
HOUSE BILL 2712

State of Washington

54th Legislature

1996 Regular Session

By Representatives Goldsmith and Koster

Read first time 01/17/96. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to public water supply systems; amending RCW
2 70.116.040, 70.116.060, and 70.116.070; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the statutes that
5 limit the number of public water purveyors within an area provide
6 public water purveyors with a privileged status that enables them to
7 control growth within their service area contrary to the public
8 interest. These public water purveyors are also able to charge unfair
9 rates and unreasonably withhold service because of this status
10 conferred by statute. The legislature also finds that the department
11 of health enforces the restrictions pertaining to new public water
12 purveyors even though a coordinated water system plan has not been
13 approved for an area. It is the intent of the legislature to provide
14 the public the opportunity to receive better service in areas in which
15 coordinated water system plans have not yet been adopted.

16 **Sec. 2.** RCW 70.116.040 and 1977 ex.s. c 142 s 4 are each amended
17 to read as follows:

1 (1) The secretary and the appropriate local planning agencies and
2 purveyors, shall study geographical areas where water supply problems
3 related to uncoordinated planning, inadequate water quality or
4 unreliable service appear to exist. If the results of the study
5 indicate that such water supply problems do exist, the secretary or the
6 county legislative authority shall designate the area involved as being
7 a critical water supply service area, consult with the appropriate
8 local planning agencies and purveyors, and appoint a committee of not
9 less than three representatives therefrom solely for the purpose of
10 establishing the proposed external boundaries of the critical water
11 supply service area. The committee shall include a representative from
12 each purveyor serving more than fifty customers, the county legislative
13 authority, county planning agency, and health agencies. Such proposed
14 boundaries shall be established within six months of the appointment of
15 the committee.

16 During the six month period following the establishment of the
17 proposed external boundaries of the critical water supply services
18 areas, the county legislative authority shall conduct public hearings
19 on the proposed boundaries and shall modify or ratify the proposed
20 boundaries in accordance with the findings of the public hearings. The
21 boundaries shall reflect the existing land usage, and permitted
22 densities in county plans, ordinances, and/or growth policies. If the
23 proposed boundaries are not modified during the six month period, the
24 proposed boundaries shall be automatically ratified and be the critical
25 water supply service area.

26 After establishment of the external boundaries of the critical
27 water supply service area, no new public water systems may be approved
28 within the boundary area unless the local legislative authority
29 determines that an existing water purveyor is unable to provide water
30 service in a timely and reasonable manner. For purposes of this
31 section, "timely" means within one hundred twenty days. For purposes
32 of this section, "reasonable" includes:

33 (a) An existing purveyor's capital charges cannot exceed the
34 capital costs of a proposed new system by more than five percent;

35 (b) An existing purveyor's service rates cannot exceed the rates to
36 be charged by a proposed new system by more than five percent; and

37 (c) It is not feasible to require a proposed system to establish
38 service due to insurmountable logistical, environmental, or regulatory
39 constraints.

1 (2) At the time a critical water supply service area is
2 established, the external boundaries for such area shall not include
3 any fractional part of a purveyor's existing contiguous service area.

4 (3) The external boundaries of the critical water supply service
5 area may be amended in accordance with procedures prescribed in
6 subsection (1) of this section for the establishment of the critical
7 water supply service areas when such amendment is necessary to
8 accomplish the purposes of this chapter.

9 **Sec. 3.** RCW 70.116.060 and 1995 c 376 s 2 are each amended to read
10 as follows:

11 (1) A coordinated water system plan shall be submitted to the
12 secretary for design approval within two years of the establishment of
13 the boundaries of a critical water supply service area.

14 (2) The secretary shall review the coordinated water system plan
15 and, to the extent the plan is consistent with the requirements of this
16 chapter and regulations adopted hereunder, shall approve the plan,
17 provided that the secretary shall not approve those portions of a
18 coordinated water system plan that fail to meet the requirements for
19 future service area boundaries until any boundary dispute is resolved
20 as set forth in RCW 70.116.070.

21 (3) Following the approval of a coordinated water system plan by
22 the secretary:

23 (a) All purveyors constructing or proposing to construct public
24 water system facilities within the area covered by the plan shall
25 comply with the plan.

26 (b) No other purveyor shall establish a public water system within
27 the area covered by the plan, unless the local legislative authority
28 determines that existing purveyors are unable to provide the service in
29 a timely and reasonable manner, pursuant to guidelines developed by the
30 secretary. An existing purveyor is unable to provide the service in a
31 timely manner if the water cannot be provided to an applicant for water
32 within one hundred twenty days unless specified otherwise by the local
33 legislative authority. If such a determination is made, the local
34 legislative authority shall require the new public water system to be
35 constructed in accordance with the construction standards and
36 specifications embodied in the coordinated water system plan approved
37 for the area. The service area boundaries in the coordinated plan for

1 the affected utilities shall be revised to reflect the decision of the
2 local legislative authority.

3 (4) The secretary may deny proposals to establish or to expand any
4 public water system within a critical water supply service area for
5 which there is not an approved coordinated water system plan at any
6 time after two years of the establishment of the critical water supply
7 service area: PROVIDED, That service connections shall not be
8 considered expansions.

9 (5) The affected legislative authorities may develop and utilize a
10 mechanism for addressing disputes that arise in the implementation of
11 the coordinated water system plan after the plan has been approved by
12 the secretary.

13 (6) After adoption of the initial coordinated water system plan,
14 the local legislative authority or the secretary may determine that the
15 plan should be updated or revised. The legislative authority may
16 initiate an update at any time, but the secretary may initiate an
17 update no more frequently than once every five years. The update may
18 encompass all or a portion of the plan, with the scope of the update to
19 be determined by the secretary and the legislative authority. The
20 process for the update shall be the one prescribed in RCW 70.116.050.

21 (7) (~~The provisions of subsection (3) of this section shall not~~
22 ~~apply in any county for which a coordinated water system plan has not~~
23 ~~been approved under subsection (2) of this section)) The limitations on
24 water system purveyors provided for in this section shall not apply,
25 and shall not be enforced by the department, until a critical water
26 supply plan has been approved by the secretary for the area.~~

27 (8) If the secretary initiates an update or revision of a
28 coordinated water system plan, the state shall pay for the cost of
29 updating or revising the plan.

30 **Sec. 4.** RCW 70.116.070 and 1995 c 376 s 13 are each amended to
31 read as follows:

32 (1) The proposed service area boundaries of public water systems
33 within the critical water supply service area that are required to
34 submit water system plans under this chapter shall be identified in the
35 system's plan. The local legislative authority, or its planning
36 department or other designee, shall review the proposed boundaries to
37 determine whether the proposed boundaries of one or more systems
38 overlap. The boundaries determined by the local legislative authority

1 not to overlap shall be incorporated into the coordinated water system
2 plan. Where any overlap exists, the local legislative authority may
3 attempt to resolve the conflict through procedures established under
4 RCW 70.116.060(5).

5 (2) Any final decision by a local legislative authority regarding
6 overlapping service areas, or any unresolved disputes regarding service
7 area boundaries, may be appealed or referred to the secretary in
8 writing for resolution. After receipt of an appeal or referral, the
9 secretary shall hold a public hearing thereon. The secretary shall
10 provide notice of the hearing by certified mail to each purveyor
11 involved in the dispute, to each county legislative authority having
12 jurisdiction in the area and to the public. The secretary shall
13 provide public notice pursuant to the provisions of chapter 65.16 RCW.
14 Such notice shall be given at least twenty days prior to the hearing.
15 The hearing may be continued from time to time and, at the termination
16 thereof, the secretary may restrict the expansion of service of any
17 purveyor within the area if the secretary finds such restriction is
18 necessary to provide the greatest protection of the public health and
19 well-being.

20 (3) If a water purveyor cannot provide service to an area within
21 its service boundary within a timely and reasonable manner, as defined
22 in RCW 70.116.040, the purveyor's service area shall be redefined by
23 the county legislative authority to exclude the unserviceable area.
24 The county legislative authority shall notify the purveyor of the
25 change in his or her service area by certified mail following its
26 action redefining the service area.

27 (4) The county legislative authority shall establish a process for
28 resolving disputes between existing water purveyors and proposed new
29 water systems.

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