
Local Government Committee

SB 5606

Brief Description: Concerning fire suppression water facilities and services provided by municipal and other water purveyors.

Sponsors: Senators Roach, Hasegawa, Litzow, Nelson, Mullet, Harper and Rivers.

Brief Summary of Bill

- Establishes the authority of water purveyors to supply fire suppression water facilities and services for cities, towns, and counties, and to recover the costs of providing those facilities and services.
- Provides liability protections for purveyors supplying fire suppression water facilities and services.

Hearing Date: 3/19/13

Staff: Michaela Murdock (786-7289).

Background:

Over 17,000 public water systems exist in this state. Public water systems may be owned by public, private non-profit, or investor-owned utilities. Many publicly owned public water systems are owned and operated by cities, towns, and water-sewer districts. Irrigation districts, public utility districts, and counties may also own and operate public water systems.

Water-sewer districts (districts) may purchase, construct, maintain, and supply waterworks to furnish water to inhabitants within and outside of the district, and may develop and operate systems of sewers and drainage. Districts may also create facilities, systems, and programs for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from the waste water. Districts are authorized to establish rates and charges for providing water and sewer services.

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.

Cities and towns may provide for the sewerage, drainage, and water supply of the city or town, and may establish, construct, and maintain water supply systems and systems of sewers and drains within or without their corporate limits. Cities and towns are also authorized to establish rates and charges for providing water and sewer services. In 2002 the Legislature passed House Bill 2902, which expressly authorizes cities and towns operating water supply systems to include fire hydrants as an integral utility service incorporated within general rates.

Counties may purchase, construct, and maintain a system or system of water supply within the county. Counties may control, regulate, operate, and manage such systems and provide funds by general obligation bonds, revenue bonds, and local improvement district bonds or assessments.

Public Water Systems.

A public water system is any system providing water intended for, or used for, human consumption or other domestic uses. It includes water source, purifying treatment, storage, transmission, pumping, and distribution facilities where water is furnished to a community, individuals, or is made available to the public for human consumption or domestic use. It does not include water systems serving one single-family residence. A "purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

Under the Public Water System Coordination Act of 1977, the secretary of the Department of Health must adopt performance standards relating to fire protection to be incorporated into the design and construction of new and expanding public water systems. The standards must be consistent with applicable national standards.

Case Law Relating to Local Government Funding of Fire Hydrants.

Local government may not impose taxes without statutory or constitutional authority. The Washington Constitution provides: "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." Local governments may impose a fee, however, pursuant to their general police power under the Washington Constitution.

In *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008) (*Lane*), the Washington Supreme Court announced that providing fire hydrants is a government responsibility, not a proprietary one, for which the government must pay out of its general fund. The court held that a monthly fire hydrant charge paid by water utility ratepayers to a public utility is not a fee, as the City of Seattle termed it, but rather an unlawful tax that violates Article VII, section 5 of the Washington Constitution. The court noted, however, that a tax on public utilities (rather than a fee charged to ratepayers) to make up the cost of fire hydrants would be lawful, even though the tax increase would result in the public utility increasing rates for ratepayers.

In *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 269 P.3d 1017 (2012) (*Bonney Lake*), the Washington Supreme Court considered issues similar to those considered in *Lane*.

Tacoma and Tacoma Public Utility had franchise agreements with Pierce County, Fircrest, University Place, and Federal Way to provide water services. Prior to *Lane*, Tacoma paid for fire

hydrants in its jurisdiction and the other jurisdictions by charging ratepayers a hydrant fee. Following *Lane*, Tacoma and Tacoma Public Utility ceased charging Tacoma ratepayers and instead sent bills to the other jurisdictions for hydrant costs. The jurisdictions refused to pay the costs.

Ultimately, the court in *Bonney Lake* held that Tacoma, acting in a proprietary capacity in entering into the franchise agreements, was contractually obligated by the agreements to provide hydrant services and to bear the costs of those services. It noted that Tacoma and Tacoma Public Utility could have negotiated for the costs of the hydrants to be borne by the other jurisdictions, but it had not. The court also declined to find that a charge for hydrants always results in a tax, and held that whether a charge is a tax or a fee depends on how the charge is levied.

Summary of Bill:

Intent. In enacting the bill, the Legislature specifically responds to the Washington Supreme Court cases of *Lane* and *Bonney Lake*. It finds that governmental and nongovernmental water purveyors play a key public service role in providing water for fire protection, and there is currently uncertainty and confusion as to a water purveyor's role, responsibilities, cost allocation, and recovery authority related to those services. The Legislature intends to address that uncertainty and confusion.

Definitions. Frequently used terms are defined, including:

- "fire suppression water facilities," which means water supply transmission and distribution facilities, inerties, pipes, valves, control systems, lines, storage, pumps, fire hydrants, and other facilities, or any part thereof, used or usable for the delivery of water for fire suppression purposes; and
- "fire suppression water services," which means operation and maintenance of fire suppression water facilities and the delivery of water for fire suppression purposes.

Cost Allocation and Recovery. A purveyor may allocate and recover the costs of fire suppression water facilities and services: (1) from all customers as costs of complying with state law and regulations, or (2) from customers based on service, benefits, burdens, and impacts; or (3) both.

Contracts for Facilities and Services. A city, town, or county may contract with purveyors for the provision of fire suppression water facilities, services, or both.

Payment by Counties. A county is not required to pay for fire suppression water facilities or services unless it is a customer, acting as a purveyor, or has agreed to do so consistent with applicable law.

Liability. Municipal and non-municipal purveyors are not liable for any damages that arise out of a fire event, relating to the operation, maintenance, and provision of fire suppression water facilities and services, under certain circumstances.

Consistent with applicable statute, agreements or franchises may include indemnification, hold harmless, or other risk management provisions under which purveyors may indemnify and hold harmless cities, towns, and counties against damages arising from fire suppression activities.

Other provisions. The statutory provisions are to be liberally construed, confer powers that are supplemental to powers conferred by other law, and do not affect or impair any ordinance, resolution, or contract lawfully entered into prior to the bill's effective date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.