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SENATE BILL 5198

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators Pridemore, Swecker, Rockefeller, Zarelli, and Shin

Read first time 01/18/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

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 82.16 RCW; and adding a new chapter to Title  
6 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 services to the public, and to  
13 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 conservation services; the provision of wastewater,  
25 sewage, or septage collection, handling, treatment, transmission, or  
26 disposal services; the provision of point and nonpoint water pollution  
27 monitoring programs; the provision for the generation, production,  
28 storage, distribution, use, or management of reclaimed water; and the  
29 management and handling of storm water, surface water, drainage, and  
30 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 or a  
6 certificate of incorporation with respect to any authority. An  
7 authority shall be deemed to have been formed as of the date of that  
8 filing. The formation and activities of an authority, and the  
9 admission or withdrawal of members, are not subject to review by any  
10 boundary review board. Any amendments to an agreement must be filed  
11 with the Washington state secretary of state, and will become effective  
12 on the date of filing.

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

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

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

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

1        NEW SECTION.    **Sec. 4.**    CORPORATE POWERS OF JOINT MUNICIPAL UTILITY  
2 SERVICES AUTHORITIES.    (1) In performing or providing utility services,  
3 and subject to subsection (3) of this section and section 5 of this  
4 act, an authority has and is entitled to exercise the following powers:

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

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

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

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

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

21        (f) To enter into contracts for any of its purposes with any  
22 individual or entity, both public and private, and to enter into  
23 intergovernmental agreements with its members and with other public  
24 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 its  
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, an authority is subject to the  
27 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 carry out its purposes, but only if all of its members, other than  
31 tribal government members, have powers of eminent domain. Further, an  
32 authority may exercise the power of eminent domain only pursuant to the  
33 provisions of Washington law, in the manner and subject to the  
34 statutory limitations applicable to one or more of its Washington local  
35 government members. If all of its members are the same type of  
36 Washington governmental entity, then the statute governing the exercise  
37 of eminent domain by that type of entity shall govern. An authority  
38 may not exercise the power of eminent domain with respect to property

1 owned by a city, town, county, special purpose district, authority, or  
2 other unit of local government, but may acquire or use such property  
3 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,  
22 which must be a bond issuance statute applicable to one or more of its  
23 members other than a tribal member. If all of its members are the same  
24 type of Washington governmental entity, then a Washington state statute  
25 or statutes governing the issuance of bonds, notes, and other  
26 obligations issued by that type of entity shall govern;

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

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

35 NEW SECTION. **Sec. 6.** AUTHORITY OF MEMBERS TO ASSIST AUTHORITY AND  
36 TO TRANSFER FUNDS, PROPERTY, AND OTHER ASSETS. For the purpose of  
37 assisting the authority in providing utility services, the members of

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

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

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

16 NEW SECTION. **Sec. 8.** CONVERSION OF EXISTING ENTITIES INTO  
17 AUTHORITIES. (1) Any intergovernmental entity formed under chapter  
18 39.34 RCW or other applicable law may become a joint municipal utility  
19 services authority and be entitled to all the powers and privileges  
20 available under this chapter, if: (a) The public agencies that are  
21 parties to an existing interlocal agreement would otherwise be eligible  
22 to form an authority to provide the relevant utility services; (b) the  
23 public agencies that are parties to the existing interlocal agreement  
24 amend, restate, or replace that interlocal agreement so that it  
25 materially complies with the requirements of section 5 of this act; (c)  
26 the amended, restated, or replacement agreement is filed with the  
27 Washington state secretary of state consistent with section 3 of this  
28 act; and (d) the amended, restated, or replacement agreement expressly  
29 provides that all rights and obligations of the entity formerly  
30 existing under chapter 39.34 RCW or other applicable law shall  
31 thereafter be the obligations of the new authority created under this  
32 chapter. Upon compliance with those requirements, the new authority  
33 shall be a successor of the former intergovernmental entity for all  
34 purposes, and all rights and obligations of the former entity shall  
35 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 16 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 16  
12 of this act) and any of its members.

13       NEW SECTION.    **Sec. 13.** A new section is added to chapter 82.16 RCW  
14 to read as follows:

15       This chapter does not apply to any payments between, or any  
16 transfer of assets to or from, a joint municipal utility services  
17 authority created under chapter 39.--- RCW (the new chapter created in  
18 section 16 of this act) and any of its members.

19        **Sec. 14.** RCW 86.09.720 and 2003 c 327 s 18 are each amended to  
20 read as follows:

21        In addition to the authority provided in this chapter, flood  
22 control districts may participate in and expend revenue on cooperative  
23 watershed management arrangements and actions, including ((~~watershed~~  
24 ~~management partnerships under RCW 39.34.210~~)) without limitation those  
25 under chapter 39.34 RCW, under chapter 39.--- RCW (the new chapter  
26 created in section 16 of this act), and under other intergovernmental  
27 agreements authorized by law, for purposes of water supply, water  
28 quality, and water resource and habitat protection and management.

29        **Sec. 15.** RCW 86.15.035 and 2003 c 327 s 19 are each amended to  
30 read as follows:

31        In addition to the authority provided in this chapter, flood  
32 control zone districts may participate in and expend revenue on  
33 cooperative watershed management arrangements and actions, including  
34 ((~~watershed management partnerships under RCW 39.34.210~~)) without

1 limitation those under chapter 39.34 RCW, under chapter 39.--- RCW (the  
2 new chapter created in section 16 of this act), and under other  
3 intergovernmental agreements authorized by law, for purposes of water  
4 supply, water quality, and water resource and habitat protection and  
5 management.

6 NEW SECTION. Sec. 16. CODIFICATION. Sections 1 through 9 of this  
7 act constitute a new chapter in Title 39 RCW.

--- END ---