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SENATE BILL 5606

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Roach, Hasegawa, Litzow, Nelson, Mullet, Harper, and Rivers

Read first time 02/05/13. Referred to Committee on Governmental Operations.

1            AN ACT Relating to fire suppression water facilities and services  
2 provided by municipal and other water purveyors; and adding a new  
3 chapter to Title 70 RCW.

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

5            NEW SECTION.    **Sec. 1.**    FINDINGS AND DECLARATION OF PURPOSE.    (1)  
6 The legislature finds that historically governmental and  
7 nongovernmental water purveyors have played two key public service  
8 roles: Providing safe drinking water and providing water for fire  
9 protection. This dual function approach is a deeply embedded and  
10 state-regulated feature of water system planning, engineering,  
11 operation, and maintenance. This dual function enables purveyors to  
12 provide these critical public services in a cost-effective way that  
13 protects public health and safety, promotes economic development, and  
14 supports appropriate land use planning.

15            (2) The legislature finds that the provision of integrated, dual  
16 function water facilities and services benefits all customers of a  
17 purveyor, similar to other benefits provided to water system customers  
18 in response to regulation regarding safe drinking water such as  
19 treatment and water quality monitoring.

1 (3) The legislature finds that water purveyors plan, construct,  
2 acquire, operate, and maintain fire suppression water facilities in  
3 response to regulatory requirements, including without limitation the  
4 public water system coordination act, RCW 70.116.080, the design of  
5 public water systems and water system operations requirements, chapter  
6 246-290 WAC, Parts 3 and 5, the state building code, chapter 19.27 RCW,  
7 and the international fire code. The availability of infrastructure  
8 and water to fight fires allows for the development and habitability of  
9 property, increases property values, and benefits customers and  
10 property through lower casualty insurance rates.

11 (4) The legislature finds that recent Washington supreme court  
12 decisions, including *Lane v. City of Seattle*, 164 Wn.2d 875 (2008), and  
13 *City of Tacoma v. City of Bonney Lake, et al.*, 173 Wn.2d 584 (2012),  
14 have created uncertainty and confusion as to the role,  
15 responsibilities, cost allocation, and recovery authority of water  
16 purveyors. If left unresolved, the absence of legal clarity will  
17 adversely affect the availability and condition of fire suppression  
18 infrastructure necessary to protect life and property.

19 (5) It is the legislature's intent to determine appropriate methods  
20 of organizing public services and the authority of water purveyors with  
21 respect to critical public services. The legislature further intends  
22 this chapter to clarify the authority of water purveyors to provide  
23 fire suppression water facilities and services and to recover the costs  
24 for those facilities and services. The legislature also intends to  
25 provide liability protections appropriate for water purveyors engaged  
26 in this vital public service.

27 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
28 section apply throughout this chapter unless the context clearly  
29 requires otherwise.

30 (1) "Fire suppression water facilities" means water supply  
31 transmission and distribution facilities, interties, pipes, valves,  
32 control systems, lines, storage, pumps, fire hydrants, and other  
33 facilities, or any part thereof, used or usable for the delivery of  
34 water for fire suppression purposes.

35 (2) "Fire suppression water services" or "services" means operation  
36 and maintenance of fire suppression water facilities and the delivery  
37 of water for fire suppression purposes.

1 (3) "Municipal corporation" means any city, town, county, water-  
2 sewer district, port district, public utility district, irrigation  
3 district, and any other municipal corporation, quasi-municipal  
4 corporation, or political subdivision of the state.

5 (4) "Purveyor" has the same meaning as set forth in RCW  
6 70.116.030(4).

7 NEW SECTION. **Sec. 3.** COST ALLOCATION AND RECOVERY. A purveyor  
8 may allocate and recover the costs of fire suppression water facilities  
9 and services from all customers as costs of complying with state laws  
10 and regulations, or from customers based on service to, benefits  
11 conferred upon, and burdens and impacts caused by various classes of  
12 customers, or both.

13 NEW SECTION. **Sec. 4.** CONTRACTS TO PROVIDE FOR FACILITIES AND  
14 SERVICES. A city, town, or county may contract with purveyors for the  
15 provision of fire suppression water facilities, services, or both. The  
16 contract may take the form of a franchise agreement, an interlocal  
17 agreement pursuant to chapter 39.34 RCW, or an agreement under other  
18 contracting authority, and may provide for funding or cost recovery of  
19 fire suppression water facilities, services, or both, as the parties  
20 may agree.

21 NEW SECTION. **Sec. 5.** PAYMENT BY COUNTIES. A county is not  
22 required to pay for fire suppression water facilities or services  
23 except: (1) As a customer of a purveyor; (2) in areas where a county  
24 is acting as a purveyor; or (3) where a county has agreed to do so  
25 consistent with section 4 of this chapter.

26 NEW SECTION. **Sec. 6.** LIABILITY PROTECTION FOR FIRE SUPPRESSION  
27 WATER FACILITIES AND SERVICES. (1) A purveyor that is a municipal  
28 corporation is not liable for any damages that arise out of a fire  
29 event and relate to the operation, maintenance, and provision of fire  
30 suppression water facilities and services that are located within or  
31 outside its corporate boundaries.

32 (2) A purveyor that is not a municipal corporation is not liable  
33 for any damages that arise out of a fire event and relate to the  
34 operation, maintenance, and provision of fire suppression water

1 facilities and services if the purveyor has a description of fire  
2 hydrant maintenance measures. The description of fire hydrant  
3 maintenance measures must be kept on file by the water purveyor and be  
4 available to the public and may be included within the purveyor's most  
5 recently approved water system plan or small water system management  
6 program.

7 (3) Consistent with RCW 36.55.060, with respect to counties and  
8 notwithstanding the provisions of subsections (1) and (2) of this  
9 section, agreements or franchises may, as the parties mutually agree,  
10 include indemnification, hold harmless, or other risk management  
11 provisions under which purveyors indemnify and hold harmless cities,  
12 towns, and counties against damages arising from fire suppression  
13 activities during fire events. Such provisions are unaffected by  
14 subsections (1) and (2) of this section.

15 NEW SECTION. **Sec. 7.** LIBERAL CONSTRUCTION. This chapter is  
16 exempted from the rule of strict construction and must be liberally  
17 construed to give full effect to the objectives and purposes for which  
18 it was enacted.

19 NEW SECTION. **Sec. 8.** POWERS CONFERRED BY CHAPTER ARE  
20 SUPPLEMENTAL. (1) The powers and authority conferred by this chapter  
21 are supplemental to powers and authority conferred by other law, and  
22 nothing contained in this chapter may be construed as limiting any  
23 other powers or authority of any municipal corporation or other entity  
24 under applicable law.

25 (2) As to water companies that are regulated by the utilities and  
26 transportation commission under Title 80 RCW, nothing in this chapter  
27 is intended to change or limit the authority or jurisdiction of the  
28 utilities and transportation commission.

29 NEW SECTION. **Sec. 9.** RATIFICATION OF PRIOR ACTS. To the extent  
30 that they provide for or address funding, cost allocation, and recovery  
31 of fire suppression water facilities and services, all ordinances,  
32 resolutions, and contracts adopted, entered, implemented, or performed  
33 prior to the effective date of this section are hereby validated,  
34 ratified, and confirmed. This chapter must not affect or impair any

1 ordinance, resolution, or contract lawfully entered into prior to the  
2 effective date of this section.

3 NEW SECTION. **Sec. 10.** CODIFICATION. Sections 1 through 9 of this  
4 act constitute a new chapter in Title 70 RCW.

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