

# SENATE BILL REPORT

## 2SSB 5034

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As Amended by House, April 5, 2011

**Title:** An act relating to private infrastructure development.

**Brief Description:** Concerning private infrastructure development.

**Sponsors:** Senate Committee on Environment, Water & Energy (originally sponsored by Senators Kilmer, Kastama, Shin, Hatfield, Zarelli, Conway and Hewitt).

**Brief History:**

**Committee Activity:** Economic Development, Trade & Innovation: 2/02/11, 2/07/11 [DPS-EWE, w/oRec].

Environment, Water & Energy: 2/15/11, 2/18/11 [DP2S].

Passed Senate: 2/28/11, 46-1.

Passed House: 4/05/11, 95-0.

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### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

**Majority Report:** That Substitute Senate Bill No. 5034 be substituted therefor, and the substitute bill do pass and be referred to Committee on Environment, Water & Energy.

Signed by Senators Kastama, Chair; Chase, Vice Chair; Baumgartner, Ranking Minority Member; Hatfield, Kilmer and Shin.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Holmquist Newbry.

**Staff:** Jack Brummel (786-7428)

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Second Substitute Senate Bill No. 5034 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Honeyford, Ranking Minority Member; Chase, Delvin, Fraser, Holmquist Newbry, Morton and Ranker.

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

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** Wastewater systems collect, treat and dispose of sewage or surface water run-off. They range in size from on-site sewage systems (OSS) serving single homes to large urban systems serving thousands of customers. OSS, which are regulated by the Department of Health, are generally installed and operated by private individuals and organizations. Large wastewater systems, which are regulated by the Department of Ecology, are installed and operated by local government entities, including cities, counties, and special purpose districts.

The state Growth Management Act (GMA) requires certain counties to designate urban growth areas (UGAs) and plan for provision of urban services, including wastewater services.

The Utilities and Transportation Commission (UTC) regulates utilities and transportation services to ensure fair pricing, availability, reliability, and safety. The UTC has jurisdiction over companies providing electricity and natural gas, certain telecommunications service, water, solid waste collection, commercial ferry service, transportation of household goods, certain auto transportation service, and transportation of petroleum via pipeline.

Some UTC-regulated entities, including natural gas companies, certain auto transportation companies, solid waste collection companies, household goods carriers, and commercial ferries must obtain certificates of public convenience and necessity (certificates) from the UTC to lawfully operate in the state. Factors that the UTC may review in issuing certificates vary. With respect to some services, the UTC may consider an applicant's financial resources and prior experience in the field. Certificates issued by the UTC may include conditions, including operating parameters and service rates, set by the agency.

The UTC does not regulate companies operating wastewater systems.

**Summary of Second Substitute Bill:** Certain wastewater companies may not provide sewerage services for compensation without first obtaining certificates from the UTC. Wastewater companies subject to UTC jurisdiction are entities owning or proposing to develop and own sewerage systems (facilities and services to collect, treat, and dispose of sewage or storm or surface run-off) that are designed:

- for a peak daily flow of 27,000 to 100,000 gallons if treatment is by large OSS, or
- to serve 100 or more customers.

Excluded from UTC jurisdiction are publicly-owned wastewater systems and wastewater company service to customers outside of a UGA.

The UTC must consider specified factors when determining whether to issue certificates, including business plans, sufficiency of financial resources, need to develop systems instead of connecting to existing systems, prior experience, unwillingness of municipalities to provide sewerage services, and consistency with local sewer plans. Companies must file and maintain bonds or equivalent sureties with the UTC to ensure sufficient funding.

The UTC may set fees to cover program costs.

The UTC may determine that a wastewater company is unfit to provide service and order transfer of its systems to a capable and willing company. The UTC may petition a superior court to place a failed wastewater company into receivership. A system owned by a failed company may be taken over by another company or a municipality in eminent domain proceedings.

General laws applicable to several UTC-regulated companies are applied to wastewater companies.

Municipal corporations or private utilities, including wastewater companies, may petition for amendments to county sewerage and/or water general plans.

The UTC may adopt rules to implement the act, and collect payments from wastewater companies and other private entities that have notified the UTC of their willingness to cover rulemaking costs. The UTC is not required to engage in rulemaking until it has collected sufficient payments to cover rulemaking costs.

Except for UTC rulemaking authority, which takes effect 90 days after adjournment of the legislative session, the act takes effect July 1, 2012, if the UTC receives legislative approval of regulatory fees it proposes to recover its costs in implementing the act.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

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

**Effective Date:** The bill takes effect on July 1, 2012, except for section 29 authorizing rulemaking which takes effect ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Recommended First Substitute (Economic Development, Trade & Innovation):** PRO: We try to drive growth into urban growth areas under the Growth Management Act, but the capacity of local governments to make investments is limited. This bill allows development projects to move forward. If public money is not available for infrastructure, we need alternatives to pay for the infrastructure. You need money from somewhere to get good infill and effective growth management outcomes. A regulated industry will foot the bill here; the state just needs to make it possible for the private sector to help the situation. Without this we don't have sustainable smart growth and we get sprawl.

CON: The UTC experience with small water companies has caused concerns because of the problems when a system fails. We've put every regulatory system we can think of in the bill, but we are still concerned because even with these regulations on private water systems we have failures. The bill does allow screening of applicants and other safety net provisions. Costs are recoverable under the bill.

OTHER: The DOH deals with small systems of 10-370 homes, and they have difficulty with ongoing operations and maintenance. Large on-site programs have ownership restrictions.

**Persons Testifying (Economic Development, Trade & Innovation):** PRO: Senator Kilmer, prime sponsor; Craig Goodwin, Northwest Cascade; Rick Slunaker, AGC of WA.

CON: Ann Rendahl, Chris Rose, UTC.

OTHER: Denise Lahmann, DOH.

**Staff Summary of Public Testimony on Recommended First Substitute (Environment, Water & Energy):** PRO: This legislation, the product of a lengthy negotiation, is necessary to enable private wastewater companies to serve areas that local governments cannot afford to serve. Public utility commissions in other states regulate private wastewater companies. The legislation incorporates financial responsibility safeguards and grants the UTC necessary regulatory authority. The Departments of Health and Ecology will continue to provide important regulatory oversight.

**Persons Testifying (Environment, Water & Energy):** PRO: Senator Kilmer, prime sponsor; Rick Slunaker, Associated General Contractors; Craig Goodwin, Northwest Cascade; Chris Rose, UTC.

**House Amendment(s):**

- Clarifies in what circumstances the bond or equivalent surety is payable to the UTC;
- Restructures the provisions concerning the appointment of a court-order receiver to clarify the role of the UTC and the court, and requires the petition for a court-appointed receiver to be filed in Thurston County;
- Removes the provision making the bill effective only if the UTC receives legislative approval of the regulatory fees proposed by the UTC and removes the reporting notice associated with this contingency; and
- Modifies the rulemaking authority of the UTC granted by the bill.