

SENATE BILL REPORT

SB 5606

As Reported by Senate Committee On:
Governmental Operations, February 19, 2013

Title: An act relating to fire suppression water facilities and services provided by municipal and other water purveyors.

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 History:

Committee Activity: Governmental Operations: 2/19/13 [DP].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Braun, Conway, Fraser and Rivers.

Staff: Karen Epps (786-7424)

Background: General purpose and selected special purpose local governments are authorized to provide water-related utility services. This includes cities, towns, counties, water-sewer districts, and public utility districts.

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 wastewater. Districts are authorized to establish rates and charges for providing water and sewer services. 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. PUDs are authorized to establish rates and charges for providing water and sewer services.

Counties may provide for the sewerage, drainage, and water supply within all or a portion of a county. Counties may control, regulate, operate, and manage these systems. Cities and

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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 outside 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 HB 2902, which expressly authorizes cities and towns operating water supply systems to include fire hydrants as an integral utility service incorporated within general rates.

In *Lane v. City of Seattle*, 164 Wn.2d 875, 194 P.3d 977 (2008) (*Lane*), the Washington Supreme Court determined that the provision of fire hydrants is a general governmental responsibility. The Court held that financing the cost of fire hydrants through a monthly fire hydrant charge paid by water utility ratepayers is an unlawful tax that violates Article VII, section 5 of the Washington State Constitution.

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 Utilities 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 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 Utilities could have negotiated for the cost 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: A purveyor may allocate and recover the costs of fire suppression water facilities and services:

- from all customers as costs of complying with state law and regulations;
- from customers based on service, benefits, burdens, and impacts; or
- from both.

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

Municipal and nonmunicipal 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.

Frequently used terms are defined, including the following:

- fire suppression water facilities, which means water supply transmission and distribution facilities, interties, 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.

An intent section is included stating 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 statutory provisions must be liberally construed, confer powers that are supplemental to powers conferred by other law, and 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.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The court decision in *Lane* turned communities upside down. It essentially said that water districts and water purveyors could no longer charge its rate payers for fire protection systems and fire hydrants. Local water districts sent bills to counties and fire protection districts. When fire districts did not pay these bills, they were locked out of fire hydrants and padlocks were placed on the fire hydrants. This legislation will fix this problem. This bill will also give water purveyors incentives to maintain fire protection systems and fire hydrants. Water purveyors will develop a workable plan to maintain and keep their hydrants in working order in exchange for liability protection. This bill is critical to cities. After *Lane*, the cost of maintaining fire protection systems and fire hydrants became a general fund charge for cities and counties. This bill allows water purveyors to charge rates to pay for fire hydrants. This bill returns things to the way things have been handled for decades. Traditionally, water purveyors have charged for fire hydrants through the rate structure. Providing fire hydrants and the pipes and pumps to supply water to the hydrants is a cost of doing business for the utility. This bill is consistent with existing case law. This bill clarifies the immunities that purveyors have based on the theory that entities should not be punished for trying to help fight fires. The bill also provides that contracts entered into prior to the date the bill is enacted are approved and affirmed. Some purveyors have entered into contractual relationships with cities or counties to address this issue and this bill does not impact those relationships. Passage of this bill will likely save money. The liability issue is so important to the special purpose districts that some special purpose districts have said that they will not provide fire protection systems even if they are paid by the general purpose government. This bill addresses the issue of liability.

Persons Testifying: PRO: Beau Bakken, WA Fire Chiefs; Tom Brubaker, City of Kent; Blair Burroughs, WA Assn. of Sewer and Water Districts; Steve Lindstrom, Sno-King Water District Coalition; Dan Heid, City of Auburn; David St.Pierre, Pierce County.