

SENATE BILL REPORT

SB 5198

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 10, 2011

Title: An act relating to the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services.

Brief Description: Providing for the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services.

Sponsors: Senators Pridemore, Swecker, Rockefeller, Zarelli and Shin.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 2/03/11, 2/10/11 [DPS, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5198 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Chase and Nelson.

Minority Report: That it be referred without recommendation.

Signed by Senators Benton and Roach.

Staff: Karen Epps (786-7424)

Background: Cities and towns may provide for the sewerage, drainage, and water supply of the city or town. They may also establish, construct, and maintain water supply systems and systems of sewers and drains within or without their corporate limits. Cities and towns may participate in and expend revenue on cooperative watershed management actions related to water supply, water quality, and water resource protection and management.

Counties may establish, operate, finance, and maintain a system or systems of water supply, sewer systems, and stormwater systems within all or a portion of the county. A county also may, as part of a system of sewerage, exercise powers pertaining to stormwater, flood control, pollution prevention, and drainage services and activities.

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.

A public utility district (PUD) is a type of special purpose district authorized for the purpose of generating and distributing electricity, providing water and sewer services, and providing telecommunications services. There are currently 28 operating PUDs in this state, 19 of which provide water or wastewater services.

Water-sewer districts provide water and sewer services to incorporated and unincorporated areas. Districts are established through a petition, public hearing, and voter approval process and are each managed by a board of elected commissioners. District powers include the authority to purchase, construct, maintain, and supply waterworks to furnish water to inhabitants, and to develop and operate systems of sewers and drainage.

The Interlocal Cooperation Act allows public agencies to enter into agreements with one another for joint or cooperative action. Any power, privilege, or authority held by a public agency may be exercised jointly with one or more other public agencies having the same power, privilege, or authority. A public agency for purposes of interlocal agreements includes any agency, political subdivision, or unit of local government. Public agencies may enter into interlocal agreements to form a watershed management partnership to implement all or parts of a watershed management plan.

Summary of Bill (Recommended Substitute): A Joint Municipal Utility Services Authority (Authority) may be formed by two or more members to perform or provide water, wastewater, stormwater, or flood control services that all of its members, other than tribal government members, perform or provide. A member for purposes of Authority provisions, may be a county, city, town, special purpose district, or other unit of local government in Washington or another state that provides utility services, and any federally-recognized Indian tribe that is a party to an agreement forming an Authority.

With limited exceptions, each member must be providing the type of utility service or services that is provided by the Authority at the time of execution of an agreement to form an Authority. The agreement must be approved by the legislative authority of each member organization and then filed with the Secretary of State. The date of filing is the date of formation; and the formation and activities of an Authority, including the admission or withdrawal of members, are not subject to review by a boundary review board.

A joint municipal utility services agreement that forms and governs an Authority must include numerous provisions, including provisions that:

- identify members and specify terms or conditions for joining or withdrawing from the Authority;
- describe the utility services that the Authority provides;
- specify how the number of directors of the Authority's board are determined and how those directors are appointed (each director must be an elected official);
- describe how votes of the members represented on the board are weighted;
- describe how the agreement may be amended;
- specify under which public works and procurement laws the authority operates;
- specify how the treasurer of the Authority is appointed; and
- describe how rates and charges imposed by the authority, if any, are determined.

Authorities are entitled to all immunities and exemptions that apply to local governmental entities under tortious conduct provisions specified in statute. Authorities are subject to Washington's public records and open public meetings acts and the code of ethics for municipal officers, and may be audited by the State Auditor.

The formation and operation of an Authority does not diminish a member's powers in connection with its provision or management of utility services or its taxing power with respect to its utility services. The formation and operation of an Authority does not diminish the authority of local governments to enter into agreements under the Interlocal Cooperation Act or agreements formed under the Interlocal Cooperation Act. Additionally, the formation and operation of an Authority does not impair or diminish valid water rights.

In performing or providing utility services, Authorities are entitled to exercise numerous powers, including the power to:

- sue and be sued;
- acquire and fully control property and property rights, including water rights and other assets;
- incur liabilities, including issuing bonds;
- apply for and receive public and private monies and assistance;
- employ persons and fix salaries;
- determine and impose fees, rates, and charges for utility services;
- compel qualifying property owners to connect private drain and sewer systems to systems owned and operated by the Authority, or to participate in and follow requirements for on-site systems;
- create local improvement districts or utility local improvement districts;
- prepare and submit plans relating to utility services; and
- exercise eminent domain, but only if all of its members, other than tribal government members, have powers of eminent domain.

Authorities do not have the power to levy taxes. An Authority's obligations and liabilities are its own and are not the obligations or liabilities of its members except where specified by an agreement.

Members of an Authority, for the purpose of assisting the Authority in providing utility services, are authorized to transfer or otherwise make available assets of member organizations, including money, real property, and water rights, to an Authority with or without payment or other consideration. The transfer and asset availability provisions are not required to be submitted and approved by the electors of the members. As a municipal corporation, the property of the Authority is exempt from taxation.

Any intergovernmental entity formed under the Interlocal Cooperation Act or other applicable law may be converted into an Authority and is entitled to all powers and privileges available to Authorities if certain requirements are met. These requirements include:

- the public agencies that are parties to an interlocal agreement must be eligible to form an Authority to provide the relevant utility services;
- the parties amend or replace the interlocal agreement with one that materially complies with formation and governance agreements for Authorities;
- the amended or replacement agreement is filed with the Secretary of State; and

- the amended or replacement agreement expressly provides that all rights and obligations of the intergovernmental entity become the obligations of the new Authority.

Payments between or any transfers of assets to or from an Authority and its members are exempt from business and occupation taxes and public utility taxes. Additionally, sales tax provisions do not apply to any sales or transfers made to or from an Authority and its members.

Flood control districts and flood control zone districts are expressly authorized to participate in watershed management arrangements and actions, rather than watershed management partnerships, including those authorized under the Interlocal Cooperation Act and provisions governing Authorities.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Clarifies that the authorities provided to joint municipal utilities are limited to the intended and authorized purpose of performing and providing "utility services." Specifies that the Washington State Secretary of State must issue a certificate of filing, rather than a certificate of filing or a certificate of incorporation, upon the filing of an agreement to form a joint municipal utility services authority. Provides that the retail sales tax does not apply to any sales or transfers made to or from a joint municipal utility services authority and any of its members.

Appropriation: None.

Fiscal Note: Requested on January 29, 2011.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is the product of a six month process involving at least 30 local entities, hosted by the Department of Ecology (DOE) and the Department of Health, to do a legislative study effort. The purpose of this bill is to improve the ability of local governments to provide water and sewer utility services collectively in order to better serve their customers and to hold down costs. The legislation would not grant any new powers to municipal utilities. A joint authority created by a group of cities, counties, water-sewer districts, or PUDs could carry out tasks that all of the members can do on their own. The bill has explicit restrictions to adhere to this structure. The Interlocal Cooperation Act only allows an entity to be formed under the nonprofit corporation statute, which is a private entity statute. This bill will not increase government, but rather decrease government and costs to customers. This bill will provide greater efficiency and clarity. It is good for our rate paying public. This will give local jurisdictions a tool to address utility issues. By joining together, utilities can achieve greater efficiencies and economies of scale that are not possible at the individual utility level.

Persons Testifying: PRO: Adam Graveley, Gordon Derr; John Peterson, Clark Regional Wastewater; Bob Mack, Tacoma Public Utilities; Rick Hughes, LOTT Alliance; Robert Johnson, Lewis County; Maia Bellon, DOE.