

SENATE BILL REPORT

HB 2902

As Reported By Senate Committee On:
State & Local Government, March 1, 2002

Title: An act relating to local government utility authority.

Brief Description: Affirming the authority of cities and towns to operate fire hydrants and streetlights.

Sponsors: Representatives Santos, McDermott and Kenney.

Brief History:

Committee Activity: State & Local Government: 2/27/02, 3/1/02 [DP].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: Do pass.

Signed by Senators Gardner, Chair; Fairley, Vice Chair; Hale, Haugen, Keiser, Kline and Swecker.

Staff: Mac Nicholson (786-7445)

Background: The city of Seattle traditionally maintained street lights as part of its transportation responsibilities using general funds generated by various taxes imposed throughout the city. In 1999, the Seattle City Council transferred, by ordinance, street light maintenance to Seattle City Light, thereby passing the costs to utility rate-payers. Seattle maintains that many cities in Washington currently operate streetlights as part of their rate based utilities, and there has never been a problem. The State Auditor questioned whether Seattle had the authority to make such a transfer and asked the Attorney General for a written opinion.

The Attorney General's Office (AGO) concluded that in the absence of express statutory authority, the maintenance and operation of street lights are not a lawful charge against the customers of a city's water, sewer, electric, or transportation utility. The AGO reasoned that while cities have been granted the statutory authority to operate several types of utilities, including water, sewer, gas, electricity, transportation, and solid waste removal, no such language exists authorizing a city to charge its utility customers for the cost of lighting the streets or public places. The AGO further reasoned that street lighting is a basic municipal service that benefits all residents, and as such there is no plausible way to measure the use by any resident of street lighting. Conversely, a utility necessarily involves furnishing a measurable service to particular persons, and does not include services which benefit the undifferentiated general public. Thus, the AGO concluded, street lighting, while a recognized municipal function, is not a utility for which the statutes authorize cities to bill their customers.

The State Auditor then issued a finding against Seattle, and Seattle sued seeking declaratory judgment that it did in fact have the authority to operate and maintain street lights as part of its electric utility. King County Superior Court, in an order denying plaintiffs' motion for summary judgment and granting defendant's cross motion for summary judgment, concluded that Seattle does not have the authority to conduct the general governmental function of lighting streets and public places as an integral part of their separate and distinct proprietary function of operating a municipal electric utility. The court opined that the imposition by the city of a rate or charge for the maintenance and operation of street lights on their electricity utility customers is a tax. The city of Seattle appealed the decision, and the appeal is currently pending.

On February 14, 2002, a class action lawsuit was filed seeking declaratory relief that the 1999 ordinance is illegal and invalid and plaintiffs are entitled to reimbursement of fees paid to Seattle City Light as a result of the increased rates to cover street light maintenance.

Summary of Bill: It is affirmed that cities and towns have the authority to operate fire hydrants and streetlights as part of their rate-based water and electric utilities. Fire hydrants are included in the municipal utility authority for water service as an integral utility service incorporated within general rates. Streetlights are included in the municipal utility authority for electricity service as an integral utility service incorporated within general rates.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Numerous cities already have taken this measure, and virtually every city and town does this for fire hydrants. Water and sewer districts have authority to charge for street lights, and the same authority should be granted for cities. Two percent or less constitutes the cost of street lights on a person's electric bill. In the city's budget, \$5 to \$6 million is redirected to transportation due to not having to pay for street lights. This has been in effect for many years, and cities are simply seeking clarification on the matter.

Testimony Against: Utilities should not be allowed to charge their ratepayers this fee, as street lights are a public safety responsibility, not a utility function. The State Auditor questioned this practice, and the Attorney General Opinion concluded that cities did not have the authority. Then, this November, King County Superior Court upheld that decision, and declared that the city didn't have authority to transfer rates for streetlights. This transfer amounts to \$7 million in 2002, and is added on to a 60 percent increase that was added to the rates in 2001. Now Tacoma and Puget Sound Energy have lower rates than Seattle. There are also provisions in statute that allow fire hydrants. No public or private utility can charge for street lights, and this change would affect poor and middle income folks unfairly. This imposition of utilities on customers for street lights constitutes a tax.

Testified: PRO: Stan Finkelstein, AWC; Jim Ritch, Seattle City Light; CON: Rud Okeson; Walter Williams; Jorgen Bader, Seattle Community Council Federation; Arthur T. Lane; Richard White.