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SENATE BILL 6428

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State of Washington                      53rd Legislature                      1994 Regular Session

By Senators M. Rasmussen, Newhouse, Fraser, Gaspard and Winsley

Read first time 01/21/94. Referred to Committee on Energy & Utilities.

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; and  
6 creating a new section.

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

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

14            It is the intent of the legislature to encourage larger existing  
15 systems to assist or acquire troubled systems or those systems burdened  
16 by federal requirements, to provide financial protection for that  
17 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.

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

34 (8) If, as part of the ultimate disposition of the system, an  
35 eminent domain action is commenced by a public entity to acquire the  
36 system, the court shall oversee any appraisal of the system conducted  
37 under Title 7 RCW to assure that the appraised value properly reflects  
38 any reduced value because of the necessity to make improvements to the  
39 system. The court shall have the authority to approve the appraisal,

1 and to modify it based on any information provided at an evidentiary  
2 hearing. The court's determination of the proper value of the system,  
3 based on the appraisal, shall be final, and only appealable if not  
4 supported by substantial evidence. If the appraised value is appealed,  
5 the court may order that the system's ownership be transferred upon  
6 payment of the approved appraised value.

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

9 Except as follows, the boundaries of counties, cities and all other  
10 taxing districts, for purposes of property taxation and the levy of  
11 property taxes, shall be the established official boundaries of such  
12 districts existing on the first day of March of the year in which the  
13 property tax levy is made.

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

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

29 (2) Boundaries for a newly incorporated port district shall be  
30 established on the first day of October if the boundaries of the newly  
31 incorporated port district are coterminous with the boundaries of  
32 another taxing district, as they existed on the first day of March of  
33 that year;

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

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

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

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

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

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

32       NEW SECTION. Sec. 6. A new section is added to chapter 35A.21 RCW  
33 to read as follows:

34       A code city assuming responsibility for a water system that is not  
35 in compliance with state or federal requirements for public drinking  
36 water systems, and its agents and employees, is immune from liability  
37 for any civil action or suit arising from its operation of that system

1 if it has submitted a plan and schedule of improvements approved by the  
2 department of health, unless actual malice, fraud, or bad faith is  
3 shown.

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

6 A county assuming responsibility for a water system that is not in  
7 compliance with state or federal requirements for public drinking water  
8 systems, and its agents and employees, is immune from liability for any  
9 civil action or suit arising from its operation of that system if it  
10 has submitted 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. 8.** A new section is added to chapter 57.24 RCW  
14 to read as follows:

15 A water district assuming responsibility for a water system that is  
16 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 any civil action or suit arising from its operation of  
19 that system if it has submitted a plan and schedule of improvements  
20 approved by the department of health, unless actual malice, fraud, or  
21 bad faith is shown.

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

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

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