
SENATE BILL 5285

State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen, Morton, Rockefeller, Honeyford, Kline, Mulliken and Oke

Read first time 01/19/2005. Referred to Committee on Water, Energy & Environment.

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 in accordance with this chapter.

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

13 (6) "Public water systems" has the meaning provided in RCW
14 70.119.020.

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

17 The legislative authority of a public body may secure services by
18 means of an agreement with a service provider. Such an agreement may
19 obligate a service provider to perform one or more of the following
20 services: Design, finance, construct, own, operate, or maintain water
21 pollution control facilities or public water systems by which services
22 are provided to the public body. Service agreements and related
23 agreements under this chapter shall be entered into in accordance with
24 the following procedure:

25 (1) The legislative authority of the public body shall publish
26 notice that it is seeking to secure certain specified services by means
27 of entering into an agreement with a service provider. The notice
28 shall be published in the official newspaper of the public body, or if
29 there is no official newspaper then in a newspaper in general
30 circulation within the boundaries of the public body, at least once
31 each week for two consecutive weeks. The final notice shall appear not
32 less than (~~sixty~~) thirty days before the date for submission of
33 proposals. The notice shall state (a) the nature of the services
34 needed, (b) the location in the public body's offices where the
35 requirements and standards for construction, operation, or maintenance
36 of projects needed as part of the services are available for

1 inspection, and (c) the final date for the submission of proposals.
2 The legislative authority may undertake a prequalification process by
3 the same procedure set forth in this subsection.

4 (2) The request for proposals shall (a) indicate the time and place
5 responses are due, (b) include evaluation criteria to be considered in
6 selecting a service provider, (c) specify minimum requirements or other
7 limitations applying to selection, (d) insofar as practicable, set
8 forth terms and provisions to be included in the service agreement, and
9 (e) require the service provider to demonstrate in its proposal to the
10 public body's satisfaction that ~~((a public body's annual costs will be~~
11 ~~lower under its proposal than they would be if the public body~~
12 ~~financed, constructed, owned, operated, and maintained facilities~~
13 ~~required for service))~~ it is in the public interest to enter into the
14 service agreement and that the service agreement is financially sound
15 and advantageous to the public body from the standpoint of quality of
16 services, experience of the provider, reduction of risk, and other
17 factors.

18 (3) The criteria set forth in the request for proposals shall be
19 those determined to be relevant by the legislative authority of the
20 public body, which may include but shall not be limited to: The
21 respondent's prior experience, including design, construction, or
22 operation of other similar facilities; respondent's management
23 capability, schedule availability, and financial resources; cost of the
24 service; nature of facility design proposed by respondents; system
25 reliability; performance standards required for the facilities;
26 compatibility with existing service facilities operated by the public
27 body or other providers of service to the public body; project
28 performance warranties; penalty and other enforcement provisions;
29 environmental protection measures to be used; and allocation of project
30 risks. The legislative authority ~~((shall))~~ may designate persons or
31 entities within or outside the public body (a) to assist it in issuing
32 the request for proposals to ensure that proposals will be responsive
33 to its needs, and (b) to assist it in evaluating the proposals
34 received. ~~((The designee shall not be a member of the legislative~~
35 ~~authority.))~~

36 (4) After proposals under subsections (1) through (3) of this
37 section have been received, the legislative authority~~((is))~~ or its
38 designee shall determine, on the basis of its review of the proposals,

1 whether one or more proposals have been received from respondents which
2 are (a) determined to be qualified to provide the requested services,
3 and (b) responsive to the notice and evaluation criteria, which shall
4 include, but not be limited to, cost of services. These chosen
5 respondents may, at the discretion of the public body, be aggregated
6 into a short list of qualified respondents, who shall be referred to as
7 the selected respondents in this section. The legislative authority or
8 its designee shall conduct a bidder's conference to include all these
9 selected respondents to assure a full understanding of the proposals.
10 The bidder's conference shall (~~also allow the designee to~~) make these
11 selected respondents aware of any changes in the request for proposal.
12 Any information related to revisions in the request for proposal shall
13 be made available to all these selected respondents. Any selected
14 respondent shall be accorded a reasonable opportunity for revision of
15 its proposal prior to commencement of the negotiation provided in
16 subsection (5) of this section, for the purpose of obtaining best and
17 final proposals.

18 (5) After such conference is held, the legislative authority or its
19 designee may negotiate with the selected respondent whose proposal it
20 determines to be the most advantageous to the public body, considering
21 the criteria set forth in the request for proposals. If negotiations
22 are conducted by the designee, the legislative authority shall continue
23 to oversee the negotiations and provide direction to its designee. If
24 the negotiation is unsuccessful, the legislative authority may
25 (~~authorize the designee to~~) commence negotiations with any other
26 selected respondent. On completion of this process, (~~the designee~~
27 ~~shall report to~~) and after the department of ecology and the
28 department of health review and comment as provided for in subsection
29 (9) of this section, and after public hearing as provided for in
30 subsection (10) of this section, the legislative authority (~~on his or~~
31 ~~her recommendations and the reasons for them~~) may approve a contract
32 with its chosen respondent.

33 (6) Any person aggrieved by the legislative authority's approval of
34 a contract may appeal the determination to an appeals board selected by
35 the public body, which shall consist of not less than three persons
36 determined by the legislative authority to be qualified for such
37 purposes. Such board shall promptly hear and determine whether the
38 public body entered into the agreement in accordance with this chapter

1 and other applicable law. (~~The hearing shall be conducted in the same~~
2 ~~manner as an adjudicative proceeding under chapter 34.05 RCW.~~) The
3 board shall have the power only to affirm or void the agreement.

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

9 (8) (~~A~~) If a public body elects to enter into an agreement
10 whereby the service provider will own all or a portion of the
11 facilities it constructs, the service agreement shall include provision
12 for an option by which a public body may acquire at fair market value
13 facilities dedicated to such service.

14 (9)(a) Before any service agreement is entered into by the public
15 body in connection with water pollution control facilities, it shall be
16 reviewed (~~and approved~~) by the department of ecology solely to ensure
17 that the purposes of chapter 90.48 RCW are implemented.

18 (b) Before any service agreement is entered into by the public body
19 in connection with public water systems, it shall be reviewed by the
20 department of health solely to ensure that the purposes of chapter
21 70.119 RCW are implemented. The department of ecology or department of
22 health has thirty days from receipt of the proposed service agreement
23 to complete its review and provide the public body with comments
24 indicating the changes necessary to achieve compliance.

25 (10) Prior to entering into any service agreement under this
26 chapter, the public body must have made written findings, after holding
27 a public hearing on the proposal, that it is in the public interest to
28 enter into the service agreement and that the service agreement is
29 financially sound and advantageous compared to other methods.

30 (11) Each service agreement shall include project performance bonds
31 or other security by the service provider which in the judgment of the
32 public body is sufficient to secure adequate performance by the service
33 provider.

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

36 RCW 70.150.030 through 70.150.060 shall be deemed to provide an
37 additional method for the provision of services from and in connection

1 with facilities and shall be regarded as supplemental and additional to
2 powers conferred by other state laws and by federal laws. A public
3 body that is also eligible to enter into agreements with service
4 providers under the alternative public works contracting procedures in
5 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061
6 or this chapter as its method of procurement for such services.

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

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

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

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

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

3 (4) "Job order contract" means a contract between a public body or
4 any school district and a registered or licensed contractor in which
5 the contractor agrees to a fixed period, indefinite quantity delivery
6 order contract which provides for the use of negotiated, definitive
7 work orders for public works as defined in RCW 39.04.010.

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

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

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

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

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

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

1 Contracts made by the department shall be subject to the following
2 limitations:

3 (1) No contract shall be made unless the department shall find that
4 the project cannot be financed at reasonable cost or within statutory
5 limitations by the borrower without the making of such contract.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (5) RCW 39.10.051 and 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328
2 s 2;
3 (6) RCW 39.10.061 and 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328
4 s 3;
5 (7) RCW 39.10.065 and 1997 c 376 s 5;
6 (8) RCW 39.10.067 and 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209
7 s 3;
8 (9) RCW 39.10.070 and 1994 c 132 s 7;
9 (10) RCW 39.10.080 and 1994 c 132 s 8;
10 (11) RCW 39.10.090 and 1994 c 132 s 9;
11 (12) RCW 39.10.100 and 1994 c 132 s 10;
12 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
13 (14) RCW 39.10.900 and 1994 c 132 s 13;
14 (15) RCW 39.10.901 and 1994 c 132 s 14;
15 (16) RCW 39.10.068 and 2003 c 300 s 6;
16 (17) RCW 39.10.117 and 2003 c 300 s 7; and
17 (18) RCW 39.10.130 and 2003 c 301 s 1.

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