

SENATE BILL 5298

State of Washington 52nd Legislature 1991 Regular Session

By Senators McCaslin, Sutherland and Madsen.

Read first time January 28, 1991. Referred to Committee on
Governmental Operations.

1 AN ACT Relating to limitations on charges by municipal water
2 utilities on customers residing outside the municipal boundaries;
3 reenacting and amending RCW 35.92.010; adding a new section to chapter
4 35.92 RCW; adding a new section to chapter 35.21 RCW; and creating a
5 new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that:

8 (1) The provision of high quality, dependable supplies of drinking
9 water at fair and reasonable rates to the citizens of this state is of
10 the highest priority;

11 (2) There has been increased planning and coordination for the
12 provision of drinking water supplies to the citizens of this state that
13 has resulted in the delineation of designated service territories for
14 water utilities in many areas of the state, and a de facto service

1 monopoly granted to those utilities, so that residents in those areas
2 have no practical ability to choose between different water utilities;

3 (3) Many municipal water utilities in this state have expanded
4 their municipal water supply service into areas beyond their municipal
5 boundaries, and for some municipal water utilities a majority of their
6 customers live outside the municipal boundaries;

7 (4) Municipal utility rates and services are not subject to
8 regulation by the utilities and transportation commission;

9 (5) Municipal water utility customers that live outside the
10 municipal boundaries do not have any effective means of limiting or
11 controlling the charges or rates imposed on them by the municipal
12 utility, since they do not have the ability to vote in municipal
13 elections, as municipal residents have;

14 (6) Washington courts have not been willing to impose any
15 limitations on the ability of municipal water utilities to impose
16 differential rates on customers living outside the municipal
17 boundaries; and

18 (7) There is a need to provide some form of protection to
19 nonresident municipal water utility customers with regard to rates and
20 other charges they are required to pay for this basic human need.

21 **Sec. 2.** RCW 35.92.010 and 1985 c 445 s 4 and 1985 c 444 s 2 are
22 each reenacted and amended to read as follows:

23 A city or town may construct, condemn and purchase, purchase,
24 acquire, add to, alter, maintain and operate waterworks, within or
25 without its limits, for the purpose of furnishing the city and its
26 inhabitants, and any other persons, with an ample supply of water for
27 all purposes, public and private, including water power and other power
28 derived therefrom, with full power to regulate and control the use,
29 distribution, and price thereof: PROVIDED, That the rates charged must

1 be fair, just, and reasonable and be uniform for the same class of
2 customers or service. Such waterworks may include facilities for the
3 generation of electricity as a byproduct and such electricity may be
4 used by the city or town or sold to an entity authorized by law to
5 distribute electricity. Such electricity is a byproduct when the
6 electrical generation is subordinate to the primary purpose of water
7 supply. In classifying customers served or service furnished, the city
8 or town governing body (~~may in its discretion~~) shall consider (~~any~~
9 ~~or~~) all of the following factors: The difference in cost of service
10 to the various customers; location of the various customers within and
11 without the city or town, to the extent that such location provides a
12 quantifiable basis for different rates that other factors do not; the
13 difference in cost of maintenance, operation, repair, and replacement
14 of the various parts of the system; the different character of the
15 service furnished various customers; the quantity and quality of the
16 water furnished; the time of its use; capital contributions made to the
17 system including, but not limited to, assessments; and any other
18 matters which present a reasonable difference as a ground for
19 distinction. No rate shall be charged that is less than the cost of
20 the water and service to the class of customers served.

21 For such purposes any city or town may take, condemn and purchase,
22 purchase, acquire, and retain water from any public or navigable lake
23 or watercourse, surface or ground, and, by means of aqueducts or pipe
24 lines, conduct it to the city or town; and it may erect and build dams
25 or other works across or at the outlet of any lake or watercourse in
26 this state for the purpose of storing and retaining water therein up to
27 and above high water mark; and for all the purposes of erecting such
28 aqueducts, pipe lines, dams, or waterworks or other necessary
29 structures in storing and retaining water, or for any of the purposes
30 provided for by this chapter, the city or town may occupy and use the

1 beds and shores up to the high water mark of any such watercourse or
2 lake, and acquire the right by purchase, or by condemnation and
3 purchase, or otherwise, to any water, water rights, easements or
4 privileges named in this chapter, or necessary for any of said
5 purposes, and the city or town may acquire by purchase or condemnation
6 and purchase any properties or privileges necessary to be had to
7 protect its water supply from pollution. Should private property be
8 necessary for any such purposes or for storing water above high water
9 mark, the city or town may condemn and purchase, or purchase and
10 acquire such private property. For the purposes of waterworks which
11 include facilities for the generation of electricity as a byproduct,
12 nothing in this section may be construed to authorize a city or town
13 that does not own or operate an electric utility system to condemn
14 electric generating, transmission, or distribution rights or facilities
15 of entities authorized by law to distribute electricity, or to acquire
16 such rights or facilities without the consent of the owner.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 35.92 RCW
18 to read as follows:

19 (1) Any city or town operating a municipal water supply system
20 where the majority of its retail customers reside outside the municipal
21 boundaries shall not charge such customers rates that are higher than
22 those charged its retail customers that reside within the municipal
23 boundaries unless such rates are reviewed and approved by the
24 legislative authority of the county in which the city or town is
25 located. The county legislative authority shall review the proposed
26 rates for customers in the unincorporated areas of the county for their
27 compliance with the factors identified in RCW 35.92.010 as to
28 classification of customers, and shall conduct at least one public

1 hearing on the proposed rates before taking any action to approve or
2 disapprove of them.

3 (2) For purposes of this section, "retail customer" means a person
4 or entity that receives service from the municipal water supply system
5 for use at the location where such service is received, and not for the
6 principal purpose of resale to another customer or customers.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.21 RCW
8 to read as follows:

9 (1) No city or town may impose a tax on the privilege of conducting
10 a water, sewer, or water and sewer utility business at a rate that
11 exceeds the combined rate of state and local sales and use taxes
12 applicable in the unincorporated area of the county in which the city
13 or town is located.

14 (2) If a city or town is imposing a rate of tax under subsection
15 (1) of this section in excess of the maximum rate permitted under
16 subsection (1) of this section on the effective date of this act, the
17 city or town shall decrease the rate each year on or before November 1
18 by ordinances to be effective on January 1 of the succeeding year, by
19 an amount equal to one-tenth the difference between the rate being
20 imposed on the effective date of this act and the maximum rate
21 permitted under subsection (1) of this section. Nothing in this
22 subsection shall prohibit a city or town from reducing its rates by
23 amounts greater than the amounts required by this subsection.