

**SENATE BILL REPORT**

**SSB 6428**

**AS PASSED SENATE, FEBRUARY 14, 1994**

**Brief Description:** Changing provisions relating to water systems.

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

**SENATE COMMITTEE ON ENERGY & UTILITIES**

**Majority Report:** That Substitute Senate Bill No. 6428 be substituted therefor, and the substitute bill do pass.

Signed by Senators Sutherland, Chairman; Ludwig, Vice Chairman; Amondson, Hochstatter, McCaslin, Owen, Roach, A. Smith, Vognild, West and Williams.

**Staff:** Scott Huntley (786-7421)

**Hearing Dates:** February 1, 1994; February 3, 1994

**HOUSE COMMITTEE ON LOCAL GOVERNMENT**

**BACKGROUND:**

There are over 12,000 public water systems in the state of Washington. Nearly 80 percent of these systems are small systems with fewer than 100 connections. Almost all of these are investor-owned, cooperatives, mutual companies, or homeowner association-operated.

There has been an increasing occurrence of failure by these small systems to comply with legal requirements to deliver water of adequate quantity and quality. It is widely accepted by professionals in the drinking water field that small systems commonly have problems with design, financing, operation and management. Often these problems are directly related to the limited capital available from the small rate base, and because privately-operated systems do not have access to funding sources that publicly-operated systems have.

The burdens on small systems have increased as a result of new testing and treatment requirements under federal law. On occasions in the past, owners or operators of small systems have refused to meet their legal obligations, or have abandoned the systems entirely, which has created a potential threat to the health of their customers. By law, if no person steps forward to take over a failed water system the county is appointed as the receiver of that system. Most counties do not operate water systems, so receiving and operating the small, failed systems can become a burden to a county. Solutions to these problems, among which are the creation of

new water districts and the takeover of failing systems by larger, well-operated systems, are sometimes complicated by legal barriers.

**SUMMARY:**

Ballot measures for the creation of a water district are not to appear on September or November ballots and the requirement for a 60 percent majority approval vote is eliminated.

The date for the establishment of the boundaries of a newly-created water district is changed from March 1 to June 15 of the year in which any water district levy is approved.

Cities, counties, water districts, water companies, public utility districts and irrigation districts are granted immunity from liability in any civil action or suit for any pre-existing noncompliance with state or federal requirements in an acquired water system if they have submitted and are complying with a plan and schedule of improvements approved by the Department of Health. The immunity does not cover malice, fraud or bad faith.

Provisions regarding the appointment of a receiver are modified to: (1) require the development of a plan for the disposition of the failing system within 12 months of the appointment of a receiver, and authorize a judge to order that disposition according to the alternatives identified in the plan; (2) preclude the return of the system to the owner without Department of Health approval, and to permit the imposition of conditions if the system is returned to the owner; and (3) authorize the court to oversee the appraisal of a system to assure that the value reflects the necessity to make improvements, and grants the court the authority to approve the appraisal and determine the proper value of the system.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested January 27, 1994

**TESTIMONY FOR:**

This bill will greatly enhance efforts to improve the situation regarding small, failing water systems. It will remove impediments to those systems being acquired by larger, better operated systems. This will remove the problems experienced because of the unworkable election laws for creating new water districts. This will expedite the creation of new districts which could take over the failing water systems.

**TESTIMONY AGAINST:** None

**TESTIFIED:** PRO: Mary Riveland, Director of Ecology; Judith Turpin; Paul Cross, Lake Chelan Reclamation District; John

Kurner, Tacoma Public Utilities; Paul Parker, WA Association of Counties; Bill Dooley, Pierce County; Kathleen Collins, Association of WA Cities; Dave Clark, Department of Health; Dave Arbaugh, Public Utilities Districts; K.O. Rosenberg, Stevens County PUD; Ed McClary, Trout Lodge

**HOUSE AMENDMENT(S):**

The immunity provided to entities acquiring failing water systems only applies to lawsuits based on noncompliance with federal or state requirements that pre-date the assumption of responsibility by the acquiring entity. The immunity will expire when the plan of improvements is completed or four years after assuming responsibility for the system, whichever occurs earlier.

The definition of "rates," for purposes of city and town water systems, is defined as all lawful charges assessed by the utility.