CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1532

Chapter 253, Laws of 2009

61st Legislature
2009 Regular Session

RECLAIMED WATER--WATER-SEWER DISTRICTS--AUTHORITY

EFFECTIVE DATE: 07/26/09

Passed by the House February 23, 2009
Yeas 92  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 13, 2009
Yeas 36  Nays 9

BRAD OWEN
President of the Senate

Approved April 28, 2009, 4:09 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1532 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
April 29, 2009

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to authorizing water-sewer districts to construct, condemn and purchase, add to, maintain, and operate systems for reclaimed water; and amending RCW 57.08.005, 57.08.044, 57.08.047, and 57.16.010.

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

Sec. 1. RCW 57.08.005 and 2007 c 31 s 8 are each amended to read as follows:

A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;
(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;
(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewage facilities may include facilities which result in combined sewage disposal or treatment and electric or methane gas generation, except that the electricity or methane gas generated thereby is a byproduct of the system of sewers. Such electricity or methane gas may be used by the district or sold to any entity authorized by law to distribute electricity or methane gas. Electricity and methane gas are deemed byproducts when the electrical or methane gas generation is subordinate to the primary purpose of sewage disposal or treatment. The district may also sell surplus methane gas, which may be produced as a byproduct. For such purposes a district may conduct sewage throughout the district, and construct and lay
sewer pipe along and upon public highways, roads, and streets, within
and without the district, and condemn and purchase or acquire land and
rights-of-way necessary for such sewer pipe. A district may erect
sewage treatment plants within or without the district, and may
acquire, by purchase or condemnation, properties or privileges
necessary to be had to protect any lakes, rivers, or watercourses and
also other areas of land from pollution from its sewers or its sewage
treatment plant. For the purposes of sewage facilities which include
facilities that result in combined sewage disposal or treatment and
electric generation where the electric generation is a byproduct,
nothing in this section may be construed to authorize a district to
condemn electric generating, transmission, or distribution rights or
facilities of entities authorized by law to distribute electricity, or
to acquire such rights or facilities without the consent of the owners;

(6) The authority to construct, condemn and purchase, add to,
maintain, and operate systems of reclaimed water as authorized by
chapter 90.46 RCW for the purpose of furnishing the district and the
inhabitants thereof with reclaimed water for all authorized uses and
purposes, public and private, including with full authority to regulate
the use and operation thereof and the service rates to be charged. In
compliance with other sections of this chapter, a district may also
provide reclaimed water services to persons outside the district;

(7) (a) To construct, condemn and purchase, add to, maintain, and
operate systems of drainage for the benefit and use of the district,
the inhabitants thereof, and persons outside the district with an
adequate system of drainage, including but not limited to facilities
and systems for the collection, interception, treatment, and disposal
of storm or surface waters, and for the protection, preservation, and
rehabilitation of surface and underground waters, and drainage
facilities for public highways, streets, and roads, with full authority
to regulate the use and operation thereof and, except as provided in
(b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or
surface water sewer systems or the portion of the rate allocable to the
storm or surface water sewer system of combined sanitary sewage and
storm or surface water sewer systems shall be reduced by a minimum of
ten percent for any new or remodeled commercial building that utilizes
a permissive rainwater harvesting system. Rainwater harvesting systems
shall be properly sized to utilize the available roof surface of the
building. The jurisdiction shall consider rate reductions in excess of
ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage
facilities may include facilities which result in combined drainage
facilities and electric generation, except that the electricity
generated thereby is a byproduct of the drainage system. Such
electricity may be used by the district or sold to any entity
authorized by law to distribute electricity. Electricity is deemed a
byproduct when the electrical generation is subordinate to the primary
purpose of drainage collection, disposal, and treatment. For such
purposes, a district may conduct storm or surface water throughout the
district and throughout other political subdivisions within the
district, construct and lay drainage pipe and culverts along and upon
public highways, roads, and streets, within and without the district,
and condemn and purchase or acquire land and rights-of-way necessary
for such drainage systems. A district may provide or erect facilities
and improvements for the treatment and disposal of storm or surface
water within or without the district, and may acquire, by purchase or
condemnation, properties or privileges necessary to be had to protect
any lakes, rivers, or watercourses and also other areas of land from
pollution from storm or surface waters. For the purposes of drainage
facilities which include facilities that also generate electricity as
a byproduct, nothing in this section may be construed to authorize a
district to condemn electric generating, transmission, or distribution
rights or facilities of entities authorized by law to distribute
electricity, or to acquire such rights or facilities without the
consent of the owners;

((7)) (8) To construct, condemn, acquire, and own buildings and
other necessary district facilities;

((8)) (9) To compel all property owners within the district
located within an area served by the district's system of sewers to
connect their private drain and sewer systems with the district's
system under such penalty as the commissioners shall prescribe by
resolution. The district may for such purpose enter upon private
property and connect the private drains or sewers with the district
system and the cost thereof shall be charged against the property owner
and shall be a lien upon property served;
Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, groundwater as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

Subject to subsection of this section, to fix rates and charges for water, sewer, reclaimed water, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. In lieu of requiring the installation of permanent local facilities not planned for construction by the district, a district may permit connection to the water and/or sewer systems through temporary facilities installed at the property owner's expense, provided the property owner pays a connection charge consistent with the provisions of this chapter and agrees, in the future, to connect to permanent facilities when they are installed; or a district may permit connection to the water and/or
sewer systems through temporary facilities and collect from property owners so connecting a proportionate share of the estimated cost of future local facilities needed to serve the property, as determined by the district. The amount collected, including interest at a rate commensurate with the rate of interest applicable to the district at the time of construction of the temporary facilities, shall be held for contribution to the construction of the permanent local facilities by other developers or the district. The amount collected shall be deemed full satisfaction of the proportionate share of the actual cost of construction of the permanent local facilities. If the permanent local facilities are not constructed within fifteen years of the date of payment, the amount collected, including any accrued interest, shall be returned to the property owner, according to the records of the county auditor on the date of return. If the amount collected is returned to the property owner, and permanent local facilities capable of serving the property are constructed thereafter, the property owner at the time of construction of such permanent local facilities shall pay a proportionate share of the cost of such permanent local facilities, in addition to reasonable connection charges and other charges authorized by this section. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the
1 residence is within the proposed service area and must provide
2 information on estimated rates or charges that may be imposed for the
3 service.
4 A water-sewer district shall not provide on-site sewage system
5 inspection, pumping services, or other maintenance or repair services
6 under this section using water-sewer district employees unless the on-
7 site system is connected by a publicly owned collection system to the
8 water-sewer district's sewerage system, and the on-site system
9 represents the first step in the sewage disposal process.
10 Except as otherwise provided in RCW 90.03.525, any public entity
11 and public property, including the state of Washington and state
12 property, shall be subject to rates and charges for sewer, water, storm
13 water control, drainage, and street lighting facilities to the same
14 extent private persons and private property are subject to those rates
15 and charges that are imposed by districts. In setting those rates and
16 charges, consideration may be made of in-kind services, such as stream
17 improvements or donation of property;
18 ((11)) (12) To contract with individuals, associations and
19 corporations, the state of Washington, and the United States;
20 ((12)) (13) To employ such persons as are needed to carry out the
21 district's purposes and fix salaries and any bond requirements for
22 those employees;
23 ((13)) (14) To contract for the provision of engineering, legal,
24 and other professional services as in the board of commissioner's
25 discretion is necessary in carrying out their duties;
26 ((14)) (15) To sue and be sued;
27 ((15)) (16) To loan and borrow funds and to issue bonds and
28 instruments evidencing indebtedness under chapter 57.20 RCW and other
29 applicable laws;
30 ((16)) (17) To transfer funds, real or personal property,
31 property interests, or services subject to RCW 57.08.015;
32 ((17)) (18) To levy taxes in accordance with this chapter and
33 chapters 57.04 and 57.20 RCW;
34 ((18)) (19) To provide for making local improvements and to levy
35 and collect special assessments on property benefitted thereby, and for
36 paying for the same or any portion thereof in accordance with chapter
37 57.16 RCW;
To establish street lighting systems under RCW 57.08.060;

To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage.

Sec. 2. RCW 57.08.044 and 1999 c 153 s 7 are each amended to read as follows:

A district may enter into contracts with any county, city, town, or any other municipal or quasi-municipal corporation, or with any private person or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district. A district may provide water, reclaimed water, sewer, drainage, or street lighting services to property owners in areas within or without the limits of the district, except that if the area to be served is located within another existing district duly authorized to exercise district powers in that area, then water, reclaimed water, sewer, drainage, or street lighting service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of that other district.

Sec. 3. RCW 57.08.047 and 1999 c 153 s 8 are each amended to read as follows:

The provision of water, reclaimed water, sewer, or drainage service beyond the boundaries of a special purpose district or city may be subject to potential review by a boundary review board under chapter 36.93 RCW.

Sec. 4. RCW 57.16.010 and 1997 c 447 s 18 are each amended to read as follows:

Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a
separate general comprehensive plan for each of these services and other services that districts are permitted to provide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers,
syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a reclaimed water system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a reclaimed water system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan must provide for treatment plants or the use of existing treatment plants and other methods and services, if any, for reclaiming water and must, for such portions of the district as may then reasonably be served, provide for a general system or plan for acquiring the lands and easements necessary therefor, including retaining and storing reclaimed water, and for the acquisition or construction and installation of mains, transmission mains, pumping stations, hydrants, or other facilities and systems for the reclamation and transmission of reclaimed water throughout such district for such uses, public and private, as authorized by law. The general comprehensive plan must provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the reclaimed water system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses must be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive
plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

((4)) (5) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

((5)) (6) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

((6)) (7) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a comprehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of
the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative
authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body.

Passed by the House February 23, 2009.
Passed by the Senate April 13, 2009.
Approved by the Governor April 28, 2009.
Filed in Office of Secretary of State April 29, 2009.