receiver,
13 the petitioning agency, in conjunction with the county in which the
14 system is located, and the appropriate state and local health agencies,
15 shall develop and present to the court a plan for the disposition of
16 the system. The report shall include the recommendations of the
17 receiver made pursuant to subsection (2) of this section. The report
18 shall include all reasonable and feasible alternatives. After
19 receiving the report, the court shall provide notice to interested
20 parties and conduct such hearings as are necessary. The court shall
21 then order the parties to implement one of the alternatives, or any
22 combination thereof, for the disposition of the system. Such order
23 shall include a date, or proposed date, for the termination of the
24 receivership. Nothing in this section authorizes a court to require a
25 city, town, public utility district, water district, or irrigation
26 district to accept a system that has been in receivership unless the
27 city, town, public utility district, water district, or irrigation
28 district agrees to the terms and conditions outlined in the plan
29 adopted by the court.

30 (7) The court shall not terminate the receivership, and order the
31 return of the system to the owners, unless the department of health
32 approves of such an action. The court may impose reasonable conditions
33 upon the return of the system to the owner, including the posting of a
34 bond or other security, routine performance and financial audits,
35 employment of qualified operators and other staff or contracted
36 services, compliance with financial viability requirements, or other
37 measures sufficient to ensure the ongoing proper operation of the
38 system.

1 (8) If, as part of the ultimate disposition of the system, an
2 eminent domain action is commenced by a public entity to acquire the
3 system, the court shall oversee any appraisal of the system conducted
4 under Title 7 RCW to assure that the appraised value properly reflects
5 any reduced value because of the necessity to make improvements to the
6 system. The court shall have the authority to approve the appraisal,
7 and to modify it based on any information provided at an evidentiary
8 hearing. The court's determination of the proper value of the system,
9 based on the appraisal, shall be final, and only appealable if not
10 supported by substantial evidence. If the appraised value is appealed,
11 the court may order that the system's ownership be transferred upon
12 payment of the approved appraised value.

13 **Sec. 4.** RCW 84.09.030 and 1989 c 378 s 8 and 1989 c 217 s 1 are
14 each reenacted and amended to read as follows:

15 Except as follows, the boundaries of counties, cities and all other
16 taxing districts, for purposes of property taxation and the levy of
17 property taxes, shall be the established official boundaries of such
18 districts existing on the first day of March of the year in which the
19 property tax levy is made.

20 The official boundaries of a newly incorporated taxing district
21 shall be established at a different date in the year in which the
22 incorporation occurred as follows:

23 (1) Boundaries for a newly incorporated city shall be established
24 on the last day of March of the year in which the initial property tax
25 levy is made, and the boundaries of a road district, library district,
26 or fire protection district or districts, that include any portion of
27 the area that was incorporated within its boundaries shall be altered
28 as of this date to exclude this area, if the budget for the newly
29 incorporated city is filed pursuant to RCW 84.52.020 and the levy
30 request of the newly incorporated city is made pursuant to RCW
31 84.52.070. Whenever a proposed city incorporation is on the March
32 special election ballot, the county auditor shall submit the legal
33 description of the proposed city to the department of revenue on or
34 before the first day of March;

35 (2) Boundaries for a newly incorporated port district shall be
36 established on the first day of October if the boundaries of the newly
37 incorporated port district are coterminous with the boundaries of

1 another taxing district, as they existed on the first day of March of
2 that year;

3 (3) Boundaries of any other newly incorporated taxing district
4 shall be established on the first day of June of the year in which the
5 property tax levy is made if the taxing district has boundaries
6 coterminous with the boundaries of another taxing district, as they
7 existed on the first day of March of that year;

8 (4) Boundaries for a newly incorporated water district shall be
9 established on the fifteenth of June of the year in which the
10 proposition under RCW 57.04.050 authorizing a water district excess
11 levy is approved.

12 The boundaries of a taxing district shall be established on the
13 first day of June if territory has been added to, or removed from, the
14 taxing district after the first day of March of that year with
15 boundaries coterminous with the boundaries of another taxing district
16 as they existed on the first day of March of that year. However, the
17 boundaries of a road district, library district, or fire protection
18 district or districts, that include any portion of the area that was
19 annexed to a city or town within its boundaries shall be altered as of
20 this date to exclude this area. In any case where any instrument
21 setting forth the official boundaries of any newly established taxing
22 district, or setting forth any change in such boundaries, is required
23 by law to be filed in the office of the county auditor or other county
24 official, said instrument shall be filed in triplicate. The officer
25 with whom such instrument is filed shall transmit two copies to the
26 county assessor.

27 No property tax levy shall be made for any taxing district whose
28 boundaries are not established as of the dates provided in this
29 section.

30 NEW SECTION. Sec. 5. A new section is added to chapter 35.13A RCW
31 to read as follows:

32 A city assuming responsibility for a water system that is not in
33 compliance with state or federal requirements for public drinking water
34 systems, and its agents and employees, are immune from lawsuits or
35 causes of action, based on non-compliance with state or federal
36 requirements for public drinking water systems, which pre-date the date
37 of assuming responsibility and continue after the date of assuming
38 responsibility, provided that the city has submitted and is complying

1 with a plan and schedule of improvements approved by the department of
2 health. This immunity shall expire on the earlier of the date the plan
3 of improvements is completed or four years from the date of assuming
4 responsibility. This immunity does not apply to intentional injuries,
5 fraud, or bad faith.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 35A.21 RCW
7 to read as follows:

8 A code city assuming responsibility for a water system that is not
9 in compliance with state or federal requirements for public drinking
10 water systems, and its agents and employees, are immune from lawsuits
11 or causes of action, based on non-compliance with state or federal
12 requirements for public drinking water systems, which pre-date the date
13 of assuming responsibility and continue after the date of assuming
14 responsibility, provided that the city has submitted and is complying
15 with a plan and schedule of improvements approved by the department of
16 health. This immunity shall expire on the earlier of the date the plan
17 of improvements is completed or four years from the date of assuming
18 responsibility. This immunity does not apply to intentional injuries,
19 fraud, or bad faith.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.94 RCW
21 to read as follows:

22 A county assuming responsibility for a water system that is not in
23 compliance with state or federal requirements for public drinking water
24 systems, and its agents and employees, are immune from lawsuits or
25 causes of action, based on non-compliance with state or federal
26 requirements for public drinking water systems, which pre-date the date
27 of assuming responsibility and continue after the date of assuming
28 responsibility, provided that the county has submitted and is complying
29 with a plan and schedule of improvements approved by the department of
30 health. This immunity shall expire on the earlier of the date the plan
31 of improvements is completed or four years from the date of assuming
32 responsibility. This immunity does not apply to intentional injuries,
33 fraud, or bad faith.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 57.24 RCW
35 to read as follows:

1 A water district assuming responsibility for a water system that is
2 not in compliance with state or federal requirements for public
3 drinking water systems, and its agents and employees, are immune from
4 lawsuits or causes of action, based on non-compliance with state or
5 federal requirements for public drinking water systems, which pre-date
6 the date of assuming responsibility and continue after the date of
7 assuming responsibility, provided that the water district has submitted
8 and is complying with a plan and schedule of improvements approved by
9 the department of health. This immunity shall expire on the earlier of
10 the date the plan of improvements is completed or four years from the
11 date of assuming responsibility. This immunity does not apply to
12 intentional injuries, fraud, or bad faith.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 80.28 RCW
14 to read as follows:

15 A water company assuming responsibility for a water system that is
16 not in compliance with state or federal requirements for public
17 drinking water systems, and its agents and employees, are immune from
18 lawsuits or causes of action, based on non-compliance with state or
19 federal requirements for public drinking water systems, which pre-date
20 the date of assuming responsibility and continue after the date of
21 assuming responsibility, provided that the water company has submitted
22 and is complying with a plan and schedule of improvements approved by
23 the department of health. This immunity shall expire on the earlier of
24 the date the plan of improvements is completed or four years from the
25 date of assuming responsibility. This immunity does not apply to
26 intentional injuries, fraud, or bad faith.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 54.16 RCW
28 to read as follows:

29 A public utility district assuming responsibility for a water
30 system that is not in compliance with state or federal requirements for
31 public drinking water systems, and its agents and employees, are immune
32 from lawsuits or causes of action, based on non-compliance with state
33 or federal requirements for public drinking water systems, which pre-
34 date the date of assuming responsibility and continue after the date of
35 assuming responsibility, provided that the public utility district has
36 submitted and is complying with a plan and schedule of improvements
37 approved by the department of health. This immunity shall expire on

1 the earlier of the date the plan of improvements is completed or four
2 years from the date of assuming responsibility. This immunity does not
3 apply to intentional injuries, fraud, or bad faith.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 87.03 RCW
5 to read as follows:

6 An irrigation district assuming responsibility for a water system
7 that is not in compliance with state or federal requirements for public
8 drinking water systems, and its agents and employees, are immune from
9 lawsuits or causes of action, based on non-compliance with state or
10 federal requirements for public drinking water systems, which pre-date
11 the date of assuming responsibility and continue after the date of
12 assuming responsibility, provided that the irrigation district has
13 submitted and is complying with a plan and schedule of improvements
14 approved by the department of health. This immunity shall expire on
15 the earlier of the date the plan of improvements is completed or four
16 years from the date of assuming responsibility. This immunity does not
17 apply to intentional injuries, fraud, or bad faith.

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Passed the House March 8, 1994.

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