

SENATE BILL REPORT

ESSB 5285

As Passed Senate, March 15, 2005

Title: An act relating to updating the water quality joint development act to provide local government flexibility.

Brief Description: Updating the water quality joint development act to provide local government flexibility.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Poulsen, Morton, Rockefeller, Honeyford, Kline, Mulliken and Oke).

Brief History:

Committee Activity: Water, Energy & Environment: 1/26/05, 2/23/05 [DPS].
Passed Senate: 3/15/05, 43-3.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5285 be substituted therefor, and the substitute bill do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hewitt, Honeyford, Mulliken, Pridemore and Regala.

Staff: Sam Thompson (786-7413)

Background: Enacted in 1986, the Water Quality Joint Development Act facilitates privatization of water pollution control facilities, primarily sewage treatment plants. Local governments may contract with a public or privately-owned service provider to design, finance, construct, own, operate or maintain these facilities. A proposal submitted by a service provider must demonstrate that the local government's costs will be lower under the proposal than they would be if the local government itself financed, constructed, owned, operated and maintained the facilities.

A local government entering into an agreement with a service provider must assure that all procedural and other requirements are met. The local government retains authority to set utility rates.

The Department of Ecology must review and approve service agreements before they are finalized to ensure compliance with the state Water Pollution Control Act.

It has been suggested that the Water Quality Joint Development Act be revised to clarify ambiguities, provide greater local government contracting flexibility, and expand the scope of the Act to include municipal drinking water supply facilities.

Summary of Bill: The Water Quality Joint Development Act (Act) is revised to clarify ambiguities and reduce procedural constraints. Larger local governments currently authorized

to use alternative public works contracting procedures (design-build and general contractor/construction manager) are expressly authorized to use the Act's procurement provisions.

Service Providers. A single service provider need not perform all design, finance, construction, operation, and maintenance services, but may perform one or more of these services.

Notice. A local government must provide final notice that it seeks the services of a service provider at least 30 days before the proposal submission date, rather than 60 days.

Proposals. A requirement obligating service providers to demonstrate that a local government's annual costs will be lower under its proposal than they would be if the local government itself financed, constructed, owned, operated, and maintained facilities is deleted. Instead, a service provider must demonstrate to the local government's satisfaction that it is in the public interest to enter into a service agreement and that the agreement is financially sound and advantageous to the local government, considering annual costs, quality of services, the provider's experience, risk reduction, and other factors.

Evaluation of Proposals. A restriction preventing a local government legislative authority from appointing one of its members to act as a designated issuer and evaluator of requests for proposals is deleted. Qualified, responsive proposals may be aggregated into a short list of qualified respondents. The legislative authority may participate in the bidder's conference held to assure a full understanding of qualified, responsive proposals.

Negotiations. A local government legislative authority is expressly authorized to negotiate with a service provider. If a designee conducts the negotiations, the legislative authority will continue to oversee negotiations and provide direction to the designee.

State Financing and Review. The Water Pollution Control Act is clarified to provide that the Department of Ecology (DOE) may help finance design (in addition to construction) of facilities. DOE will review service agreements to ensure consistency with reclaimed water and water pollution control standards, and must complete its review within 30 days. DOE review of service agreements will not replace any additional review and approval required under other law.

Appropriation: None.

Fiscal Note: Available for original bill.

Committee/Commission/Task Force Created: No.

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

Testimony For: Local governments have found existing procedures too ambiguous and cumbersome to implement; some local governments need these changes to proceed with planned projects. Water and wastewater service costs and concerns decrease if a single contracted "team" works together to design, build and operate a facility. Because of changes in the federal tax code since 1986, private companies no longer seek to own facilities.

Testimony Against: Water quality and consumer service concerns arise when private companies own municipal water systems. Private companies advocate against adopting more

stringent water quality standards. Changes regarding the local government designee who reviews proposals and conducts negotiations create potential conflict of interest. Limits upon state agency review of proposed service agreements are too restrictive.

Who Testified: PRO: Ashley Probart, Association of Washington Cities; Andrea McNamara, Davis, Wright & Tremaine; Jim Good, Veolia Water North America; Melodie Selby, Department of Ecology.

CON: Craig Engelking, Sierra Club.