
HOUSE BILL 2591

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Eddy, Ryu, Springer, Asay, Fitzgibbon, Stanford, and Moscoso

Read first time 01/18/12. Referred to Committee on Local Government.

1 AN ACT Relating to fire hydrant services provided by local
2 governments; amending RCW 35.92.010 and 57.08.005; adding a new section
3 to chapter 57.08 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to recognize that
6 special purpose water and sewer districts, as well as cities and towns
7 operating waterworks systems, have had and continue to have an
8 obligation to provide, operate, and maintain fire hydrants within
9 service areas. Districts, cities, and towns have historically met this
10 need and paid for it through adopted rate systems.

11 The legislature finds that, for the purposes of providing,
12 operating, and maintaining fire hydrants, a district, city, or town
13 operating a waterworks system functions for the benefit of its
14 customers, not the general public. Fire hydrant services are integral
15 to the water services provided to customers. Customers enjoy the
16 benefit of having fire hydrants in case of fires, and that benefit
17 correlates to the burden of paying rates. To that end, when providing,
18 maintaining, and operating fire hydrants for its customers, a district,

1 city, or town operating a waterworks system is functioning in a
2 proprietary capacity.

3 The purpose of this act is to affirm the authority of districts, as
4 well as cities and towns operating waterworks systems, to provide fire
5 hydrant services and finance the cost of these services through adopted
6 rate systems.

7 **Sec. 2.** RCW 35.92.010 and 2002 c 102 s 2 are each amended to read
8 as follows:

9 (1) A city or town may construct, condemn and purchase, purchase,
10 acquire, add to, alter, maintain and operate waterworks, including fire
11 hydrants as an integral utility service incorporated within general
12 rates, within or without its limits, for the purpose of furnishing the
13 city and its inhabitants, and any other persons, with an ample supply
14 of water for all purposes, public and private, including water power
15 and other power derived therefrom, with full power to regulate and
16 control the use, distribution, and price thereof: PROVIDED, That the
17 rates charged must be uniform for the same class of customers or
18 service. Such waterworks may include facilities for the generation of
19 electricity as a by-product and such electricity may be used by the
20 city or town or sold to an entity authorized by law to distribute
21 electricity. Such electricity is a by-product when the electrical
22 generation is subordinate to the primary purpose of water supply.

23 In classifying customers served or service furnished, the city or
24 town governing body may in its discretion consider any or all of the
25 following factors: The difference in cost of service to the various
26 customers; location of the various customers within and without the
27 city or town; the difference in cost of maintenance, operation, repair,
28 and replacement of the various parts of the system; the different
29 character of the service furnished various customers; the quantity and
30 quality of the water furnished; the time of its use; the achievement of
31 water conservation goals and the discouragement of wasteful water use
32 practices; the extent of fire hydrant services provided; capital
33 contributions made to the system including, but not limited to,
34 assessments; and any other matters which present a reasonable
35 difference as a ground for distinction. No rate shall be charged that
36 is less than the cost of the water and service to the class of
37 customers served.

1 For such purposes any city or town may take, condemn and purchase,
2 purchase, acquire, and retain water from any public or navigable lake
3 or watercourse, surface or ground, and, by means of aqueducts or pipe
4 lines, conduct it to the city or town; and it may erect and build dams
5 or other works across or at the outlet of any lake or watercourse in
6 this state for the purpose of storing and retaining water therein up to
7 and above high water mark; and for all the purposes of erecting such
8 aqueducts, pipe lines, dams, or waterworks or other necessary
9 structures in storing and retaining water, or for any of the purposes
10 provided for by this chapter, the city or town may occupy and use the
11 beds and shores up to the high water mark of any such watercourse or
12 lake, and acquire the right by purchase, or by condemnation and
13 purchase, or otherwise, to any water, water rights, easements or
14 privileges named in this chapter, or necessary for any of said
15 purposes, and the city or town may acquire by purchase or condemnation
16 and purchase any properties or privileges necessary to be had to
17 protect its water supply from pollution. Should private property be
18 necessary for any such purposes or for storing water above high water
19 mark, the city or town may condemn and purchase, or purchase and
20 acquire such private property. For the purposes of waterworks which
21 include facilities for the generation of electricity as a by-product,
22 nothing in this section may be construed to authorize a city or town
23 that does not own or operate an electric utility system to condemn
24 electric generating, transmission, or distribution rights or facilities
25 of entities authorized by law to distribute electricity, or to acquire
26 such rights or facilities without the consent of the owner.

27 (2)(a) For the purposes of providing and maintaining fire hydrants,
28 a city or town operating a waterworks system functions for the benefit
29 of its customers, not the general public. Fire hydrant services are
30 integral to the water services provided by a city or town to its
31 waterworks customers.

32 (b) The amount of the rates charged to customers by a city or town
33 for providing, operating, and maintaining fire hydrants must correlate
34 with the costs of providing, operating, and maintaining fire hydrants.
35 Rates paid by customers for fire hydrants must be used by the city or
36 town to finance the provision, operation, and maintenance of fire
37 hydrants.

1 **Sec. 3.** RCW 57.08.005 and 2009 c 253 s 1 are each amended to read
2 as follows:

3 A district shall have the following powers:

4 (1) To acquire by purchase or condemnation, or both, all lands,
5 property and property rights, and all water and water rights, both
6 within and without the district, necessary for its purposes. The right
7 of eminent domain shall be exercised in the same manner and by the same
8 procedure as provided for cities and towns, insofar as consistent with
9 this title, except that all assessment or reassessment rolls to be
10 prepared and filed by eminent domain commissioners or commissioners
11 appointed by the court shall be prepared and filed by the district, and
12 the duties devolving upon the city treasurer are imposed upon the
13 county treasurer;

14 (2) To lease real or personal property necessary for its purposes
15 for a term of years for which that leased property may reasonably be
16 needed;

17 (3) To construct, condemn and purchase, add to, maintain, and
18 supply waterworks to furnish the district and inhabitants thereof and
19 any other persons, both within and without the district, with an ample
20 supply of water for all uses and purposes public and private, including
21 fire hydrants, with full authority to regulate and control the use,
22 content, distribution, and price thereof in such a manner as is not in
23 conflict with general law and may construct, acquire, or own buildings
24 and other necessary district facilities. Where a customer connected to
25 the district's system uses the water on an intermittent or transient
26 basis, a district may charge for providing water service to such a
27 customer, regardless of the amount of water, if any, used by the
28 customer. District waterworks may include facilities which result in
29 combined water supply and electric generation, if the electricity
30 generated thereby is a by-product of the water supply system. That
31 electricity may be used by the district or sold to any entity
32 authorized by law to use or distribute electricity. Electricity is
33 deemed a by-product when the electrical generation is subordinate to
34 the primary purpose of water supply. For such purposes, a district may
35 take, condemn and purchase, acquire, and retain water from any public
36 or navigable lake, river or watercourse, or any underflowing water, and
37 by means of aqueducts or pipeline conduct the same throughout the
38 district and any city or town therein and carry it along and upon

1 public highways, roads, and streets, within and without such district.
2 For the purpose of constructing or laying aqueducts or pipelines, dams,
3 or waterworks or other necessary structures in storing and retaining
4 water or for any other lawful purpose such district may occupy the beds
5 and shores up to the high water mark of any such lake, river, or other
6 watercourse, and may acquire by purchase or condemnation such property
7 or property rights or privileges as may be necessary to protect its
8 water supply from pollution. For the purposes of waterworks which
9 include facilities for the generation of electricity as a by-product,
10 nothing in this section may be construed to authorize a district to
11 condemn electric generating, transmission, or distribution rights or
12 facilities of entities authorized by law to distribute electricity, or
13 to acquire such rights or facilities without the consent of the owner;

14 (4) To purchase and take water from any municipal corporation,
15 private person, or entity. A district contiguous to Canada may
16 contract with a Canadian corporation for the purchase of water and for
17 the construction, purchase, maintenance, and supply of waterworks to
18 furnish the district and inhabitants thereof and residents of Canada
19 with an ample supply of water under the terms approved by the board of
20 commissioners;

21 (5) To construct, condemn and purchase, add to, maintain, and
22 operate systems of sewers for the purpose of furnishing the district,
23 the inhabitants thereof, and persons outside the district with an
24 adequate system of sewers for all uses and purposes, public and
25 private, including but not limited to on-site sewage disposal
26 facilities, approved septic tanks or approved septic tank systems, on-
27 site sanitary sewerage systems, inspection services and maintenance
28 services for private and public on-site systems, point and nonpoint
29 water pollution monitoring programs that are directly related to the
30 sewerage facilities and programs operated by a district, other
31 facilities, programs, and systems for the collection, interception,
32 treatment, and disposal of wastewater, and for the control of pollution
33 from wastewater with full authority to regulate the use and operation
34 thereof and the service rates to be charged. Under this chapter, after
35 July 1, 1998, any requirements for pumping the septic tank of an on-
36 site sewage system should be based, among other things, on actual
37 measurement of accumulation of sludge and scum by a trained inspector,
38 trained owner's agent, or trained owner. Training must occur in a

1 program approved by the state board of health or by a local health
2 officer. Sewage facilities may include facilities which result in
3 combined sewage disposal or treatment and electric or methane gas
4 generation, except that the electricity or methane gas generated
5 thereby is a by-product of the system of sewers. Such electricity or
6 methane gas may be used by the district or sold to any entity
7 authorized by law to distribute electricity or methane gas.
8 Electricity and methane gas are deemed by-products when the electrical
9 or methane gas generation is subordinate to the primary purpose of
10 sewage disposal or treatment. The district may also sell surplus
11 methane gas, which may be produced as a by-product. For such purposes
12 a district may conduct sewage throughout the district and throughout
13 other political subdivisions within the district, and construct and lay
14 sewer pipe along and upon public highways, roads, and streets, within
15 and without the district, and condemn and purchase or acquire land and
16 rights-of-way necessary for such sewer pipe. A district may erect
17 sewage treatment plants within or without the district, and may
18 acquire, by purchase or condemnation, properties or privileges
19 necessary to be had to protect any lakes, rivers, or watercourses and
20 also other areas of land from pollution from its sewers or its sewage
21 treatment plant. For the purposes of sewage facilities which include
22 facilities that result in combined sewage disposal or treatment and
23 electric generation where the electric generation is a by-product,
24 nothing in this section may be construed to authorize a district to
25 condemn electric generating, transmission, or distribution rights or
26 facilities of entities authorized by law to distribute electricity, or
27 to acquire such rights or facilities without the consent of the owners;

28 (6) The authority to construct, condemn and purchase, add to,
29 maintain, and operate systems of reclaimed water as authorized by
30 chapter 90.46 RCW for the purpose of furnishing the district and the
31 inhabitants thereof with reclaimed water for all authorized uses and
32 purposes, public and private, including with full authority to regulate
33 the use and operation thereof and the service rates to be charged. In
34 compliance with other sections of this chapter, a district may also
35 provide reclaimed water services to persons outside the district;

36 (7)(a) To construct, condemn and purchase, add to, maintain, and
37 operate systems of drainage for the benefit and use of the district,
38 the inhabitants thereof, and persons outside the district with an

1 adequate system of drainage, including but not limited to facilities
2 and systems for the collection, interception, treatment, and disposal
3 of storm or surface waters, and for the protection, preservation, and
4 rehabilitation of surface and underground waters, and drainage
5 facilities for public highways, streets, and roads, with full authority
6 to regulate the use and operation thereof and, except as provided in
7 (b) of this subsection, the service rates to be charged.

8 (b) The rate a district may charge under this section for storm or
9 surface water sewer systems or the portion of the rate allocable to the
10 storm or surface water sewer system of combined sanitary sewage and
11 storm or surface water sewer systems shall be reduced by a minimum of
12 ten percent for any new or remodeled commercial building that utilizes
13 a permissive rainwater harvesting system. Rainwater harvesting systems
14 shall be properly sized to utilize the available roof surface of the
15 building. The jurisdiction shall consider rate reductions in excess of
16 ten percent dependent upon the amount of rainwater harvested.

17 (c) Drainage facilities may include natural systems. Drainage
18 facilities may include facilities which result in combined drainage
19 facilities and electric generation, except that the electricity
20 generated thereby is a by-product of the drainage system. Such
21 electricity may be used by the district or sold to any entity
22 authorized by law to distribute electricity. Electricity is deemed a
23 by-product when the electrical generation is subordinate to the primary
24 purpose of drainage collection, disposal, and treatment. For such
25 purposes, a district may conduct storm or surface water throughout the
26 district and throughout other political subdivisions within the
27 district, construct and lay drainage pipe and culverts along and upon
28 public highways, roads, and streets, within and without the district,
29 and condemn and purchase or acquire land and rights-of-way necessary
30 for such drainage systems. A district may provide or erect facilities
31 and improvements for the treatment and disposal of storm or surface
32 water within or without the district, and may acquire, by purchase or
33 condemnation, properties or privileges necessary to be had to protect
34 any lakes, rivers, or watercourses and also other areas of land from
35 pollution from storm or surface waters. For the purposes of drainage
36 facilities which include facilities that also generate electricity as
37 a by-product, nothing in this section may be construed to authorize a
38 district to condemn electric generating, transmission, or distribution

1 rights or facilities of entities authorized by law to distribute
2 electricity, or to acquire such rights or facilities without the
3 consent of the owners;

4 (8) To construct, condemn, acquire, and own buildings and other
5 necessary district facilities;

6 (9) To compel all property owners within the district located
7 within an area served by the district's system of sewers to connect
8 their private drain and sewer systems with the district's system under
9 such penalty as the commissioners shall prescribe by resolution. The
10 district may for such purpose enter upon private property and connect
11 the private drains or sewers with the district system and the cost
12 thereof shall be charged against the property owner and shall be a lien
13 upon property served;

14 (10) Where a district contains within its borders, abuts, or is
15 located adjacent to any lake, stream, groundwater as defined by RCW
16 90.44.035, or other waterway within the state of Washington, to provide
17 for the reduction, minimization, or elimination of pollutants from
18 those waters in accordance with the district's comprehensive plan, and
19 to issue general obligation bonds, revenue bonds, local improvement
20 district bonds, or utility local improvement bonds for the purpose of
21 paying all or any part of the cost of reducing, minimizing, or
22 eliminating the pollutants from these waters;

23 (11) Subject to subsection (7) of this section, to fix rates and
24 charges for water, sewer, reclaimed water, and drain service supplied
25 and to charge property owners seeking to connect to the district's
26 systems, as a condition to granting the right to so connect, in
27 addition to the cost of the connection, such reasonable connection
28 charge as the board of commissioners shall determine to be proper in
29 order that those property owners shall bear their equitable share of
30 the cost of the system. For the purposes of calculating a connection
31 charge, the board of commissioners shall determine the pro rata share
32 of the cost of existing facilities and facilities planned for
33 construction within the next ten years and contained in an adopted
34 comprehensive plan and other costs borne by the district which are
35 directly attributable to the improvements required by property owners
36 seeking to connect to the system. The cost of existing facilities
37 shall not include those portions of the system which have been donated
38 or which have been paid for by grants. The connection charge may

1 include interest charges applied from the date of construction of the
2 system until the connection, or for a period not to exceed ten years,
3 whichever is shorter, at a rate commensurate with the rate of interest
4 applicable to the district at the time of construction or major
5 rehabilitation of the system, or at the time of installation of the
6 lines to which the property owner is seeking to connect. In lieu of
7 requiring the installation of permanent local facilities not planned
8 for construction by the district, a district may permit connection to
9 the water and/or sewer systems through temporary facilities installed
10 at the property owner's expense, provided the property owner pays a
11 connection charge consistent with the provisions of this chapter and
12 agrees, in the future, to connect to permanent facilities when they are
13 installed; or a district may permit connection to the water and/or
14 sewer systems through temporary facilities and collect from property
15 owners so connecting a proportionate share of the estimated cost of
16 future local facilities needed to serve the property, as determined by
17 the district. The amount collected, including interest at a rate
18 commensurate with the rate of interest applicable to the district at
19 the time of construction of the temporary facilities, shall be held for
20 contribution to the construction of the permanent local facilities by
21 other developers or the district. The amount collected shall be deemed
22 full satisfaction of the proportionate share of the actual cost of
23 construction of the permanent local facilities. If the permanent local
24 facilities are not constructed within fifteen years of the date of
25 payment, the amount collected, including any accrued interest, shall be
26 returned to the property owner, according to the records of the county
27 auditor on the date of return. If the amount collected is returned to
28 the property owner, and permanent local facilities capable of serving
29 the property are constructed thereafter, the property owner at the time
30 of construction of such permanent local facilities shall pay a
31 proportionate share of the cost of such permanent local facilities, in
32 addition to reasonable connection charges and other charges authorized
33 by this section. A district may permit payment of the cost of
34 connection and the reasonable connection charge to be paid with
35 interest in installments over a period not exceeding fifteen years.
36 The county treasurer may charge and collect a fee of three dollars for
37 each year for the treasurer's services. Those fees shall be a charge
38 to be included as part of each annual installment, and shall be

1 credited to the county current expense fund by the county treasurer.
2 Revenues from connection charges excluding permit fees are to be
3 considered payments in aid of construction as defined by department of
4 revenue rule. Rates or charges for on-site inspection and maintenance
5 services may not be imposed under this chapter on the development,
6 construction, or reconstruction of property.

7 Before adopting on-site inspection and maintenance utility
8 services, or incorporating residences into an on-site inspection and
9 maintenance or sewer utility under this chapter, notification must be
10 provided, prior to the applicable public hearing, to all residences
11 within the proposed service area that have on-site systems permitted by
12 the local health officer. The notice must clearly state that the
13 residence is within the proposed service area and must provide
14 information on estimated rates or charges that may be imposed for the
15 service.

16 A water-sewer district shall not provide on-site sewage system
17 inspection, pumping services, or other maintenance or repair services
18 under this section using water-sewer district employees unless the on-
19 site system is connected by a publicly owned collection system to the
20 water-sewer district's sewerage system, and the on-site system
21 represents the first step in the sewage disposal process.

22 Except as otherwise provided in RCW 90.03.525, any public entity
23 and public property, including the state of Washington and state
24 property, shall be subject to rates and charges for sewer, water, storm
25 water control, drainage, and street lighting facilities to the same
26 extent private persons and private property are subject to those rates
27 and charges that are imposed by districts. In setting those rates and
28 charges, consideration may be made of in-kind services, such as stream
29 improvements or donation of property;

30 (12) To contract with individuals, associations and corporations,
31 the state of Washington, and the United States;

32 (13) To employ such persons as are needed to carry out the
33 district's purposes and fix salaries and any bond requirements for
34 those employees;

35 (14) To contract for the provision of engineering, legal, and other
36 professional services as in the board of commissioner's discretion is
37 necessary in carrying out their duties;

38 (15) To sue and be sued;

1 (16) To loan and borrow funds and to issue bonds and instruments
2 evidencing indebtedness under chapter 57.20 RCW and other applicable
3 laws;

4 (17) To transfer funds, real or personal property, property
5 interests, or services subject to RCW 57.08.015;

6 (18) To levy taxes in accordance with this chapter and chapters
7 57.04 and 57.20 RCW;

8 (19) To provide for making local improvements and to levy and
9 collect special assessments on property benefited thereby, and for
10 paying for the same or any portion thereof in accordance with chapter
11 57.16 RCW;

12 (20) To establish street lighting systems under RCW 57.08.060;

13 (21) To exercise such other powers as are granted to water-sewer
14 districts by this title or other applicable laws; and

15 (22) To exercise any of the powers granted to cities and counties
16 with respect to the acquisition, construction, maintenance, operation
17 of, and fixing rates and charges for waterworks and systems of sewerage
18 and drainage.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 57.08 RCW
20 to read as follows:

21 (1) For the purposes of providing, operating, and maintaining fire
22 hydrants, a district operates for the benefit of its customers, not the
23 general public. Fire hydrant services are integral to the water
24 services provided by a district to its customers.

25 (2)(a) A district may acquire, construct, operate, and maintain
26 fire hydrants as part of the district's waterworks system.

27 (b) A district has the same powers of imposing charges for
28 providing fire hydrants, collecting fire hydrant service charges, and
29 financing fire hydrants systems by issuing general obligation bonds,
30 issuing revenue bonds, and creating improvement districts as it has for
31 imposing charges for providing water, collecting delinquent water
32 service charges, and financing water systems by issuing general
33 obligation bonds, issuing revenue bonds, and creating improvement
34 districts.

35 (c) The amount of the rates charged to customers by a district for
36 providing, operating, and maintaining fire hydrants must correlate with

1 the costs of providing, operating, and maintaining fire hydrants.
2 Rates paid by customers for fire hydrants must be used by the district
3 to finance the provision, operation, and maintenance of fire hydrants.

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