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HOUSE BILL 2579

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State of Washington

55th Legislature

1998 Regular Session

By Representative Koster

Read first time 01/15/98. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to critical water supply service areas; amending  
2 RCW 70.116.050, 70.116.060, and 70.116.090; adding a new section to  
3 chapter 36.94 RCW; adding a new section to chapter 36.93 RCW; adding a  
4 new section to chapter 35.21 RCW; adding a new section to chapter 35.92  
5 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that there are gaps in  
8 the current law pertaining to the availability of water service in  
9 critical water supply service areas. State statutes that govern  
10 critical water supply service areas are intended to limit the  
11 proliferation of small public water systems so that water can be  
12 developed for use in a safe, effective, and efficient manner.  
13 Purveyors within the boundaries of a critical water supply service area  
14 are therefore granted a virtual monopoly for the delivery of water  
15 service within a particular area.

16 Although the legislature recognizes that cities and towns are  
17 generally not required to provide water service beyond their  
18 boundaries, citizens of the state who live in critical water supply  
19 service areas need to be assured that water service will be available

1 to them when they are within a city's exclusive service area and when  
2 there are no reasonably feasible alternative water purveyors capable of  
3 providing timely and cost-effective service. The legislature also  
4 finds that this problem of effective and efficient delivery of a safe  
5 water supply is exacerbated when the critical water supply service area  
6 is part of one or more urban growth areas. Therefore, it is the intent  
7 of the legislature to establish a process for ensuring that a safe  
8 water supply is available in a timely manner to residents and property  
9 owners in critical water supply service areas within urban growth  
10 areas.

11 **Sec. 2.** RCW 70.116.050 and 1995 c 376 s 7 are each amended to read  
12 as follows:

13 (1) Each purveyor within the boundaries of a critical water supply  
14 service area shall develop a water system plan for the purveyor's  
15 future service area if such a plan has not already been developed(~~(:~~  
16 ~~PROVIDED, That~~)). However, nonmunicipally owned public water systems  
17 are exempt from the planning requirements of this chapter, except for  
18 the establishment of service area boundaries if they have no plans for  
19 water service beyond their existing service area(~~(:~~~~—PROVIDED~~)).  
20 Further, (~~That~~) if the county legislative authority permits a change  
21 in development that will increase the demand for water service of such  
22 a system beyond the existing system's ability to provide minimum water  
23 service, the purveyor shall develop a water system plan in accordance  
24 with this section. The establishment of future service area boundaries  
25 shall be in accordance with RCW 70.116.070.

26 (2) After the boundaries of a critical water supply service area  
27 have been established pursuant to RCW 70.116.040, the committee  
28 established in RCW 70.116.040 shall participate in the development of  
29 a coordinated water system plan for the designated area. Such a plan  
30 shall incorporate all water system plans developed pursuant to  
31 subsection (1) of this section. The plan shall provide for maximum  
32 integration and coordination of public water system facilities  
33 consistent with the protection and enhancement of the public health and  
34 well-being. Decisions of the committee shall be by majority vote of  
35 those present at meetings of the committee.

36 (3) Those portions of a critical water supply service area not yet  
37 served by a public water system shall have a coordinated water system  
38 plan developed by existing purveyors based upon permitted densities in

1 county plans, ordinances, and/or growth policies for a minimum of five  
2 years beyond the date of establishment of the boundaries of the  
3 critical water supply service area.

4 (4) To ~~((insure))~~ ensure that the plan incorporates the proper  
5 designs to protect public health, the secretary shall adopt  
6 ~~((regulations pursuant to))~~ rules under chapter 34.05 RCW concerning  
7 the scope and content of coordinated water system plans, and shall  
8 ensure, as minimum requirements, that such plans:

9 (a) Are reviewed by the appropriate local governmental agency to  
10 ~~((insure))~~ ensure that the plan is not inconsistent with the land use  
11 plans, shoreline master programs, and/or developmental policies of the  
12 general purpose local government or governments whose jurisdiction the  
13 water system plan affects.

14 (b) Recognize all water resource plans, water quality plans, and  
15 water pollution control plans which have been adopted by units of  
16 local, regional, and state government.

17 (c) Incorporate the fire protection standards developed pursuant to  
18 RCW 70.116.080.

19 (d) Identify the future service area boundaries of the public water  
20 system or systems included in the plan within the critical water supply  
21 service area.

22 (e) Include a schedule indicating when water service will be  
23 available to lands that are located outside the corporate boundaries of  
24 a city or town. This subsection (4)(e) only applies to cities and  
25 towns located in counties that are required or choose to plan under RCW  
26 36.70A.040, and only when the lands are included in both an urban  
27 growth area and a critical water supply service area designated to be  
28 served by the city or town.

29 (f) Identify feasible emergency inter-ties between adjacent  
30 purveyors.

31 ~~((f))~~ (g) Include satellite system management requirements  
32 consistent with RCW 70.116.134.

33 ~~((g))~~ (h) Include policies and procedures that generally address  
34 failing water systems for which counties may become responsible under  
35 RCW 43.70.195.

36 (5) If a "water general plan" for a critical water supply service  
37 area or portion thereof has been prepared pursuant to chapter 36.94 RCW  
38 and such a plan meets the requirements of subsections (1) and (4) of

1 this section, such a plan shall constitute the coordinated water system  
2 plan for the applicable geographical area.

3 (6) The committee established in RCW 70.116.040 may develop and  
4 utilize a mechanism for addressing disputes that arise in the  
5 development of the coordinated water system plan.

6 (7) Prior to the submission of a coordinated water system plan to  
7 the secretary for approval pursuant to RCW 70.116.060, the legislative  
8 authorities of the counties in which the critical water supply service  
9 area is located shall hold a public hearing thereon and shall determine  
10 the plan's consistency with subsection (4) of this section. If within  
11 sixty days of receipt of the plan, the legislative authorities find any  
12 segment of a proposed service area of a purveyor's plan or any segment  
13 of the coordinated water system plan to be inconsistent with any  
14 current land use plans, shoreline master programs, and/or developmental  
15 policies of the general purpose local government or governments whose  
16 jurisdiction the water system plan affects, the secretary shall not  
17 approve that portion of the plan until the inconsistency is resolved  
18 between the local government and the purveyor. If no comments have  
19 been received from the legislative authorities within sixty days of  
20 receipt of the plan, the secretary may consider the plan for approval.

21 (8) Any county legislative authority may adopt an abbreviated plan  
22 for the provision of water supplies within its boundaries that includes  
23 provisions for service area boundaries, minimum design criteria, and  
24 review process. The elements of the abbreviated plan shall conform to  
25 the criteria established by the department under subsection (4) of this  
26 section and shall otherwise be consistent with other adopted land use  
27 and resource plans. The county legislative authority may, in lieu of  
28 the committee required under RCW 70.116.040, and the procedures  
29 authorized in this section, utilize an advisory committee that is  
30 representative of the water utilities and local governments within its  
31 jurisdiction to assist in the preparation of the abbreviated plan,  
32 which may be adopted by resolution and submitted to the secretary for  
33 approval. Purveyors within the boundaries covered by the abbreviated  
34 plan need not develop a water system plan, except to the extent  
35 required by the secretary or state board of health under other  
36 authority. Any abbreviated plan adopted by a county legislative  
37 authority pursuant to this subsection shall be subject to the same  
38 provisions contained in RCW 70.116.060 for coordinated water system  
39 plans that are approved by the secretary.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 36.94 RCW  
2 to read as follows:

3        (1) As part of either a county sewerage or water general plan, or  
4 both, a city or town located in a county that is required or chooses to  
5 plan under RCW 36.70A.040 must file a schedule with the county  
6 legislative authority indicating when water and sewer service will be  
7 available to lands that are located outside the corporate boundaries of  
8 the city or town, when:    (a) The lands are included within an urban  
9 growth area; and (b) the lands are included within a critical water  
10 supply service area designated to be served by the city or town in  
11 accordance with chapter 70.116 RCW.

12        (2) The requirement for filing a schedule under subsection (1) of  
13 this section for water and sewer service does not apply when a city or  
14 town has already developed a schedule for providing this service as  
15 part of a capital facilities element, land use element, or other  
16 element of the comprehensive plan under chapter 36.70A RCW.

17        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 36.93 RCW  
18 to read as follows:

19        (1) The board must invoke its review authority when it receives a  
20 petition meeting the requirements of this section that claims that an  
21 area designated to receive water under a coordinated water system plan  
22 in accordance with RCW 70.116.050 has not received a commitment for  
23 timely and reasonable service under RCW 70.116.050 and section 3 of  
24 this act or is not receiving service in a timely manner.    "Area," for  
25 purposes of this section, means land:    (a) Outside the corporate  
26 boundaries of a city or town located within a county that plans under  
27 RCW 36.70A.040; (b) that is within an urban growth area; and (c) that  
28 is included within a critical water supply service area designated to  
29 be served by the city or town in accordance with chapter 70.116 RCW.

30        (2) A petition requesting review may be filed with the board when  
31 it is signed by:

32        (a) Five percent of the registered voters residing within the area;  
33 or

34        (b) An owner or owners of property consisting of five percent of  
35 the assessed value within the area.

36        (3) After receiving a valid petition meeting the requirements of  
37 subsection (2) of this section, the board shall hold a hearing or  
38 hearings to determine the ability of the city or town to provide

1 service in a timely manner according to guidelines developed by the  
2 secretary of health under RCW 70.116.060, and also review the  
3 feasibility of other purveyors in the general area to provide water  
4 service. The board shall follow the provisions of this chapter for  
5 providing notice of the hearing and conducting the hearing. Instead of  
6 issuing a final decision, however, the board shall, within one hundred  
7 twenty days of the filing of a sufficient petition, prepare findings  
8 and recommendations as well as a record of the hearing, and forward  
9 them to the secretary of health. No appeals may be made regarding the  
10 hearing, record, findings, or recommendations made by the board.  
11 Parties to the hearing may file written exceptions and responses to the  
12 exceptions with the secretary regarding the findings, recommendations,  
13 and record prepared by the board.

14 **Sec. 5.** RCW 70.116.060 and 1995 c 376 s 2 are each amended to read  
15 as follows:

16 (1) A coordinated water system plan shall be submitted to the  
17 secretary for design approval within two years of the establishment of  
18 the boundaries of a critical water supply service area.

19 (2) The secretary shall review the coordinated water system plan  
20 and, to the extent the plan is consistent with the requirements of this  
21 chapter and (~~regulations~~) rules adopted hereunder, shall approve the  
22 plan, provided that the secretary shall not approve those portions of  
23 a coordinated water system plan that fail to meet the requirements for  
24 future service area boundaries until any boundary dispute is resolved  
25 as set forth in RCW 70.116.070.

26 (3) Following the approval of a coordinated water system plan by  
27 the secretary:

28 (a) All purveyors constructing or proposing to construct public  
29 water system facilities within the area covered by the plan shall  
30 comply with the plan.

31 (b) Purveyors shall serve their designated service areas and future  
32 service areas according to the plan and no other purveyor shall  
33 establish a public water system within the area covered by the plan,  
34 unless the local legislative authority or the secretary, under (b)(ii)  
35 of this subsection, determines that existing purveyors are unable to  
36 provide the service in a timely and reasonable manner, pursuant to  
37 guidelines developed by the secretary. An existing purveyor is unable  
38 to provide the service in a timely manner if:

1        (i) The water cannot be provided to an applicant for water within  
2 one hundred twenty days unless specified otherwise by the local  
3 legislative authority. If such a determination is made, the local  
4 legislative authority shall require the new public water system to be  
5 constructed in accordance with the construction standards and  
6 specifications embodied in the coordinated water system plan approved  
7 for the area. The service area boundaries in the coordinated plan for  
8 the affected utilities shall be revised to reflect the decision of the  
9 local legislative authority; or

10        (ii) The secretary, after reviewing the record, findings, and  
11 recommendations prepared by a boundary review board under section 4 of  
12 this act, determines that service is not being provided in a timely  
13 manner. A decision by the secretary that service is not being provided  
14 in a timely manner shall be made within sixty days of the boundary  
15 review board's submittal of its record and recommendations and may be  
16 appealed to superior court by a party to the boundary review board  
17 hearing. Notice of appeal shall be filed within fourteen days of the  
18 secretary's decision. The filing of such a notice of appeal does not  
19 stay the effective date of the secretary's decision.

20        (4) The committee established in RCW 70.116.040 may be convened at  
21 the request of the secretary or the county legislative authority after  
22 the secretary has determined that service is not being provided in a  
23 timely or reasonable manner under subsection (3) of this section. The  
24 committee shall make recommendations for updating the plan to ensure  
25 that timely service will be provided to all residents within the  
26 critical water supply service area.

27        (5) The secretary may deny proposals to establish or to expand any  
28 public water system within a critical water supply service area for  
29 which there is not an approved coordinated water system plan at any  
30 time after two years of the establishment of the critical water supply  
31 service area(~~(: PROVIDED, That)~~)). However, service connections shall  
32 not be considered expansions.

33        ((+5)) (6) The affected legislative authorities may develop and  
34 utilize a mechanism for addressing disputes that arise in the  
35 implementation of the coordinated water system plan after the plan has  
36 been approved by the secretary.

37        ((+6)) (7)(a) After adoption of the initial coordinated water  
38 system plan, the local legislative authority or the secretary may  
39 determine that the plan should be updated or revised. The legislative

1 authority may initiate an update at any time, but the secretary may  
2 initiate an update no more frequently than once every five years,  
3 except as provided in (b) of this subsection. The update may encompass  
4 all or a portion of the plan, with the scope of the update to be  
5 determined by the secretary and the legislative authority. The process  
6 for the update shall be the one prescribed in RCW 70.116.050.

7 ~~((+7))~~ (b) If the secretary determines that an existing purveyor  
8 is unable, unwilling, or is failing to provide service in a timely and  
9 reasonable manner, the secretary may initiate an update or revision of  
10 the plan to allow another purveyor to provide service to the area.

11 (8) The provisions of subsection (3) of this section shall not  
12 apply in any county for which a coordinated water system plan has not  
13 been approved under subsection (2) of this section.

14 ~~((+8))~~ (9) If the secretary initiates an update or revision of a  
15 coordinated water system plan, the state shall pay for the cost of  
16 updating or revising the plan.

17 **Sec. 6.** RCW 70.116.090 and 1977 ex.s. c 142 s 9 are each amended  
18 to read as follows:

19 The assumption of jurisdiction or control of any public water  
20 system or systems by a city, town, or code city, shall be ~~((subject))~~  
21 according to the provisions of chapter 35.13A RCW~~((7))~~ that are  
22 applicable to water-sewer districts and the provisions of this chapter  
23 shall be superseded by the provisions of chapter 35.13A RCW regarding  
24 such an assumption of jurisdiction. The provisions of chapter 35.13A  
25 RCW do not supersede the provisions of this chapter with regards to the  
26 process for making findings by the secretary that service is not being  
27 furnished by a city or town in a timely manner and the secretary's role  
28 in curative actions under RCW 70.116.060(3)(b)(ii).

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 35.21 RCW  
30 to read as follows:

31 (1) Regardless of the source of authority used by a city or town  
32 for the operation of utility services, a city or town must provide  
33 sewer and water service to an area outside of its geographic boundaries  
34 and shall not require the property owners to sign a preannexation  
35 agreement as a condition for the provision of sewer and water service,  
36 if: (a) The area is within an urban growth area; (b) the area is  
37 within a critical water supply service area, as defined in RCW



1 70.116.030, and the city or town is designated as the purveyor for that  
2 area in the coordinated water system plan; and (c) the area is within  
3 the city's sewer service area identified as part of a capital  
4 facilities element, land use element, or other element of a  
5 comprehensive plan under chapter 36.70A RCW.

6 (2) The requirements for furnishing water and sewer service under  
7 subsection (1) of this section are deemed to be met by a city or town  
8 when:

9 (a) The city or town allows property owners to connect to existing  
10 water and sewer lines located near the owners' property when the city  
11 or town is already providing such a service to other property in the  
12 general vicinity; and

13 (b) The city or town has filed a schedule under RCW 70.116.050  
14 committing to a reasonable date when water and sewer service will be  
15 available to areas where there are no existing water and sewer lines,  
16 as well as areas where there are existing sewer and water lines but no  
17 property owners are connected to these services.

18 (3) Nothing in this section prohibits a city or town from imposing  
19 higher rates and charges for water and sewer service on customers  
20 located outside the geographic boundaries of the city or town, if the  
21 rates are based upon the increased cost of providing service to  
22 customers located outside the geographic boundary of the city.

23 (4) Nothing in this section invalidates preannexation agreements  
24 entered into before the effective date of this act.

25 (5) For the purposes of this section, the term preannexation  
26 agreement includes any agreement, covenant, petition, no-protest  
27 agreement, or other document that conditions service upon future  
28 annexation into the city or town and that is binding upon the property.

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 35.92 RCW  
30 to read as follows:

31 (1) A city or town must provide sewer and water service to an area  
32 outside of its geographic boundaries and may not require the property  
33 owners to sign a preannexation agreement as a condition for providing  
34 sewer and water service, if: (a) The area is within an urban growth  
35 area; (b) the area is within a critical water supply service area, as  
36 defined in RCW 70.116.030, and the city or town is designated as the  
37 purveyor for that area in the coordinated water system plan; and (c)  
38 the area is within the city's sewer service area identified as part of

1 a capital facilities element, land use element, or other element of a  
2 comprehensive plan under chapter 36.70A RCW.

3 (2) The requirements for furnishing water and sewer service under  
4 subsection (1) of this section are deemed to be met by a city or town  
5 when:

6 (a) The city or town allows property owners to connect to existing  
7 water and sewer lines located near the owners' property when the city  
8 or town is already providing such a service to other property in the  
9 general vicinity; and

10 (b) The city or town has filed a schedule under RCW 70.116.050  
11 providing a time frame when water and sewer service will be available  
12 to areas where there are no existing water and sewer lines, as well as  
13 to areas where there are existing water and sewer lines but no property  
14 owners are connected to these services.

15 (3) Nothing in this section prohibits a city or town from imposing  
16 higher rates and charges for water and sewer service on customers  
17 located outside the geographic boundaries of the city or town provided  
18 that the higher rates and charges are based upon the higher cost of  
19 delivering the service to the affected area.

20 (4) Nothing in this section invalidates preannexation agreements  
21 entered into before the effective date of this act.

22 (5) For the purposes of this section, the term preannexation  
23 agreement includes any agreement, covenant, petition, no-protest  
24 agreement, or other document that conditions service upon future  
25 annexation into the city or town and that is binding upon the property.

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