

**RCW 35.92.010 Authority to acquire and operate waterworks—**

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

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

For such purposes any city or town may take, condemn and purchase, purchase, acquire, and retain water from any public or navigable lake or watercourse, surface or ground, and, by means of aqueducts or pipe lines, conduct it to the city or town; and it may erect and build dams or other works across or at the outlet of any lake or watercourse in this state for the purpose of storing and retaining water therein up to and above high water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, or waterworks or other necessary structures in storing and retaining water, or for any of the purposes provided for by this chapter, the city or town may occupy and use the beds and shores up to the high water mark of any such watercourse or lake, and acquire the right by purchase, or by condemnation and purchase, or otherwise, to any water, water rights, easements or privileges named in this chapter, or necessary for any of said purposes, and the city or town may acquire by purchase or condemnation and purchase any properties or privileges necessary to be had to protect its water supply from pollution. Should private property be necessary for any such purposes or for storing water above high water mark, the city or town may condemn and purchase, or purchase and acquire such private property. For the purposes of waterworks which include facilities for the generation of electricity as a by-product, nothing in this section may be construed to authorize a city or town that does not own or operate an electric utility system to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities

without the consent of the owner. [2002 c 102 s 2; 1991 c 347 s 18. Prior: 1985 c 445 s 4; 1985 c 444 s 2; 1965 c 7 s 35.92.010; prior: 1959 c 90 s 6; 1957 c 209 s 2; prior: 1951 c 252 s 1; 1947 c 214 s 1, part; 1933 c 163 s 1, part; 1931 c 53 s 1, part; 1923 c 173 s 1, part; 1913 c 45 s 1, part; 1909 c 150 s 1, part; 1899 c 128 s 1, part; 1897 c 112 s 1, part; 1893 c 8 s 1, part; 1890 p 520 s 1, part; Rem. Supp. 1947 s 9488, part. Formerly RCW 80.40.010.]

**Purpose—Findings—2002 c 102:** "The purpose of this act is to affirm the authority of cities and towns to operate fire hydrants and streetlights as part of their rate-based water and electric utilities, respectively. The legislature finds that it has been the practice of most, if not all, cities and towns, as well as water and sewer districts, to include the operation of fire hydrants for fire and maintenance purposes and to incorporate the cost of this operation as a normal part of the utility's services and general rate structure. The legislature further finds and declares that it has been the intent of the legislature that cities and towns, just as water and sewer districts, have the right to operate and maintain streetlights in the same manner as fire hydrants, that is, as a normal part of the electric utility and a normal part of that utility's general rate structure. The legislature therefore affirms that authority." [2002 c 102 s 1.]

**Severability—2002 c 102:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 102 s 4.]

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Intent—1985 c 444:** "For the purposes of this act, the legislature finds it is the policy of the state of Washington that:  
(1) The quality of the natural environment shall be protected and, where possible, enhanced as follows: Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(2) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public." [1985 c 444 s 1.]

**Construction—Economic feasibility study—1985 c 444:** "(1) Nothing in this act exempts any city or town, water district, or sewer district from compliance with applicable state and federal statutes and regulations including but not limited to: State environmental policy act, chapter 43.21C RCW; national environmental policy act, 42 U.S.C. Sec. 4321 et seq.; federal power act, 16 U.S.C. Sec. 791 et seq.; public utility regulatory policies act, 15 U.S.C. Sec. 717f;

Pacific northwest electric power planning and conservation act, 16 U.S.C. Sec. 839; energy financing voter approval act, chapter 80.52 RCW; water resources act, chapter 90.54 RCW; federal clean water act, 33 U.S.C. Sec. 1251 et seq.; the public water system coordination act, chapter 70.116 RCW; and the state clean water act, chapter 90.48 RCW.

(2) In addition, if the work proposed under this act involves a new water supply project combined with an electric generation facility with an installed capacity in excess of five megawatts which may produce electricity for sale in excess of present and future needs of the water system, then each of those with a greater than twenty-five percent ownership interest in the project shall jointly prepare an independent economic feasibility study evaluating the cost-effectiveness of the combined facility in the context of forecast regional water needs, alternate sources of water supply, and the potential impact of the combined facility on rates charged for water and electricity.

In addition to the economic feasibility study, the results of the environmental impact statement required by chapter 43.21C RCW and any review by the department of ecology made pursuant to chapter 90.54 RCW shall be made available to the public at least sixty days prior to any public vote on the new combined project.

(3) This act supplements the authority of cities and towns, water districts, and sewer districts and does not restrict or impose limits on any authority such municipal corporations may otherwise have under any laws of this state nor may the authority of such municipal corporations under other laws of this state be construed more narrowly on account of this act." [1985 c 444 s 7.]

**Severability—1985 c 444:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 444 s 8.]

**Validating—1917 c 12:** "Whenever any city or town has heretofore issued or authorized to be issued by such vote of its electors as is required by law at any election duly and legally held to vote on such proposition, such utility bonds for the purpose of purchasing, paying for or acquiring any such utility as is described in this act, in every such case such utility bonds are hereby declared to be legal and valid, and such city or town is hereby authorized and empowered to proceed to issue and negotiate such bonds and to continue and conclude proceedings for the purchase or acquirement of such utility, and is hereby given full power to maintain and operate the same within all and every part of such contiguous territory whether incorporated or unincorporated." [1917 c 12 s 2.]

**Validating—1909 c 150:** "That in all cases where the qualified electors of any city or town have heretofore, at any election, ratified any plan or system of any public utility mentioned in section 1 of this act, and shall have authorized a general indebtedness of such city or town and the issuance of bonds therefor, or the creation of a special fund or funds out of the revenues of the public utility the plan or system of which was so ratified, and the issuance of bonds or warrants payable only out of such fund or funds; and pursuant to such authorization or ratification a general indebtedness shall have been incurred or authorized to be incurred, and bonds or other

obligations issued or contracted to be issued or authorized to be issued, or a special fund or funds shall have been created out of the revenue of any such public utility by pledging or setting aside a fixed proportion of such revenues, or a fixed amount out of and not exceeding a fixed proportion or a fixed amount without regard to any fixed proportion, and bonds or warrants payable either upon the call of such city or town or at a fixed date, but only out of such special fund or funds, issued or contracted to be issued or authorized to be issued, or a contract or contracts for the purchase, construction, acquisition, improvement, betterment, or addition to such public utility entered into; such general indebtedness, bonds or other obligations, contracts, special funds, and bonds or warrants, payable out of such special funds, and all proceedings relating thereto, are hereby ratified, confirmed and validated; and any bonds or other obligations constituting a general indebtedness, or bonds or warrants payable out of such special funds, heretofore so authorized, may be hereafter issued or sold as if all of said proceedings were taken pursuant to and under the authority of this act, and in full compliance therewith." [1909 c 150 s 5.]

*Eminent domain by cities: Chapter 8.12 RCW.*

*Evaluation of application to appropriate water for electric generation facility: RCW 90.54.170.*