

ESHB 1332 - S COMM AMD

By Committee on Government Operations, Tribal Relations & Elections

ADOPTED 04/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** TITLE OF ACT--DECLARATION OF PURPOSE. (1)
4 This act shall be known as the joint municipal utility services act.

5 (2) It is the purpose of this act to improve the ability of local
6 government utilities to plan, finance, construct, acquire, maintain,
7 operate, and provide facilities and utility services to the public, and
8 to reduce costs and improve the benefits, efficiency, and quality of
9 utility services.

10 (3) This act is intended to facilitate joint municipal utility
11 services and is not intended to expand the types of services provided
12 by local governments or their utilities. Further, nothing in this act
13 is intended to alter the regulatory powers of cities, counties, or
14 other local governments or state agencies that exercise such powers.
15 Further, nothing in this act may be construed to alter the underlying
16 authority of the units of local government that enter into agreements
17 under this act or to diminish in any way the authority of local
18 governments to enter into agreements under chapter 39.34 RCW or other
19 applicable law.

20 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
21 section apply throughout this chapter unless the context clearly
22 requires otherwise.

23 (1) "Agreement" means a joint municipal utility services agreement,
24 among members, that forms an authority, as more fully described in this
25 chapter.

26 (2) "Authority" means a joint municipal utility services authority
27 formed under this chapter.

28 (3) "Board of directors" or "board" means the board of directors of
29 an authority.

1 (4) "Member" means a city, town, county, water-sewer district,
2 public utility district, other special purpose district, municipal
3 corporation, or other unit of local government of this or another state
4 that provides utility services, and any Indian tribe recognized as such
5 by the United States government, that is a party to an agreement
6 forming an authority.

7 (5) "Utility services," for purposes of this chapter, means any or
8 all of the following functions: The provision of retail or wholesale
9 water supply and water conservation services; the provision of
10 wastewater, sewage, or septage collection, handling, treatment,
11 transmission, or disposal services; the provision of point and nonpoint
12 water pollution monitoring programs; the provision for the generation,
13 production, storage, distribution, use, or management of reclaimed
14 water; and the management and handling of storm water, surface water,
15 drainage, and flood waters.

16 NEW SECTION. **Sec. 3.** FORMATION OF JOINT MUNICIPAL UTILITY
17 SERVICES AUTHORITIES--CHARACTERISTICS--SUBSTANTIVE POWERS. (1) An
18 authority may be formed by two or more members pursuant to this chapter
19 by execution of a joint municipal utility services agreement that
20 materially complies with the requirements of section 5 of this act.
21 Except as otherwise provided in section 8 of this act, at the time of
22 execution of an agreement each member must be providing the type of
23 utility service or services that will be provided by the authority.
24 The agreement must be approved by the legislative authority of each of
25 the members. The agreement must be filed with the Washington state
26 secretary of state, who must provide a certificate of filing with
27 respect to any authority. An authority shall be deemed to have been
28 formed as of the date of that filing. The formation and activities of
29 an authority, and the admission or withdrawal of members, are not
30 subject to review by any boundary review board. Any amendments to an
31 agreement must be filed with the Washington state secretary of state,
32 and will become effective on the date of filing.

33 (2) An authority is a municipal corporation. Subject to section
34 4(3) of this act, the provisions of a joint municipal utility services
35 agreement, and any limitations imposed pursuant to section 5 of this
36 act: (a) An authority may perform or provide any or all of the utility
37 service or services that all of its members, other than tribal

1 government members, perform or provide under applicable law; and (b) in
2 performing or providing those utility services, an authority may
3 exercise any or all of the powers described in section 4(1) of this
4 act.

5 (3) An authority shall be entitled to all the immunities and
6 exemptions that are available to local governmental entities under
7 applicable law, including without limitation the provisions of chapter
8 4.96 RCW. Notwithstanding this subsection (3), if all of an
9 authority's members are the same type of Washington local government
10 entity, then the immunities and exemptions available to that type of
11 entity shall govern.

12 (4) Nothing in this chapter shall diminish a member's powers in
13 connection with its provision or management of utility services, or its
14 taxing power with respect to those services, nor does this chapter
15 diminish in any way the authority of local governments to enter into
16 agreements under chapter 39.34 RCW or other applicable law.

17 (5) Nothing in this chapter shall impair or diminish a valid water
18 right, including rights established under state law and rights
19 established under federal law.

20 NEW SECTION. **Sec. 4.** CORPORATE POWERS OF JOINT MUNICIPAL UTILITY
21 SERVICES AUTHORITIES. (1) For the purpose of performing or providing
22 utility services, and subject to subsection (3) of this section and
23 section 5 of this act, an authority has and is entitled to exercise the
24 following powers:

25 (a) To sue and be sued, complain and defend, in its corporate name;

26 (b) To have a corporate seal which may be altered at pleasure, and
27 to use the same by causing it, or a facsimile thereof, to be impressed
28 or affixed or in any other manner reproduced;

29 (c) To purchase, take, receive, take by lease, condemn, receive by
30 grant, or otherwise acquire, and to own, hold, improve, use, operate,
31 maintain, add to, extend, and fully control the use of and otherwise
32 deal in and with, real or personal property or property rights,
33 including without limitation water and water rights, or other assets,
34 or any interest therein, wherever situated;

35 (d) To sell, convey, lease out, exchange, transfer, surplus, and
36 otherwise dispose of all or any part of its property and assets;

1 (e) To incur liabilities for any of its utility services purposes,
2 to borrow money at such rates of interest as the authority may
3 determine, to issue its bonds, notes, and other obligations, and to
4 pledge any or all of its revenues to the repayment of bonds, notes, and
5 other obligations;

6 (f) To enter into contracts for any of its utility services
7 purposes with any individual or entity, both public and private, and to
8 enter into intergovernmental agreements with its members and with other
9 public agencies;

10 (g) To be eligible to apply for and to receive state, federal, and
11 private grants, loans, and assistance that any of its members are
12 eligible to receive in connection with the development, design,
13 acquisition, construction, maintenance, and/or operation of facilities
14 and programs for utility services;

15 (h) To adopt and alter rules, policies, and guidelines, not
16 inconsistent with this chapter or with other laws of this state, for
17 the administration and regulation of the affairs and assets of the
18 authority;

19 (i) To obtain insurance, to self-insure, and to participate in pool
20 insurance programs;

21 (j) To indemnify any officer, director, employee, volunteer, or
22 former officer, employee, or volunteer, or any member, for acts,
23 errors, or omissions performed in the exercise of their duties in the
24 manner approved by the board;

25 (k) To employ such persons, as public employees, that the board
26 determines are needed to carry out the authority's purposes and to fix
27 wages, salaries, and benefits, and to establish any bond requirements
28 for those employees;

29 (l) To provide for and pay pensions and participate in pension
30 plans and other benefit plans for any or all of its officers or
31 employees, as public employees;

32 (m) To determine and impose fees, rates, and charges for its
33 utility services;

34 (n) Subject to section 5(20) of this act, to have a lien for
35 delinquent and unpaid rates and charges for retail connections and
36 retail utility service to the public, together with recording fees and
37 penalties (not exceeding eight percent) determined by the board,
38 including interest (at a rate determined by the board) on such rates,

1 charges, fees, and penalties, against the premises to which such
2 service has been furnished or is available, which lien shall be
3 superior to all other liens and encumbrances except general taxes and
4 local and special assessments;

5 (o) To make expenditures to promote and advertise its programs,
6 educate its members, customers, and the general public, and provide and
7 support conservation and other practices in connection with providing
8 utility services;

9 (p) With the consent of the member within whose geographic
10 boundaries an authority is so acting, to compel all property owners
11 within an area served by a wastewater collection system owned or
12 operated by an authority to connect their private drain and sewer
13 systems with that system, or to participate in and follow the
14 requirements of an inspection and maintenance program for on-site
15 systems, and to pay associated rates and charges, under such terms and
16 conditions, and such penalties, as the board shall prescribe by
17 resolution;

18 (q) With the consent of the member within whose geographic or
19 service area boundaries an authority is so acting, to create local
20 improvement districts or utility local improvement districts, to impose
21 and collect assessments and to issue bonds and notes, all consistent
22 with the statutes governing local improvement districts or utility
23 local improvement districts applicable to the member that has provided
24 such consent. Notwithstanding this subsection (1)(q), the guaranty
25 fund provisions of chapter 35.54 RCW shall not apply to a local
26 improvement district created by an authority;

27 (r) To receive contributions or other transfers of real and
28 personal property and property rights, money, other assets, and
29 franchise rights, wherever situated, from its members or from any other
30 person;

31 (s) To prepare and submit plans relating to utility services on
32 behalf of itself or its members;

33 (t) To terminate its operations, wind up its affairs, dissolve, and
34 provide for the handling and distribution of its assets and liabilities
35 in a manner consistent with the applicable agreement;

36 (u) To transfer its assets, rights, obligations, and liabilities to
37 a successor entity, including without limitation a successor authority
38 or municipal corporation;

1 (v) Subject to subsection (3) of this section, section 5 of this
2 act, and applicable law, to have and exercise any other corporate
3 powers capable of being exercised by any of its members in providing
4 utility services;

5 (2) An authority, as a municipal corporation, is subject to the
6 public records act (chapter 42.56 RCW), the open public meetings act
7 (chapter 42.30 RCW), and the code of ethics for municipal officers
8 (chapter 42.23 RCW), and an authority is subject to audit by the state
9 auditor under chapter 43.09 RCW.

10 (3) In the exercise of its powers in connection with performing or
11 providing utility services, an authority is subject to the following:

12 (a) An authority has no power to levy taxes.

13 (b) An authority has the power of eminent domain as necessary to
14 perform or provide utility services, but only if all of its members,
15 other than tribal government members, have powers of eminent domain.
16 Further, an authority may exercise the power of eminent domain only
17 pursuant to the provisions of Washington law, in the manner and subject
18 to the statutory limitations applicable to one or more of its
19 Washington local government members. If all of its members are the
20 same type of Washington governmental entity, then the statute governing
21 the exercise of eminent domain by that type of entity shall govern. An
22 authority may not exercise the power of eminent domain with respect to
23 property owned by a city, town, county, special purpose district,
24 authority, or other unit of local government, but may acquire or use
25 such property under mutually agreed upon terms and conditions.

26 (c) An authority may pledge its revenues in connection with its
27 obligations, and may acquire property or property rights through and
28 subject to the terms of a conditional sales contract, a real estate
29 contract, or a financing contract under chapter 39.94 RCW, or other
30 federal or state financing program. However, an authority must not in
31 any other manner mortgage or provide security interests in its real or
32 personal property or property rights. As a local governmental entity
33 without taxing power, an authority may not issue general obligation
34 bonds. However, an authority may pledge its full faith and credit to
35 the payment of amounts due pursuant to a financing contract under
36 chapter 39.94 RCW or other federal or state financing program.

37 (d) In order for an authority to provide a particular utility

1 service in a geographical area, one or more of its members must have
2 authority, under applicable law, to provide that utility service in
3 that geographical area.

4 (e) As a separate municipal corporation, an authority's obligations
5 and liabilities are its own and are not obligations or liabilities of
6 its members except to the extent and in the manner established under
7 the provisions of an agreement or otherwise expressly provided by
8 contract.

9 (f) Upon its dissolution, after provision is made for an
10 authority's liabilities, remaining assets must be distributed to a
11 successor entity, or to one or more of the members, or to another
12 public body of this state.

13 NEW SECTION. **Sec. 5.** ELEMENTS OF JOINT MUNICIPAL UTILITY SERVICES
14 AGREEMENTS. A joint municipal utility services agreement that forms
15 and governs an authority must include the elements described in this
16 section, together with such other provisions an authority's members
17 deem appropriate. However, the failure of an agreement to include each
18 and every one of the elements described in this section shall not
19 render the agreement invalid. An agreement must:

20 (1) Identify the members, together with conditions upon which
21 additional members that are providing utility services may join the
22 authority, the conditions upon which members may or must withdraw,
23 including provisions for handling of relevant assets and liabilities
24 upon a withdrawal, and the effect of boundary adjustments of the
25 authority and boundary adjustments between or among members;

26 (2) State the name of the authority;

27 (3) Describe the utility services that the authority will provide;

28 (4) Specify how the number of directors of the authority's board
29 will be determined, and how those directors will be appointed. Each
30 director on the board of an authority must be an elected official of a
31 member. Except as limited by an agreement, an authority's board may
32 exercise the authority's powers;

33 (5) Describe how votes of the members represented on the
34 authority's board are to be weighted, and set forth any limitations on
35 the exercise of powers of the authority's board, which may include, by
36 way of example, requirements that certain decisions be made by a
37 supermajority of members represented on an authority's board, based on

1 the number of members and/or some other factor or factors, and that
2 certain decisions be ratified by the legislative authorities of the
3 members;

4 (6) Describe how the agreement is to be amended;

5 (7) Describe how the authority's rules may be adopted and amended;

6 (8) Specify the circumstances under which the authority may be
7 dissolved, and how it may terminate its operations, wind up its
8 affairs, and provide for the handling, assumption, and/or distribution
9 of its assets and liabilities;

10 (9) List any legally authorized substantive or corporate powers
11 that the authority will not exercise;

12 (10) Specify under which personnel laws the authority will operate,
13 which may be the personnel laws applicable to any one of its Washington
14 local government members;

15 (11) Specify under which public works and procurement laws the
16 authority will operate, which may be the public works and procurement
17 laws applicable to any one of its Washington local government members;

18 (12) Consistent with section 4(3)(b) of this act, specify under
19 which Washington eminent domain laws any condemnations by the authority
20 will be subject;

21 (13) Specify how the treasurer of the authority will be appointed,
22 which may be an officer or employee of the authority, the treasurer or
23 chief finance officer of any Washington local government member, or the
24 treasurer of any Washington county in which any member of the authority
25 is located. However, if the total number of utility customers of all
26 of the members of an authority does not exceed two thousand five
27 hundred, the treasurer of an authority must be either the treasurer of
28 any member or the treasurer of a county in which any member of the
29 authority is located;

30 (14) Specify under which Washington state statute or statutes
31 surplus property of the authority will be disposed;

32 (15) Describe how the authority's budgets will be prepared and
33 adopted;

34 (16) Describe how any assets of members that are transferred to or
35 managed by the authority will be accounted for;

36 (17) Generally describe the financial obligations of members to the
37 authority;

1 (18) Describe how rates and charges imposed by the authority, if
2 any, will be determined. An agreement may specify a specific
3 Washington state statute applicable to one or all of its members for
4 the purpose of governing rate-setting criteria applicable to retail
5 customers, if any;

6 (19) Specify the Washington state statute or statutes under which
7 bonds, notes, and other obligations of the authority will be issued for
8 the purpose of performing or providing utility services, which must be
9 a bond issuance statute applicable to one or more of its members other
10 than a tribal member. If all of its members are the same type of
11 Washington governmental entity, then a Washington state statute or
12 statutes governing the issuance of bonds, notes, and other obligations
13 issued by that type of entity shall govern;

14 (20) Specify under which Washington state statute or statutes any
15 liens of an authority shall be exercised, which must be statutes
16 applicable to the type or types of utility service for which the lien
17 shall apply. Further, if all of its members are the same type of
18 Washington governmental entity, then the statute or statutes governing
19 that type of entity shall govern;

20 (21) Include any other provisions deemed necessary and appropriate
21 by the members.

22 NEW SECTION. **Sec. 6.** AUTHORITY OF MEMBERS TO ASSIST AUTHORITY AND
23 TO TRANSFER FUNDS, PROPERTY, AND OTHER ASSETS. For the purpose of
24 assisting the authority in providing utility services, the members of
25 an authority are authorized, with or without payment or other
26 consideration and without submitting the matter to the electors of
27 those members, to lease, convey, transfer, assign, or otherwise make
28 available to an authority any money, real or personal property or
29 property rights, other assets including licenses, water rights (subject
30 to applicable law), other property (whether held by a member's utility
31 or by a member's general government), or franchises or rights
32 thereunder.

33 NEW SECTION. **Sec. 7.** TAX EXEMPTIONS AND PREFERENCES. (1) As a
34 municipal corporation, the property of an authority is exempt from
35 taxation.

1 (2) An authority is entitled to all of the exemptions from or
2 preferences with respect to taxes that are available to any or all of
3 its members, other than a tribal member, in connection with the
4 provision or management of utility services.

5 NEW SECTION. **Sec. 8.** CONVERSION OF EXISTING ENTITIES INTO
6 AUTHORITIES. (1) Any intergovernmental entity formed under chapter
7 39.34 RCW or other applicable law may become a joint municipal utility
8 services authority and be entitled to all the powers and privileges
9 available under this chapter, if: (a) The public agencies that are
10 parties to an existing interlocal agreement would otherwise be eligible
11 to form an authority to provide the relevant utility services; (b) the
12 public agencies that are parties to the existing interlocal agreement
13 amend, restate, or replace that interlocal agreement so that it
14 materially complies with the requirements of section 5 of this act; (c)
15 the amended, restated, or replacement agreement is filed with the
16 Washington state secretary of state consistent with section 3 of this
17 act; and (d) the amended, restated, or replacement agreement expressly
18 provides that all rights and obligations of the entity formerly
19 existing under chapter 39.34 RCW or other applicable law shall
20 thereafter be the obligations of the new authority created under this
21 chapter. Upon compliance with those requirements, the new authority
22 shall be a successor of the former intergovernmental entity for all
23 purposes, and all rights and obligations of the former entity shall
24 transfer to the new authority. Those obligations shall be treated as
25 having been incurred, entered into, or issued by the new authority, and
26 those obligations shall remain in full force and effect and shall
27 continue to be enforceable in accordance with their terms.

28 (2) If an interlocal agreement under chapter 39.34 RCW or other
29 applicable law relating to utility services includes among its original
30 participants a city or county that does not itself provide or no longer
31 provides utility services, that city or county may continue as a party
32 to the amended, restated, or replacement agreement and shall be treated
33 as a member for all purposes under this chapter.

34 NEW SECTION. **Sec. 9.** POWERS CONFERRED BY CHAPTER ARE
35 SUPPLEMENTAL. The powers and authority conferred by this chapter shall
36 be construed as in addition and supplemental to powers or authority

1 conferred by any other law, and nothing contained in this chapter shall
2 be construed as limiting any other powers or authority of any member or
3 any other entity formed under chapter 39.34 RCW or other applicable
4 law.

5 **Sec. 10.** RCW 4.96.010 and 2001 c 119 s 1 are each amended to read
6 as follows:

7 (1) All local governmental entities, whether acting in a
8 governmental or proprietary capacity, shall be liable for damages
9 arising out of their tortious conduct, or the tortious conduct of their
10 past or present officers, employees, or volunteers while performing or
11 in good faith purporting to perform their official duties, to the same
12 extent as if they were a private person or corporation. Filing a claim
13 for damages within the time allowed by law shall be a condition
14 precedent to the commencement of any action claiming damages. The laws
15 specifying the content for such claims shall be liberally construed so
16 that substantial compliance therewith will be deemed satisfactory.

17 (2) Unless the context clearly requires otherwise, for the purposes
18 of this chapter, "local governmental entity" means a county, city,
19 town, special district, municipal corporation as defined in RCW
20 39.50.010, quasi-municipal corporation, any joint municipal utility
21 services authority, any entity created by public agencies under RCW
22 39.34.030, or public hospital.

23 (3) For the purposes of this chapter, "volunteer" is defined
24 according to RCW 51.12.035.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.04 RCW
26 to read as follows:

27 This chapter does not apply to any payments between, or any
28 transfer of assets to or from, a joint municipal utility services
29 authority created under chapter 39.--- RCW (the new chapter created in
30 section 17 of this act) and any of its members.

31 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.08 RCW
32 to read as follows:

33 The tax levied by RCW 82.08.020 shall not apply to any sales, or
34 transfers made, to or from a joint municipal utility services authority

1 formed under chapter 39.--- RCW (the new chapter created in section 17
2 of this act) and any of its members.

3 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.12 RCW
4 to read as follows:

5 The tax levied by RCW 82.12.020 shall not apply to any sales, or
6 uses by, or transfers made, to or from a joint municipal utility
7 services authority formed under chapter 39.--- RCW (the new chapter
8 created in section 17 of this act) and any of its members.

9 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.16 RCW
10 to read as follows:

11 This chapter does not apply to any payments between, or any
12 transfer of assets to or from, a joint municipal utility services
13 authority created under chapter 39.--- RCW (the new chapter created in
14 section 17 of this act) and any of its members.

15 **Sec. 15.** RCW 86.09.720 and 2003 c 327 s 18 are each amended to
16 read as follows:

17 In addition to the authority provided in this chapter, flood
18 control districts may participate in and expend revenue on cooperative
19 watershed management arrangements and actions, including (~~watershed~~
20 ~~management partnerships under RCW 39.34.210~~) without limitation those
21 under chapter 39.34 RCW, under chapter 39.--- RCW (the new chapter
22 created in section 17 of this act), and under other intergovernmental
23 agreements authorized by law, for purposes of water supply, water
24 quality, and water resource and habitat protection and management.

25 **Sec. 16.** RCW 86.15.035 and 2003 c 327 s 19 are each amended to
26 read as follows:

27 In addition to the authority provided in this chapter, flood
28 control zone districts may participate in and expend revenue on
29 cooperative watershed management arrangements and actions, including
30 (~~watershed management partnerships under RCW 39.34.210~~) without
31 limitation those under chapter 39.34 RCW, under chapter 39.--- RCW (the
32 new chapter created in section 17 of this act), and under other
33 intergovernmental agreements authorized by law, for purposes of water

1 supply, water quality, and water resource and habitat protection and
2 management.

3 NEW SECTION. **Sec. 17.** CODIFICATION. Sections 1 through 9 of this
4 act constitute a new chapter in Title 39 RCW."

ESHB 1332 - S COMM AMD

By Committee on Government Operations, Tribal Relations & Elections

ADOPTED 04/07/2011

5 On page 1, line 2 of the title, after "services;" strike the
6 remainder of the title and insert "amending RCW 4.96.010, 86.09.720,
7 and 86.15.035; adding a new section to chapter 82.04 RCW; adding a new
8 section to chapter 82.08 RCW; adding a new section to chapter 82.12
9 RCW; adding a new section to chapter 82.16 RCW; and adding a new
10 chapter to Title 39 RCW."

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