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**SUBSTITUTE SENATE BILL 6428**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Energy & Utilities (originally sponsored by Senators M. Rasmussen, Newhouse, Fraser, Gaspard and Winsley)

Read first time 02/04/94.

1 AN ACT Relating to water systems; amending RCW 57.04.050 and  
2 43.70.195; reenacting and amending RCW 84.09.030; adding a new section  
3 to chapter 35.13A RCW; adding a new section to chapter 35A.21 RCW;  
4 adding a new section to chapter 36.94 RCW; adding a new section to  
5 chapter 57.24 RCW; adding a new section to chapter 80.28 RCW; adding a  
6 new section to chapter 54.16 RCW; adding a new section to chapter 87.03  
7 RCW; and creating a new section.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the monitoring  
10 and treatment requirements of the federal safe drinking water act place  
11 increasing burdens and cost on public water supply systems, especially  
12 smaller systems and rural systems. Across the state, those systems are  
13 turning to existing systems and their county governments for help,  
14 which may include assumption of the system.

15 It is the intent of the legislature to encourage larger existing  
16 systems to assist or acquire troubled systems or those systems burdened  
17 by federal requirements, to provide financial protection for that  
18 assistance, and to protect receivers of failed water systems.

1       **Sec. 2.** RCW 57.04.050 and 1990 c 259 s 28 are each amended to read  
2 as follows:

3       Upon entry of the findings of the final hearing on the petition if  
4 one or more county legislative authorities find that the proposed  
5 district will be conducive to the public health, welfare, and  
6 convenience and be of special benefit to the land therein, they shall  
7 call a special election by presenting a resolution to the county  
8 auditor at least forty-five days prior to the proposed election date.  
9 A special election will be held on a date decided by the commissioners  
10 in accordance with RCW 29.13.010 and 29.13.020. The commissioners  
11 shall cause to be published a notice of the election for four  
12 successive weeks in a newspaper of general circulation in the proposed  
13 district, which notice shall state the hours during which the polls  
14 will be open, the boundaries of the district as finally adopted and the  
15 object of the election, and the notice shall also be posted for ten  
16 days in ten public places in the proposed district. In submitting the  
17 proposition to the voters, it shall be expressed on the ballots in the  
18 following terms:

19       Water District . . . . . YES 1  
20       Water District . . . . . NO 1

21 giving the name of the district as provided in the petition.

22       At the same election a proposition shall be submitted to the  
23 voters, for their approval or rejection, authorizing the water  
24 district, if formed, to levy at the earliest time permitted by law on  
25 all property located in the district a general tax for one year, in  
26 excess of the limitations provided by law, in the amount specified in  
27 the petition to create the district, not to exceed one dollar and  
28 twenty-five cents per thousand dollars of assessed value, for general  
29 preliminary expenses of the district(~~(, the proposition to)~~). The  
30 proposition may not appear at the September or November election. The  
31 proposition shall be expressed on the ballots in the following terms:

32       One year . . . . . dollars and . . . . . cents per  
33               thousand dollars of assessed value tax . . . . . YES 1  
34       One year . . . . . dollars and . . . . . cents per  
35               thousand dollars of assessed value tax . . . . . NO 1

36 Such proposition to be effective must be approved (~~(by a majority of at~~  
37 ~~least three-fifths of the registered voters thereof voting on the~~

1 proposition)) in the manner set forth in Article VII, section 2(a) of  
2 the Constitution of this state, as amended by Amendment 59 and as  
3 thereafter amended.

4 **Sec. 3.** RCW 43.70.195 and 1990 c 133 s 4 are each amended to read  
5 as follows:

6 (1) In any action brought by the secretary of health or by a local  
7 health officer pursuant to chapter 7.60 RCW to place a public water  
8 system in receivership, the petition shall include the names of one or  
9 more suitable candidates for receiver who have consented to assume  
10 operation of the water system. The department shall maintain a list of  
11 interested and qualified individuals, municipal entities, special  
12 purpose districts, and investor-owned water companies with experience  
13 in the provision of water service and a history of satisfactory  
14 operation of a water system. If there is no other person willing and  
15 able to be named as receiver, the court shall appoint the county in  
16 which the water system is located as receiver. The county may  
17 designate a county agency to operate the system, or it may contract  
18 with another individual or public water system to provide management  
19 for the system. If the county is appointed as receiver, the secretary  
20 of health and the county health officer shall provide regulatory  
21 oversight for the agency or other person responsible for managing the  
22 water system.

23 (2) In any petition for receivership under subsection (1) of this  
24 section, the department shall recommend that the court grant to the  
25 receiver full authority to act in the best interests of the customers  
26 served by the public water system. The receiver shall assess the  
27 capability, in conjunction with the department and local government,  
28 for the system to operate in compliance with health and safety  
29 standards, and shall report to the court and the petitioning agency its  
30 recommendations for the system's future operation, including the  
31 formation of a water district or other public entity, or ownership by  
32 another existing water system capable of providing service.

33 (3) If a petition for receivership and verifying affidavit executed  
34 by an appropriate departmental official allege an immediate and serious  
35 danger to residents constituting an emergency, the court shall set the  
36 matter for hearing within three days and may appoint a temporary  
37 receiver ex parte upon the strength of such petition and affidavit

1 pending a full evidentiary hearing, which shall be held within fourteen  
2 days after receipt of the petition.

3 (4) A bond, if any is imposed upon a receiver, shall be minimal and  
4 shall reasonably relate to the level of operating revenue generated by  
5 the system. Any receiver appointed pursuant to this section shall not  
6 be held personally liable for any good faith, reasonable effort to  
7 assume possession of, and to operate, the system in compliance with the  
8 court's orders.

9 (5) The court shall authorize the receiver to impose reasonable  
10 assessments on a water system's customers to recover expenditures for  
11 improvements necessary for the public health and safety.

12 (6) No later than twelve months after appointment of a receiver,  
13 the petitioning agency, in conjunction with the county in which the  
14 system is located, and the appropriate state and local health agencies,  
15 shall develop and present to the court a plan for the disposition of  
16 the system. The report shall include the recommendations of the  
17 receiver made pursuant to subsection (2) of this section. The report  
18 shall include all reasonable and feasible alternatives. After  
19 receiving the report, the court shall provide notice to interested  
20 parties and conduct such hearings as are necessary. The court shall  
21 then order the parties to implement one of the alternatives, or any  
22 combination thereof, for the disposition of the system. Such order  
23 shall include a date, or proposed date, for the termination of the  
24 receivership. Nothing in this section authorizes a court to require a  
25 city, town, public utility district, water district, or irrigation  
26 district to accept a system that has been in receivership unless the  
27 city, town, public utility district, water district, or irrigation  
28 district agrees to the terms and conditions outlined in the plan  
29 adopted by the court.

30 (7) The court shall not terminate the receivership, and order the  
31 return of the system to the owners, unless the department of health  
32 approves of such an action. The court may impose reasonable conditions  
33 upon the return of the system to the owner, including the posting of a  
34 bond or other security, routine performance and financial audits,  
35 employment of qualified operators and other staff or contracted  
36 services, compliance with financial viability requirements, or other  
37 measures sufficient to ensure the ongoing proper operation of the  
38 system.

1       (8) If, as part of the ultimate disposition of the system, an  
2 eminent domain action is commenced by a public entity to acquire the  
3 system, the court shall oversee any appraisal of the system conducted  
4 under Title 7 RCW to assure that the appraised value properly reflects  
5 any reduced value because of the necessity to make improvements to the  
6 system. The court shall have the authority to approve the appraisal,  
7 and to modify it based on any information provided at an evidentiary  
8 hearing. The court's determination of the proper value of the system,  
9 based on the appraisal, shall be final, and only appealable if not  
10 supported by substantial evidence. If the appraised value is appealed,  
11 the court may order that the system's ownership be transferred upon  
12 payment of the approved appraised value.

13       **Sec. 4.** RCW 84.09.030 and 1989 c 378 s 8 and 1989 c 217 s 1 are  
14 each reenacted and amended to read as follows:

15       Except as follows, the boundaries of counties, cities and all other  
16 taxing districts, for purposes of property taxation and the levy of  
17 property taxes, shall be the established official boundaries of such  
18 districts existing on the first day of March of the year in which the  
19 property tax levy is made.

20       The official boundaries of a newly incorporated taxing district  
21 shall be established at a different date in the year in which the  
22 incorporation occurred as follows:

23       (1) Boundaries for a newly incorporated city shall be established  
24 on the last day of March of the year in which the initial property tax  
25 levy is made, and the boundaries of a road district, library district,  
26 or fire protection district or districts, that include any portion of  
27 the area that was incorporated within its boundaries shall be altered  
28 as of this date to exclude this area, if the budget for the newly  
29 incorporated city is filed pursuant to RCW 84.52.020 and the levy  
30 request of the newly incorporated city is made pursuant to RCW  
31 84.52.070. Whenever a proposed city incorporation is on the March  
32 special election ballot, the county auditor shall submit the legal  
33 description of the proposed city to the department of revenue on or  
34 before the first day of March;

35       (2) Boundaries for a newly incorporated port district shall be  
36 established on the first day of October if the boundaries of the newly  
37 incorporated port district are coterminous with the boundaries of

1 another taxing district, as they existed on the first day of March of  
2 that year;

3 (3) Boundaries of any other newly incorporated taxing district  
4 shall be established on the first day of June of the year in which the  
5 property tax levy is made if the taxing district has boundaries  
6 coterminous with the boundaries of another taxing district, as they  
7 existed on the first day of March of that year;

8 (4) Boundaries for a newly incorporated water district shall be  
9 established on the fifteenth of June of the year in which the  
10 proposition under RCW 57.04.050 authorizing a water district excess  
11 levy is approved.

12 The boundaries of a taxing district shall be established on the  
13 first day of June if territory has been added to, or removed from, the  
14 taxing district after the first day of March of that year with  
15 boundaries coterminous with the boundaries of another taxing district  
16 as they existed on the first day of March of that year. However, the  
17 boundaries of a road district, library district, or fire protection  
18 district or districts, that include any portion of the area that was  
19 annexed to a city or town within its boundaries shall be altered as of  
20 this date to exclude this area. In any case where any instrument  
21 setting forth the official boundaries of any newly established taxing  
22 district, or setting forth any change in such boundaries, is required  
23 by law to be filed in the office of the county auditor or other county  
24 official, said instrument shall be filed in triplicate. The officer  
25 with whom such instrument is filed shall transmit two copies to the  
26 county assessor.

27 No property tax levy shall be made for any taxing district whose  
28 boundaries are not established as of the dates provided in this  
29 section.

30 NEW SECTION. Sec. 5. A new section is added to chapter 35.13A RCW  
31 to read as follows:

32 A city assuming responsibility for a water system that is not in  
33 compliance with state or federal requirements for public drinking water  
34 systems, and its agents and employees, is immune from liability for the  
35 preexisting noncompliance in any civil action or suit arising from its  
36 operation of that system, if it has submitted and is complying with a  
37 plan and schedule of improvements approved by the department of health,  
38 unless actual malice, fraud, or bad faith is shown.

1        NEW SECTION.    **Sec. 6.** A new section is added to chapter 35A.21 RCW  
2 to read as follows:

3        A code city assuming responsibility for a water system that is not  
4 in compliance with state or federal requirements for public drinking  
5 water systems, and its agents and employees, is immune from liability  
6 for the preexisting noncompliance in any civil action or suit arising  
7 from its operation of that system, if it has submitted and is complying  
8 with a plan and schedule of improvements approved by the department of  
9 health, unless actual malice, fraud, or bad faith is shown.

10       NEW SECTION.    **Sec. 7.** A new section is added to chapter 36.94 RCW  
11 to read as follows:

12       A county assuming responsibility for a water system that is not in  
13 compliance with state or federal requirements for public drinking water  
14 systems, and its agents and employees, is immune from liability for the  
15 preexisting noncompliance in any civil action or suit arising from its  
16 operation of that system, if it has submitted and is complying with a  
17 plan and schedule of improvements approved by the department of health,  
18 unless actual malice, fraud, or bad faith is shown.

19       NEW SECTION.    **Sec. 8.** A new section is added to chapter 57.24 RCW  
20 to read as follows:

21       A water district assuming responsibility for a water system that is  
22 not in compliance with state or federal requirements for public  
23 drinking water systems, and its agents and employees, is immune from  
24 liability for the preexisting noncompliance in any civil action or suit  
25 arising from its operation of that system, if it has submitted and is  
26 complying with a plan and schedule of improvements approved by the  
27 department of health, unless actual malice, fraud, or bad faith is  
28 shown.

29       NEW SECTION.    **Sec. 9.** A new section is added to chapter 80.28 RCW  
30 to read as follows:

31       A water company assuming responsibility for a water system that is  
32 not in compliance with state or federal requirements for public  
33 drinking water systems, and its agents and employees, is immune from  
34 liability for the preexisting noncompliance in any civil action or suit  
35 arising from its operation of that system, if it has submitted and is  
36 complying with a plan and schedule of improvements approved by the

1 department of health, unless actual malice, fraud, or bad faith is  
2 shown.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 54.16 RCW  
4 to read as follows:

5 A public utility district assuming responsibility for a water  
6 system that is not in compliance with state or federal requirements for  
7 public drinking water systems, and its agents and employees, is immune  
8 from liability for the preexisting noncompliance in any civil action or  
9 suit arising from its operation of that system, if it has submitted and  
10 is complying with a plan and schedule of improvements approved by the  
11 department of health, unless actual malice, fraud, or bad faith is  
12 shown.

13 NEW SECTION. **Sec. 11.** A new section is added to chapter 87.03 RCW  
14 to read as follows:

15 An irrigation district assuming responsibility for a water system  
16 that is not in compliance with state or federal requirements for public  
17 drinking water systems, and its agents and employees, is immune from  
18 liability for the preexisting noncompliance in any civil action or suit  
19 arising from its operation of that system, if it has submitted and is  
20 complying with a plan and schedule of improvements approved by the  
21 department of health, unless actual malice, fraud, or bad faith is  
22 shown.

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