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**Agriculture & Natural  
Resources Committee**

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**HB 2102**

**Brief Description:** Concerning accountability by private owners of public water systems to provide required water service.

**Sponsors:** Representatives Hunt, Linville and Romero.

**Brief Summary of Bill**

- Establishes obligations for owners of certain privately-owned water systems and remedies for the owner of property that is harmed by the failure of such an owner to fulfill these obligations.
- Requires trust accounts for payments by customers to such water systems.
- Grants certain powers of eminent domain.

**Hearing Date:** 3/4/03

**Staff:** Kenneth Hirst (786-7105).

**Background:**

Water Companies. Many private water companies are regulated as utilities by the Utilities and Transportation Commission (UTC). However, the UTC regulates only those investor-owned water companies that:

- own, operate, control, or manage one or more water systems other than through management as a satellite management agency if the satellite management agency is not an owner of the water company; and
- meet jurisdictional thresholds of 100 or more customers, or receive average revenue of \$429 per customer per year. (RCW 80.040.010 and WAC 480-110-255(1).)

The UTC does not regulate: cities, towns, or counties; public utility districts; water districts; local improvement districts; homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members; homeowner associations, cooperatives and mutual corporations, or similar entities that

provide service to nonmembers unless they serve 100 or more nonmembers, or charge nonmembers more than \$429 in certain average annual revenues per nonmember; or entities or persons that provide water only to their tenants as part of the business of renting or leasing. (WAC 480-110-255(2).)

Water Code of 1917 - Eminent Domain. The water code authorizes any person to exercise the right of eminent domain to acquire any property or rights when found necessary for the storage of water for or the application of water to any beneficial use. The purposes allowed for exercising this power include enlarging existing structures employed in common with the former owner and condemning an inferior use of water for a superior use. An action to exercise this authority is filed in superior court. (RCW 90.03.040.)

### **Summary of Bill:**

Certain Public Water Systems. The owner of a public water system must provide potable water to every connection indicated in the approved subdivision, short subdivision, or other applicable land use action in which the public water system was indicated as the means of meeting requirements to provide potable water supplies. This requirement does not apply to a public water system that is:

- subject to regulation by the UTC as a utility;
- a municipal corporation or special purpose district;
- is a pass-through system that consists only of distribution and/or storage facilities, does not have any source or treatment facilities, obtains all water from, but is not owned by, a Group A water system, does not sell water directly to any person, and is not a passenger-conveying carrier in interstate commerce. (Section 1.)

Such a public water system must also comply with all of the requirements imposed by the State Board of Health and the DOH under: the public health laws, laws requiring coordinated water system planning in critical water supply service areas, and laws specifically for regulating public water systems and their operators. (Section 2.)

The owner of property that is harmed by the failure of an owner of such a public water system to meet these requirements may bring a civil action for injunctive relief and/or to recover the actual damages sustained, together with reasonable costs, including reasonable attorneys' fees and other litigation-related costs. (Sections 1 and 2.) These remedies are cumulative and are in addition to any other remedies provided by law. (Section 4.) The right of eminent domain granted to any person by the Water Code of 1917 also applies to the operation of a public water system. The right is granted if property served by the system is being harmed by such a failure. (Section 6.)

Moneys paid to the owner of such a public water system for providing a potable water supply or for construction or maintenance of the system must be promptly deposited in a trust account maintained for the purpose of holding the moneys. The account must be in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Any interest paid to the trust account accrues to the account. The owner may act as trustee. Expenditures from the account must be for legitimate and reasonable water system expenses. Records of the expenditures must be kept and be available for inspection by customers of the system.

The owner must provide written notice identifying the depository and any subsequent change. If ownership of the system is transferred to another, the moneys in the account are simultaneously transferred to an equivalent trust account of the successor owner.

Each of these duties, and each act taken to exercise a right or remedy, imposes an obligation of good faith in its performance or enforcement. (Section 5.)

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.