
SENATE BILL 5595

State of Washington 52nd Legislature 1991 Regular Session

By Senators McCaslin, Sutherland and Madsen.

Read first time February 11, 1991. Referred to Committee on
Governmental Operations.

1 AN ACT Relating to rights of public utility customers in
2 unincorporated areas; reenacting and amending RCW 35.92.010; adding a
3 new section to chapter 35.92 RCW; adding a new section to chapter 35.21
4 RCW; and creating a new section.

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

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

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

10 (2) There has been increased planning and coordination for the
11 provision of drinking water supplies to the citizens of this state that
12 has resulted in the delineation of designated service territories for
13 water utilities in many areas of the state, and a de facto service
14 monopoly granted to those utilities, so that residents in those areas
15 have no practical ability to choose between different water utilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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