
SUBSTITUTE SENATE BILL 5285

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Poulsen, Morton, Rockefeller, Honeyford, Kline, Mulliken and Oke)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to updating the water quality joint development act
2 to provide local government flexibility for improving drinking water
3 and treatment services; amending RCW 70.150.010, 70.150.020,
4 70.150.040, 70.150.070, and 90.48.285; and reenacting and amending RCW
5 39.10.020 and 39.10.902.

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

7 **Sec. 1.** RCW 70.150.010 and 1986 c 244 s 1 are each amended to read
8 as follows:

9 The long-range health and economic and environmental goals for the
10 state of Washington require the protection of the state's surface and
11 underground waters for the health, safety, use, and enjoyment of its
12 people. It is the purpose of this chapter to provide public bodies an
13 additional means by which to provide for financing, development, and
14 operation of water pollution control facilities needed for achievement
15 of state and federal water pollution control requirements for the
16 protection of the state's waters and public water supply systems needed
17 for achievement of state and federal requirements for safe drinking
18 water for the protection of public health and safety.

1 It is the intent of the legislature that public bodies be
2 authorized to provide service from water pollution control facilities
3 and public water systems by means of service agreements with public or
4 private parties as provided in this chapter.

5 It is the further intent of the legislature that nothing in this
6 chapter be construed as providing public bodies, or public or private
7 entities, with any basis for claiming new or additional entitlements to
8 water rights.

9 **Sec. 2.** RCW 70.150.020 and 1986 c 244 s 2 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) "Water pollution control facilities" or "facilities" means any
14 facilities, systems, or subsystems owned or operated by a public body,
15 or owned or operated by any person or entity for the purpose of
16 providing service to a public body, for the control, collection,
17 storage, treatment, disposal, or recycling of wastewater, including but
18 not limited to sanitary sewage, storm water, residential wastes,
19 commercial wastes, industrial wastes, and agricultural wastes, that are
20 causing or threatening the degradation of subterranean or surface
21 bodies of water due to concentrations of conventional, nonconventional,
22 or toxic pollutants. (~~Water pollution control facilities do not~~
23 ~~include dams or water supply systems.~~)

24 (2) "Public body" means the state of Washington or any agency,
25 county, city or town, special purpose district, political subdivision,
26 municipal corporation, or quasi-municipal corporation.

27 (3) "Water pollution" means such contamination, or other alteration
28 of the physical, chemical, or biological properties of any surface or
29 subterranean waters of the state, including change in temperature,
30 taste, color, turbidity, or odor of the waters, or such discharge of
31 any liquid, gaseous, solid, radioactive, or other substance into any
32 waters of the state as will or is likely to create a nuisance or render
33 such waters harmful, detrimental, or injurious to the public health,
34 safety, or welfare, or to domestic, commercial, industrial,
35 agricultural, recreational, or other legitimate beneficial uses, or to
36 livestock, wild animals, birds, fish, or other aquatic life.

1 (4) "Agreement" means any agreement to which a public body and a
2 service provider are parties by which the service provider agrees to
3 deliver service to such public body in connection with its design,
4 financing, construction, ownership, operation, or maintenance of water
5 pollution control facilities, or its design, financing, construction,
6 operation, or maintenance of public water systems, in accordance with
7 this chapter.

8 (5) "Service provider" means any privately owned or publicly owned
9 profit or nonprofit corporation, partnership, joint venture,
10 association, or other person or entity that is legally capable of
11 contracting for and providing service with respect to (~~the design,~~
12 ~~financing, ownership, construction, operation, or maintenance of~~)
13 water pollution control facilities or public water systems in
14 accordance with this chapter.

15 (6) "Public water systems" has the meaning provided in RCW
16 70.119.020.

17 **Sec. 3.** RCW 70.150.040 and 1989 c 175 s 136 are each amended to
18 read as follows:

19 The legislative authority of a public body may secure services by
20 means of an agreement with a service provider. For water pollution
21 control facilities, such an agreement may obligate a service provider
22 to perform one or more of the following services: Design, finance,
23 construct, own, operate, or maintain water pollution control facilities
24 by which services are provided to the public body. For public water
25 systems, such an agreement may obligate a service provider to perform
26 one or more of the following services: Design, finance, construct,
27 operate, or maintain public water system facilities by which services
28 are provided to the public body. Service agreements entered into under
29 this chapter may not: Transfer ownership of all or part of a public
30 body's public water system to a service provider, or authorize a lease
31 of longer than twenty years to a service provider; transfer or assign
32 all or part of a public body's water right unless the public body also
33 complies with all applicable transfer or assignment requirements in
34 state law; or transfer control of a public body's rate-setting
35 authority for the services provided by the water pollution control
36 facilities or the public water systems. Service agreements and related

1 agreements under this chapter shall be entered into in accordance with
2 the following procedure:

3 (1) The legislative authority of the public body shall publish
4 notice that it is seeking to secure certain specified services by means
5 of entering into an agreement with a service provider. The notice
6 shall be published in the official newspaper of the public body, or if
7 there is no official newspaper then in a newspaper in general
8 circulation within the boundaries of the public body, at least once
9 each week for two consecutive weeks. The final notice shall appear not
10 less than (~~sixty~~) thirty days before the date for submission of
11 proposals. The notice shall state (a) the nature of the services
12 needed, (b) the location in the public body's offices where the
13 requirements and standards for construction, operation, or maintenance
14 of projects needed as part of the services are available for
15 inspection, and (c) the final date for the submission of proposals.
16 The legislative authority may undertake a prequalification process by
17 the same procedure set forth in this subsection.

18 (2) The request for proposals shall (a) indicate the time and place
19 responses are due, (b) include evaluation criteria to be considered in
20 selecting a service provider, (c) specify minimum requirements or other
21 limitations applying to selection, (d) insofar as practicable, set
22 forth terms and provisions to be included in the service agreement, and
23 (e) require the service provider to demonstrate in its proposal to the
24 public body's satisfaction that (~~a public body's annual costs will be~~
25 ~~lower under its proposal than they would be if the public body~~
26 ~~financed, constructed, owned, operated, and maintained facilities~~
27 ~~required for service~~) it is in the public interest to enter into the
28 service agreement and that the service agreement is financially sound
29 and advantageous to the public body from the standpoint of annual
30 costs, quality of services, experience of the provider, reduction of
31 risk, and other factors.

32 (3) The criteria set forth in the request for proposals shall be
33 those determined to be relevant by the legislative authority of the
34 public body, which may include but shall not be limited to: The
35 respondent's prior experience, including design, construction, or
36 operation of other similar facilities; respondent's management
37 capability, schedule availability, and financial resources; cost of the
38 service; nature of facility design proposed by respondents; system

1 reliability; performance standards required for the facilities;
2 compatibility with existing service facilities operated by the public
3 body or other providers of service to the public body; project
4 performance warranties; penalty and other enforcement provisions;
5 environmental protection measures to be used; and allocation of project
6 risks. The legislative authority (~~shall~~) may designate persons or
7 entities within or outside the public body (a) to assist it in issuing
8 the request for proposals to ensure that proposals will be responsive
9 to its needs, and (b) to assist it in evaluating the proposals
10 received. (~~The designee shall not be a member of the legislative~~
11 ~~authority.~~)

12 (4) After proposals under subsections (1) through (3) of this
13 section have been received, the legislative authority(~~ts~~) or its
14 designee shall determine, on the basis of its review of the proposals,
15 whether one or more proposals have been received from respondents which
16 are (a) determined to be qualified to provide the requested services,
17 and (b) responsive to the notice and evaluation criteria, which shall
18 include, but not be limited to, cost of services. These chosen
19 respondents may, at the discretion of the public body, be aggregated
20 into a short list of qualified respondents, who shall be referred to as
21 the selected respondents in this section. The legislative authority or
22 its designee shall conduct a bidder's conference to include all these
23 selected respondents to assure a full understanding of the proposals.
24 The bidder's conference shall (~~also allow the designee to~~) make these
25 selected respondents aware of any changes in the request for proposal.
26 Any information related to revisions in the request for proposal shall
27 be made available to all these selected respondents. Any selected
28 respondent shall be accorded a reasonable opportunity for revision of
29 its proposal prior to commencement of the negotiation provided in
30 subsection (5) of this section, for the purpose of obtaining best and
31 final proposals.

32 (5) After such conference is held, the legislative authority or its
33 designee may negotiate with the selected respondent whose proposal it
34 determines to be the most advantageous to the public body, considering
35 the criteria set forth in the request for proposals. If negotiations
36 are conducted by the designee, the legislative authority shall continue
37 to oversee the negotiations and provide direction to its designee. If
38 the negotiation is unsuccessful, the legislative authority may

1 (~~authorize the designee to~~) commence negotiations with any other
2 selected respondent. On completion of this process, (~~the designee~~
3 ~~shall report to~~) and after the department of ecology and the
4 department of health review and comment as provided for in subsection
5 (10) of this section, and after public hearing as provided for in
6 subsection (11) of this section, the legislative authority (~~on his or~~
7 ~~her recommendations and the reasons for them)~~ may approve a contract
8 with its chosen respondent.

9 (6) Any person aggrieved by the legislative authority's approval of
10 a contract may appeal the determination to an appeals board selected by
11 the public body, which shall consist of not less than three persons
12 determined by the legislative authority to be qualified for such
13 purposes. Such board shall promptly hear and determine whether the
14 public body entered into the agreement in accordance with this chapter
15 and other applicable law. (~~The hearing shall be conducted in the same~~
16 ~~manner as an adjudicative proceeding under chapter 34.05 RCW.~~) The
17 board shall have the power only to affirm or void the agreement.

18 (7) Notwithstanding the foregoing, where contracting for design
19 services by the public body is done separately from contracting for
20 other services permitted under this chapter, the contracting for design
21 of (~~water pollution control facilities~~) services shall be done in
22 accordance with chapter 39.80 RCW.

23 (8) (~~A~~) If a public body elects to enter into an agreement
24 whereby the service provider will own all or a portion of the water
25 pollution control facilities it constructs, the service agreement shall
26 include provision for an option by which a public body may acquire at
27 fair market value facilities dedicated to such service.

28 (9) If a public body elects to enter into an agreement regarding a
29 public water system, the agreement shall include provisions to ensure
30 that all funds from state grants or loans received by the public body
31 or the service provider for projects or activities related to the
32 public water system are applied directly to benefit the system and the
33 customers of the system.

34 (10)(a) Before any service agreement is entered into by the public
35 body in connection with water pollution control facilities, it shall be
36 reviewed (~~and approved~~) by the department of ecology to ensure
37 (~~that~~) consistency with the purposes of chapters 90.46 and 90.48 RCW
38 (~~are implemented~~).

1 ~~((10))~~ (b) Before any service agreement is entered into by the
2 public body in connection with public water systems, it shall be
3 reviewed by the department of health to ensure consistency with the
4 purposes of chapter 70.119 RCW.

5 (c) The department of ecology or department of health has thirty
6 days from receipt of the proposed service agreement to complete its
7 review and provide the public body with comments. A review under this
8 section is not intended to replace any additional permitting or
9 regulatory reviews and approvals that may be required under other
10 applicable laws.

11 (11) Prior to entering into any service agreement under this
12 chapter, the public body must have made written findings, after holding
13 a public hearing on the proposal, that it is in the public interest to
14 enter into the service agreement and that the service agreement is
15 financially sound and advantageous compared to other methods.

16 ~~((11))~~ (12) Each service agreement shall include project
17 performance bonds or other security by the service provider which in
18 the judgment of the public body is sufficient to secure adequate
19 performance by the service provider.

20 (13) A service agreement adopted under this chapter regarding a
21 public water system shall include provisions requiring approval by the
22 public body:

23 (a) For any extension of distribution lines or expansion of the
24 system service area during the term of the agreement; and

25 (b) Of any assignment or transfer of the service provider's
26 interests and responsibilities in the agreement to another service
27 provider, including an affiliate or subsidiary of the original service
28 provider.

29 **Sec. 4.** RCW 70.150.070 and 1986 c 244 s 7 are each amended to read
30 as follows:

31 RCW 70.150.030 through 70.150.060 shall be deemed to provide an
32 additional method for the provision of services from and in connection
33 with facilities and shall be regarded as supplemental and additional to
34 powers conferred by other state laws and by federal laws. A public
35 body that is also eligible to enter into agreements with service
36 providers under the alternative public works contracting procedures in

1 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061
2 or this chapter as its method of procurement for such services.

3 **Sec. 5.** RCW 39.10.020 and 2003 c 352 s 1, 2003 c 301 s 2, and 2003
4 c 300 s 3 are each reenacted and amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Alternative public works contracting procedure" means the
8 design-build and the general contractor/construction manager
9 contracting procedures authorized in RCW 39.10.051 and 39.10.061,
10 respectively. Public bodies eligible to enter into agreements with
11 service providers for the furnishing of services in connection with
12 water pollution control facilities or public water systems under the
13 authority of chapter 70.150 RCW may elect to use either RCW 39.10.051
14 and 39.10.061 or chapter 70.150 RCW as their method of procurement for
15 such services.

16 (2) "Public body" means the state department of general
17 administration; the University of Washington; Washington State
18 University; every city with a population greater than seventy thousand
19 and any public authority chartered by such city under RCW 35.21.730
20 through 35.21.755 and specifically authorized as provided in RCW
21 39.10.120(4); every county with a population greater than four hundred
22 fifty thousand; every port district with total revenues greater than
23 fifteen million dollars per year; every public hospital district with
24 total revenues greater than fifteen million dollars per year utilizing
25 the design-build procedure authorized by RCW 39.10.051 and every public
26 hospital district, regardless of total revenues, proposing projects
27 that are considered and approved by the public hospital district
28 project review board under RCW 39.10.117; every public utility district
29 with revenues from energy sales greater than twenty-three million
30 dollars per year; those school districts proposing projects that are
31 considered and approved by the school district project review board
32 under RCW 39.10.115; and the state ferry system.

33 (3) "Public works project" means any work for a public body within
34 the definition of the term public work in RCW 39.04.010.

35 (4) "Job order contract" means a contract between a public body or
36 any school district and a registered or licensed contractor in which

1 the contractor agrees to a fixed period, indefinite quantity delivery
2 order contract which provides for the use of negotiated, definitive
3 work orders for public works as defined in RCW 39.04.010.

4 (5) "Job order contractor" means a registered or licensed
5 contractor awarded a job order contract.

6 (6) "Unit price book" means a book containing specific prices,
7 based on generally accepted industry standards and information, where
8 available, for various items of work to be performed by the job order
9 contractor. The prices may include: All the costs of materials;
10 labor; equipment; overhead, including bonding costs; and profit for
11 performing the items of work. The unit prices for labor must be at the
12 rates in effect at the time the individual work order is issued.

13 (7) "Work order" means an order issued for a definite scope of work
14 to be performed pursuant to a job order contract.

15 **Sec. 6.** RCW 90.48.285 and 1987 c 109 s 144 are each amended to
16 read as follows:

17 The department is authorized to enter into contracts with any
18 municipal or public corporation or political subdivision within the
19 state for the purpose of assisting such agencies to finance the design
20 and construction of water pollution control projects, whether procured
21 through chapter 39.10 or 70.150 RCW, or otherwise, that are necessary
22 to prevent the discharge of untreated or inadequately treated sewage or
23 other waste into the waters of the state, including but not limited to,
24 systems for the control of storm or surface waters which will provide
25 for the removal of waste or polluting materials in a manner conforming
26 to the comprehensive plan of water pollution control and abatement
27 proposed by the agencies and approved by the department. Any such
28 contract may provide for:

29 The payment by the department to a municipal or public corporation
30 or political subdivision on a monthly, quarterly, or annual basis of
31 varying amounts of moneys as advances which shall be repayable by said
32 municipal or public corporation, or political subdivision under
33 conditions determined by the department.

34 Contracts made by the department shall be subject to the following
35 limitations:

36 (1) No contract shall be made unless the department shall find that

1 the project cannot be financed at reasonable cost or within statutory
2 limitations by the borrower without the making of such contract.

3 (2) No contract shall be made with any public or municipal
4 corporation or political subdivision to assist in the financing of any
5 project located within a sewage drainage basin for which the department
6 shall have previously adopted a comprehensive water pollution control
7 and abatement plan unless the project is found by the department to
8 conform with the basin comprehensive plan.

9 (3) The department shall determine the interest rate, not to exceed
10 ten percent per annum, which such advances shall bear.

11 (4) The department shall provide such reasonable terms and
12 conditions of repayment of advances as it may determine.

13 (5) The total outstanding amount which the department may at any
14 time be obligated to pay under all outstanding contracts made pursuant
15 to this section shall not exceed the moneys available for such payment.

16 (6) Municipal or public corporations or political subdivisions
17 shall meet such qualifications and follow such procedures in applying
18 for contract assistance as shall be established by the department.

19 In making such contracts the department shall give priority to
20 projects which will provide relief from actual or potential public
21 health hazards or water pollution conditions and which provide
22 substantial capacity beyond present requirements to meet anticipated
23 future demand.

24 **Sec. 7.** RCW 39.10.902 and 2003 c 301 s 8 and 2003 c 300 s 8 are
25 each reenacted and amended to read as follows:

26 The following acts or parts of acts, as now existing or hereafter
27 amended, are each repealed, effective July 1, 2007:

28 (1) RCW 39.10.010 and 1994 c 132 s 1;

29 (2) RCW 39.10.020 and 2005 c ... s 5 (section 5 of this act), 2003
30 c 352 s 1, 2003 c 301 s 2, 2003 c 300 s 3, 2001 c 328 s 1, 2000 c 209
31 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;

32 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

33 (4) RCW 39.10.040 and 1994 c 132 s 4;

34 (5) RCW 39.10.051 and 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328
35 s 2;

36 (6) RCW 39.10.061 and 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328
37 s 3;

- 1 (7) RCW 39.10.065 and 1997 c 376 s 5;
2 (8) RCW 39.10.067 and 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209
3 s 3;
4 (9) RCW 39.10.070 and 1994 c 132 s 7;
5 (10) RCW 39.10.080 and 1994 c 132 s 8;
6 (11) RCW 39.10.090 and 1994 c 132 s 9;
7 (12) RCW 39.10.100 and 1994 c 132 s 10;
8 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
9 (14) RCW 39.10.900 and 1994 c 132 s 13;
10 (15) RCW 39.10.901 and 1994 c 132 s 14;
11 (16) RCW 39.10.068 and 2003 c 300 s 6;
12 (17) RCW 39.10.117 and 2003 c 300 s 7; and
13 (18) RCW 39.10.130 and 2003 c 301 s 1.

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