
SUBSTITUTE SENATE BILL 5198

State of Washington

62nd Legislature

2011 Regular Session

By Senate Government Operations, Tribal Relations & Elections
(originally sponsored by Senators Pridemore, Swecker, Rockefeller,
Zarelli, and Shin)

READ FIRST TIME 02/11/11.

1 AN ACT Relating to the joint provision and management of municipal
2 water, wastewater, storm and flood water, and related utility services;
3 amending RCW 4.96.010, 86.09.720, and 86.15.035; adding a new section
4 to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding
5 a new section to chapter 82.12 RCW; adding a new section to chapter
6 82.16 RCW; and adding a new chapter to Title 39 RCW.

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

8 NEW SECTION. **Sec. 1.** TITLE OF ACT--DECLARATION OF PURPOSE. (1)

9 This act shall be known as the joint municipal utility services act.

10 (2) It is the purpose of this act to improve the ability of local
11 government utilities to plan, finance, construct, acquire, maintain,
12 operate, and provide facilities and utility services to the public, and
13 to reduce costs and improve the benefits, efficiency, and quality of
14 utility services.

15 (3) This act is intended to facilitate joint municipal utility
16 services and is not intended to expand the types of services provided
17 by local governments or their utilities. Further, nothing in this act
18 is intended to alter the regulatory powers of cities, counties, or
19 other local governments or state agencies that exercise such powers.

1 Further, nothing in this act may be construed to alter the underlying
2 authority of the units of local government that enter into agreements
3 under this act or to diminish in any way the authority of local
4 governments to enter into agreements under chapter 39.34 RCW or other
5 applicable law.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

9 (1) "Agreement" means a joint municipal utility services agreement,
10 among members, that forms an authority, as more fully described in this
11 chapter.

12 (2) "Authority" means a joint municipal utility services authority
13 formed under this chapter.

14 (3) "Board of directors" or "board" means the board of directors of
15 an authority.

16 (4) "Member" means a city, town, county, water-sewer district,
17 public utility district, other special purpose district, municipal
18 corporation, or other unit of local government of this or another state
19 that provides utility services, and any Indian tribe recognized as such
20 by the United States government, that is a party to an agreement
21 forming an authority.

22 (5) "Utility services," for purposes of this chapter, means any or
23 all of the following functions: The provision of retail or wholesale
24 water supply and water conservation services; the provision of
25 wastewater, sewage, or septage collection, handling, treatment,
26 transmission, or disposal services; the provision of point and nonpoint
27 water pollution monitoring programs; the provision for the generation,
28 production, storage, distribution, use, or management of reclaimed
29 water; and the management and handling of storm water, surface water,
30 drainage, and flood waters.

31 NEW SECTION. **Sec. 3.** FORMATION OF JOINT MUNICIPAL UTILITY
32 SERVICES AUTHORITIES--CHARACTERISTICS--SUBSTANTIVE POWERS. (1) An
33 authority may be formed by two or more members pursuant to this chapter
34 by execution of a joint municipal utility services agreement that
35 materially complies with the requirements of section 5 of this act.
36 Except as otherwise provided in section 8 of this act, at the time of

1 execution of an agreement each member must be providing the type of
2 utility service or services that will be provided by the authority.
3 The agreement must be approved by the legislative authority of each of
4 the members. The agreement must be filed with the Washington state
5 secretary of state, who must provide a certificate of filing with
6 respect to any authority. An authority shall be deemed to have been
7 formed as of the date of that filing. The formation and activities of
8 an authority, and the admission or withdrawal of members, are not
9 subject to review by any boundary review board. Any amendments to an
10 agreement must be filed with the Washington state secretary of state,
11 and will become effective on the date of filing.

12 (2) An authority is a municipal corporation. Subject to section
13 4(3) of this act, the provisions of a joint municipal utility services
14 agreement, and any limitations imposed pursuant to section 5 of this
15 act: (a) An authority may perform or provide any or all of the utility
16 service or services that all of its members, other than tribal
17 government members, perform or provide under applicable law; and (b) in
18 performing or providing those utility services, an authority may
19 exercise any or all of the powers described in section 4(1) of this
20 act.

21 (3) An authority shall be entitled to all the immunities and
22 exemptions that are available to local governmental entities under
23 applicable law, including without limitation the provisions of chapter
24 4.96 RCW. Notwithstanding this subsection (3), if all of an
25 authority's members are the same type of Washington local government
26 entity, then the immunities and exemptions available to that type of
27 entity shall govern.

28 (4) Nothing in this chapter shall diminish a member's powers in
29 connection with its provision or management of utility services, or its
30 taxing power with respect to those services, nor does this chapter
31 diminish in any way the authority of local governments to enter into
32 agreements under chapter 39.34 RCW or other applicable law.

33 (5) Nothing in this chapter shall impair or diminish a valid water
34 right, including rights established under state law and rights
35 established under federal law.

36 NEW SECTION. **Sec. 4.** CORPORATE POWERS OF JOINT MUNICIPAL UTILITY
37 SERVICES AUTHORITIES. (1) For the purpose of performing or providing

1 utility services, and subject to subsection (3) of this section and
2 section 5 of this act, an authority has and is entitled to exercise the
3 following powers:

4 (a) To sue and be sued, complain and defend, in its corporate name;

5 (b) To have a corporate seal which may be altered at pleasure, and
6 to use the same by causing it, or a facsimile thereof, to be impressed
7 or affixed or in any other manner reproduced;

8 (c) To purchase, take, receive, take by lease, condemn, receive by
9 grant, or otherwise acquire, and to own, hold, improve, use, operate,
10 maintain, add to, extend, and fully control the use of and otherwise
11 deal in and with, real or personal property or property rights,
12 including without limitation water and water rights, or other assets,
13 or any interest therein, wherever situated;

14 (d) To sell, convey, lease out, exchange, transfer, surplus, and
15 otherwise dispose of all or any part of its property and assets;

16 (e) To incur liabilities for any of its utility services purposes,
17 to borrow money at such rates of interest as the authority may
18 determine, to issue its bonds, notes, and other obligations, and to
19 pledge any or all of its revenues to the repayment of bonds, notes, and
20 other obligations;

21 (f) To enter into contracts for any of its utility services
22 purposes with any individual or entity, both public and private, and to
23 enter into intergovernmental agreements with its members and with other
24 public agencies;

25 (g) To be eligible to apply for and to receive state, federal, and
26 private grants, loans, and assistance that any of its members are
27 eligible to receive in connection with the development, design,
28 acquisition, construction, maintenance, and/or operation of facilities
29 and programs for utility services;

30 (h) To adopt and alter rules, polices, and guidelines, not
31 inconsistent with this chapter or with other laws of this state, for
32 the administration and regulation of the affairs and assets of the
33 authority;

34 (i) To obtain insurance, to self-insure, and to participate in pool
35 insurance programs;

36 (j) To indemnify any officer, director, employee, volunteer, or
37 former officer, employee, or volunteer, or any member, for acts,

1 errors, or omissions performed in the exercise of their duties in the
2 manner approved by the board;

3 (k) To employ such persons, as public employees, that the board
4 determines are needed to carry out the authority's purposes and to fix
5 wages, salaries, and benefits, and to establish any bond requirements
6 for those employees;

7 (l) To provide for and pay pensions and participate in pension
8 plans and other benefit plans for any or all of its officers or
9 employees, as public employees;

10 (m) To determine and impose fees, rates, and charges for utility
11 services;

12 (n) Subject to section 5(20) of this act, to have a lien for
13 delinquent and unpaid rates and charges for retail connections and
14 retail utility service to the public, together with recording fees and
15 penalties (not exceeding eight percent) determined by the board,
16 including interest (at a rate determined by the board) on such rates,
17 charges, fees, and penalties, against the premises to which such
18 service has been furnished or is available, which lien shall be
19 superior to all other liens and encumbrances except general taxes and
20 local and special assessments;

21 (o) To make expenditures to promote and advertise its programs,
22 educate its members, customers, and the general public, and provide and
23 support conservation and other practices in connection with providing
24 utility services;

25 (p) With the consent of the member within whose geographic
26 boundaries an authority is so acting, to compel all property owners
27 within an area served by a wastewater collection system owned or
28 operated by an authority to connect their private drain and sewer
29 systems with that system, or to participate in and follow the
30 requirements of an inspection and maintenance program for on-site
31 systems, and to pay associated rates and charges, under such terms and
32 conditions, and such penalties, as the board shall prescribe by
33 resolution;

34 (q) With the consent of the member within whose geographic or
35 service area boundaries an authority is so acting, to create local
36 improvement districts or utility local improvement districts, to impose
37 and collect assessments and to issue bonds and notes, all consistent
38 with the statutes governing local improvement districts or utility

1 local improvement districts applicable to the member that has provided
2 such consent. Notwithstanding this subsection (1)(q), the guaranty
3 fund provisions of chapter 35.54 RCW shall not apply to a local
4 improvement district created by an authority;

5 (r) To receive contributions or other transfers of real and
6 personal property and property rights, money, other assets, and
7 franchise rights, wherever situated, from its members or from any other
8 person;

9 (s) To prepare and submit plans relating to utility services on
10 behalf of itself or its members;

11 (t) To terminate its operations, wind up its affairs, dissolve, and
12 provide for the handling and distribution of its assets and liabilities
13 in a manner consistent with the applicable agreement;

14 (u) To transfer its assets, rights, obligations, and liabilities to
15 a successor entity, including without limitation a successor authority
16 or municipal corporation;

17 (v) Subject to subsection (3) of this section, section 5 of this
18 act, and applicable law, to have and exercise any other corporate
19 powers capable of being exercised by any of its members in providing
20 utility services;

21 (2) An authority, as a municipal corporation, is subject to the
22 public records act (chapter 42.56 RCW), the open public meetings act
23 (chapter 42.30 RCW), and the code of ethics for municipal officers
24 (chapter 42.23 RCW), and an authority is subject to audit by the state
25 auditor under chapter 43.09 RCW.

26 (3) In the exercise of its powers in connection with performing or
27 providing utility services, an authority is subject to the following:

28 (a) An authority has no power to levy taxes.

29 (b) An authority has the power of eminent domain as necessary to
30 perform or provide utility services, but only if all of its members,
31 other than tribal government members, have powers of eminent domain.
32 Further, an authority may exercise the power of eminent domain only
33 pursuant to the provisions of Washington law, in the manner and subject
34 to the statutory limitations applicable to one or more of its
35 Washington local government members. If all of its members are the
36 same type of Washington governmental entity, then the statute governing
37 the exercise of eminent domain by that type of entity shall govern. An
38 authority may not exercise the power of eminent domain with respect to

1 property owned by a city, town, county, special purpose district,
2 authority, or other unit of local government, but may acquire or use
3 such property under mutually agreed upon terms and conditions.

4 (c) An authority may pledge its revenues in connection with its
5 obligations, and may acquire property or property rights through and
6 subject to the terms of a conditional sales contract, a real estate
7 contract, or a financing contract under chapter 39.94 RCW, or other
8 federal or state financing program. However, an authority must not in
9 any other manner mortgage or provide security interests in its real or
10 personal property or property rights. As a local governmental entity
11 without taxing power, an authority may not issue general obligation
12 bonds. However, an authority may pledge its full faith and credit to
13 the payment of amounts due pursuant to a financing contract under
14 chapter 39.94 RCW or other federal or state financing program.

15 (d) In order for an authority to provide a particular utility
16 service in a geographical area, one or more of its members must have
17 authority, under applicable law, to provide that utility service in
18 that geographical area.

19 (e) As a separate municipal corporation, an authority's obligations
20 and liabilities are its own and are not obligations or liabilities of
21 its members except to the extent and in the manner established under
22 the provisions of an agreement or otherwise expressly provided by
23 contract.

24 (f) Upon its dissolution, after provision is made for an
25 authority's liabilities, remaining assets must be distributed to a
26 successor entity, or to one or more of the members, or to another
27 public body of this state.

28 NEW SECTION. **Sec. 5.** ELEMENTS OF JOINT MUNICIPAL UTILITY SERVICES
29 AGREEMENTS. A joint municipal utility services agreement that forms
30 and governs an authority must include the elements described in this
31 section, together with such other provisions an authority's members
32 deem appropriate. However, the failure of an agreement to include each
33 and every one of the elements described in this section shall not
34 render the agreement invalid. An agreement must:

35 (1) Identify the members, together with conditions upon which
36 additional members that are providing utility services may join the
37 authority, the conditions upon which members may or must withdraw,

1 including provisions for handling of relevant assets and liabilities
2 upon a withdrawal, and the effect of boundary adjustments of the
3 authority and boundary adjustments between or among members;

4 (2) State the name of the authority;

5 (3) Describe the utility services that the authority will provide;

6 (4) Specify how the number of directors of the authority's board
7 will be determined, and how those directors will be appointed. Each
8 director on the board of an authority must be an elected official of a
9 member. Except as limited by an agreement, an authority's board may
10 exercise the authority's powers;

11 (5) Describe how votes of the members represented on the
12 authority's board are to be weighted, and set forth any limitations on
13 the exercise of powers of the authority's board, which may include, by
14 way of example, requirements that certain decisions be made by a
15 supermajority of members represented on an authority's board, based on
16 the number of members and/or some other factor or factors, and that
17 certain decisions be ratified by the legislative authorities of the
18 members;

19 (6) Describe how the agreement is to be amended;

20 (7) Describe how the authority's rules may be adopted and amended;

21 (8) Specify the circumstances under which the authority may be
22 dissolved, and how it may terminate its operations, wind up its
23 affairs, and provide for the handling, assumption, and/or distribution
24 of its assets and liabilities;

25 (9) List any legally authorized substantive or corporate powers
26 that the authority will not exercise;

27 (10) Specify under which personnel laws the authority will operate,
28 which may be the personnel laws applicable to any one of its Washington
29 local government members;

30 (11) Specify under which public works and procurement laws the
31 authority will operate, which may be the public works and procurement
32 laws applicable to any one of its Washington local government members;

33 (12) Consistent with section 4(3)(b) of this act, specify under
34 which Washington eminent domain laws any condemnations by the authority
35 will be subject;

36 (13) Specify how the treasurer of the authority will be appointed,
37 which may be an officer or employee of the authority, the treasurer or
38 chief finance officer of any Washington local government member, or the

1 treasurer of any Washington county in which any member of the authority
2 is located. However, if the total number of utility customers of all
3 of the members of an authority does not exceed two thousand five
4 hundred, the treasurer of an authority must be either the treasurer of
5 any member or the treasurer of a county in which any member of the
6 authority is located;

7 (14) Specify under which Washington state statute or statutes
8 surplus property of the authority will be disposed;

9 (15) Describe how the authority's budgets will be prepared and
10 adopted;

11 (16) Describe how any assets of members that are transferred to or
12 managed by the authority will be accounted for;

13 (17) Generally describe the financial obligations of members to the
14 authority;

15 (18) Describe how rates and charges imposed by the authority, if
16 any, will be determined. An agreement may specify a specific
17 Washington state statute applicable to one or all of its members for
18 the purpose of governing rate-setting criteria applicable to retail
19 customers, if any;

20 (19) Specify the Washington state statute or statutes under which
21 bonds, notes, and other obligations of the authority will be issued for
22 the purpose of performing or providing utility services, which must be
23 a bond issuance statute applicable to one or more of its members other
24 than a tribal member. If all of its members are the same type of
25 Washington governmental entity, then a Washington state statute or
26 statutes governing the issuance of bonds, notes, and other obligations
27 issued by that type of entity shall govern;

28 (20) Specify under which Washington state statute or statutes any
29 liens of an authority shall be exercised, which must be statutes
30 applicable to the type or types of utility service for which the lien
31 shall apply. Further, if all of its members are the same type of
32 Washington governmental entity, then the statute or statutes governing
33 that type of entity shall govern;

34 (21) Include any other provisions deemed necessary and appropriate
35 by the members.

36 NEW SECTION. **Sec. 6.** AUTHORITY OF MEMBERS TO ASSIST AUTHORITY AND
37 TO TRANSFER FUNDS, PROPERTY, AND OTHER ASSETS. For the purpose of

1 assisting the authority in providing utility services, the members of
2 an authority are authorized, with or without payment or other
3 consideration and without submitting the matter to the electors of
4 those members, to lease, convey, transfer, assign, or otherwise make
5 available to an authority any money, real or personal property or
6 property rights, other assets including licenses, water rights (subject
7 to applicable law), other property (whether held by a member's utility
8 or by a member's general government), or franchises or rights
9 thereunder.

10 NEW SECTION. **Sec. 7.** TAX EXEMPTIONS AND PREFERENCES. (1) As a
11 municipal corporation, the property of an authority is exempt from
12 taxation.

13 (2) An authority is entitled to all of the exemptions from or
14 preferences with respect to taxes that are available to any or all of
15 its members, other than a tribal member, in connection with the
16 provision or management of utility services.

17 NEW SECTION. **Sec. 8.** CONVERSION OF EXISTING ENTITIES INTO
18 AUTHORITIES. (1) Any intergovernmental entity formed under chapter
19 39.34 RCW or other applicable law may become a joint municipal utility
20 services authority and be entitled to all the powers and privileges
21 available under this chapter, if: (a) The public agencies that are
22 parties to an existing interlocal agreement would otherwise be eligible
23 to form an authority to provide the relevant utility services; (b) the
24 public agencies that are parties to the existing interlocal agreement
25 amend, restate, or replace that interlocal agreement so that it
26 materially complies with the requirements of section 5 of this act; (c)
27 the amended, restated, or replacement agreement is filed with the
28 Washington state secretary of state consistent with section 3 of this
29 act; and (d) the amended, restated, or replacement agreement expressly
30 provides that all rights and obligations of the entity formerly
31 existing under chapter 39.34 RCW or other applicable law shall
32 thereafter be the obligations of the new authority created under this
33 chapter. Upon compliance with those requirements, the new authority
34 shall be a successor of the former intergovernmental entity for all
35 purposes, and all rights and obligations of the former entity shall
36 transfer to the new authority. Those obligations shall be treated as

1 having been incurred, entered into, or issued by the new authority, and
2 those obligations shall remain in full force and effect and shall
3 continue to be enforceable in accordance with their terms.

4 (2) If an interlocal agreement under chapter 39.34 RCW or other
5 applicable law relating to utility services includes among its original
6 participants a city or county that does not itself provide or no longer
7 provides utility services, that city or county may continue as a party
8 to the amended, restated, or replacement agreement and shall be treated
9 as a member for all purposes under this chapter.

10 NEW SECTION. **Sec. 9.** POWERS CONFERRED BY CHAPTER ARE
11 SUPPLEMENTAL. The powers and authority conferred by this chapter shall
12 be construed as in addition and supplemental to powers or authority
13 conferred by any other law, and nothing contained in this chapter shall
14 be construed as limiting any other powers or authority of any member or
15 any other entity formed under chapter 39.34 RCW or other applicable
16 law.

17 **Sec. 10.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
18 as follows:

19 (1) All local governmental entities, whether acting in a
20 governmental or proprietary capacity, shall be liable for damages
21 arising out of their tortious conduct, or the tortious conduct of their
22 past or present officers, employees, or volunteers while performing or
23 in good faith purporting to perform their official duties, to the same
24 extent as if they were a private person or corporation. Filing a claim
25 for damages within the time allowed by law shall be a condition
26 precedent to the commencement of any action claiming damages. The laws
27 specifying the content for such claims shall be liberally construed so
28 that substantial compliance therewith will be deemed satisfactory.

29 (2) Unless the context clearly requires otherwise, for the purposes
30 of this chapter, "local governmental entity" means a county, city,
31 town, special district, municipal corporation as defined in RCW
32 39.50.010, quasi-municipal corporation, any joint municipal utility
33 services authority, any entity created by public agencies under RCW
34 39.34.030, or public hospital.

35 (3) For the purposes of this chapter, "volunteer" is defined
36 according to RCW 51.12.035.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.04 RCW
2 to read as follows:

3 This chapter does not apply to any payments between, or any
4 transfer of assets to or from, a joint municipal utility services
5 authority created under chapter 39.--- RCW (the new chapter created in
6 section 17 of this act) and any of its members.

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.08 RCW
8 to read as follows:

9 The tax levied by RCW 82.08.020 shall not apply to any sales, or
10 transfers made, to or from a joint municipal utility services authority
11 formed under chapter 39.--- RCW (the new chapter created in section 17
12 of this act) and any of its members.

13 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.12 RCW
14 to read as follows:

15 The tax levied by RCW 82.12.020 shall not apply to any sales, or
16 uses by, or transfers made, to or from a joint municipal utility
17 services authority formed under chapter 39.--- RCW (the new chapter
18 created in section 17 of this act) and any of its members.

19 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.16 RCW
20 to read as follows:

21 This chapter does not apply to any payments between, or any
22 transfer of assets to or from, a joint municipal utility services
23 authority created under chapter 39.--- RCW (the new chapter created in
24 section 17 of this act) and any of its members.

25 **Sec. 15.** RCW 86.09.720 and 2003 c 327 s 18 are each amended to
26 read as follows:

27 In addition to the authority provided in this chapter, flood
28 control districts may participate in and expend revenue on cooperative
29 watershed management arrangements and actions, including ((~~watershed~~
30 ~~management partnerships under RCW 39.34.210~~)) without limitation those
31 under chapter 39.34 RCW, under chapter 39.--- RCW (the new chapter
32 created in section 17 of this act), and under other intergovernmental
33 agreements authorized by law, for purposes of water supply, water
34 quality, and water resource and habitat protection and management.

1 **Sec. 16.** RCW 86.15.035 and 2003 c 327 s 19 are each amended to
2 read as follows:

3 In addition to the authority provided in this chapter, flood
4 control zone districts may participate in and expend revenue on
5 cooperative watershed management arrangements and actions, including
6 ~~((watershed management partnerships under RCW 39.34.210))~~ without
7 limitation those under chapter 39.34 RCW, under chapter 39.--- RCW (the
8 new chapter created in section 17 of this act), and under other
9 intergovernmental agreements authorized by law, for purposes of water
10 supply, water quality, and water resource and habitat protection and
11 management.

12 NEW SECTION. **Sec. 17.** CODIFICATION. Sections 1 through 9 of this
13 act constitute a new chapter in Title 39 RCW.

--- END ---