

FINAL BILL REPORT

ESSB 5285

C 469 L 05

Synopsis as Enacted

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).

Senate Committee on Water, Energy & Environment
House Committee on Local Government

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 (DOE) must review and approve service agreements before they are finalized to ensure compliance with the state Water Pollution Control Act.

Summary: 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 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.

Votes on Final Passage:

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| Senate | 43 | 3 |
| House | 97 | 0 |

Effective: July 24, 2005