

# SENATE BILL REPORT

## SB 5285

---

As Reported By Senate Committee On:  
Water, Energy & Environment, February 23, 2005

**Title:** An act relating to updating the water quality joint development act to provide local government flexibility for improving drinking water and treatment services.

**Brief Description:** Updating the water quality joint development act to provide local government flexibility for improving drinking water and treatment services.

**Sponsors:** Senators Poulsen, Morton, Rockefeller, Honeyford, Kline, Mulliken and Oke.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 1/26/05, 2/23/05 [DPS].

---

### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** That Substitute Senate Bill No. 5285 be substituted therefor, and the substitute bill do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hewitt, Honeyford, Mulliken, Pridemore and Regala.

**Staff:** Sam Thompson (786-7413)

**Background:** Enacted in 1986, the Water Quality Joint Development Act facilitates privatization of water pollution control facilities, primarily sewage treatment plants. Local governments may contract with a public or privately-owned service provider to design, finance, construct, own, operate or maintain these facilities. A proposal submitted by a service provider must demonstrate that the local government's costs will be lower under the proposal than they would be if the local government itself financed, constructed, owned, operated and maintained the facilities.

A local government entering into an agreement with a service provider must assure that all procedural and other requirements are met. The local government retains authority to set utility rates.

The Department of Ecology must review and approve service agreements before they are finalized to ensure compliance with the state Water Pollution Control Act.

It has been suggested that the Water Quality Joint Development Act be revised to clarify ambiguities, provide greater local government contracting flexibility, and expand the scope of the Act to include municipal drinking water supply facilities.

**Summary of Substitute Bill:** The Water Quality Joint Development Act (Act) is revised to clarify ambiguities, reduce procedural constraints and permit public water systems overseen by local governments to be designed, financed, constructed, operated, and maintained by private service providers. "Public water system" includes all systems providing piped water

for human consumption except systems serving only one single-family residence or serving four or fewer residential connections on a single farm.

Water Rights. The Act may not be construed to provide local governments, or public or private entities, with any basis for claiming new or additional water rights. In addition, an agreement with a service provider may not transfer or assign ownership of local government water rights unless the local government complies with all applicable requirements.

Eligible Local Governments. The definition of "public body" is clarified to expressly include "special purpose districts," a generic term used elsewhere in statutes to describe a variety of local government entities, including water-sewer districts, fire protection districts, drainage and diking improvement districts, irrigation districts, public utility districts, port districts, and many other entities. Larger local governments authorized to use alternative public works contracting procedures are expressly authorized to use the Act's procurement provisions.

Notice. A local government must provide final notice that it seeks the services of a service provider at least 30 days before the proposal submission date, rather than 60 days.

Service Providers. The Act is clarified to provide that a single service provider need not perform all design, finance, construction, operation, and maintenance services, but may perform one or more of these services. A service provider may own a water pollution control facility, but not a public water system.

The requirement obligating service providers to demonstrate that a local government's annual costs will be lower under its proposal than they would be if the local government itself financed, constructed, owned, operated, and maintained facilities is deleted. Instead, the service provider must demonstrate to the local government's satisfaction that it is in the public interest to enter into the service agreement and that the agreement is financially sound and advantageous to the local government, considering annual costs, quality of services, the provider's experience, risk reduction, and other factors.

Evaluation of Proposals. A restriction preventing a local government legislative authority from appointing one of its members to act as a designated issuer and evaluator of requests for proposals is deleted. Qualified, responsive proposals may be aggregated into a short list of qualified respondents for further input and review. The legislative authority may participate in the bidder's conference held to assure a full understanding of qualified, responsive proposals.

Negotiations. A local government legislative authority is expressly authorized to negotiate with a service provider, and, if a designee conducts the negotiations, the legislative authority will continue to oversee negotiations and provide direction to the designee.

Public Water System Service Agreements. Local government agreements with service providers may not transfer ownership of a public water system to a service provider or authorize a lease for longer than 20 years. Agreements must specify that state grants or loans concerning the system must be applied directly to the benefit of the system and its customers, and that the local government must approve: (1) any subsequent extension of distribution lines or service area expansion; and (2) any assignment or transfer of the service provider's interests and responsibilities in the agreement to another service provider, including an affiliate or subsidiary of the original service provider.

Rate Setting. A service agreement may not transfer control of a local government's rate setting authority for water pollution control or public water services.

State Financing and Review. The Water Pollution Control Act is clarified to provide that the Department of Ecology (DOE) may help finance design (in addition to construction) of local government water pollution control projects.

The requirement that DOE approve a service agreement concerning water pollution control facilities is deleted; instead the agency will review the agreement solely to ensure consistency with reclaimed water and water pollution control standards. The Department of Health (DOH) will review proposed service agreements concerning public water supply systems to ensure consistency with operator certification requirements. Both DOH and DOE must complete review within 30 days. Agency review of service agreements will not replace any additional permitting or regulatory review and approval required under other applicable law.

**Substitute Bill Compared to Original Bill:** The option for a service agreement to transfer ownership of a public water system to a service provider is removed, and leases of public water systems to service providers are limited to 20 years.

New provisions clarify that a service agreement may not transfer or assign ownership of water rights unless the local government complies with all applicable requirements, and that a service agreement may not transfer rate-setting authority from a local government to a service provider.

Annual costs are included in the factors that must be considered by a local government in evaluating a service provider's proposal.

Provisions are added requiring public water system service agreements to specify that: (1) state grants or loans concerning the system must be applied directly to the benefit of the system and its customers; and (2) the local government must approve any subsequent extension of distribution lines or service area expansion, and any assignment or transfer of the service provider's interests and responsibilities in the agreement to another service provider, including an affiliate or subsidiary of the original service provider.

Additions clarify that the purpose of initial review of service agreements by the Department of Ecology (regarding public water systems) and the Department of Health (regarding pollution control facilities) is to provide comments to local governments as to consistency of agreements with public water system operator certification requirements and reclaimed water and water pollution control standards. Agency review will not replace any additional permitting or regulatory review and approval required under other applicable law.

**Appropriation:** None.

**Fiscal Note:** Available for original bill.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Local governments have found existing procedures too ambiguous and cumbersome to implement; some local governments need these changes to proceed with

planned projects. Water and wastewater service costs and concerns decrease if a single contracted "team" works together to design, build and operate a facility. Because of changes in the federal tax code since 1986, private companies no longer seek to own facilities.

**Testimony Against:** Water quality and consumer service concerns arise when private companies own municipal water systems. Private companies advocate against adopting more stringent water quality standards. Changes regarding the local government designee who reviews proposals and conducts negotiations create potential conflict of interest. Limits upon state agency review of proposed service agreements are too restrictive.

**Who Testified:** PRO: Ashley Probart, Association of Washington Cities; Jim Good and Andrea McNamara, Veolia Water North America; Melodie Selby, Department of Ecology.

CON: Craig Engelking, Sierra Club.