

subsection must act in a manner that is consistent with the approved county debt policy adopted in accordance with RCW 36.48.070.

Expanded Authority for Joint Utility Operations (ESHB 1332, Ch. 258, Laws of 2011)²

May 5, 2011 – Governor Chris Gregoire recently signed ESHB 1332, a new law that will significantly boost the ability of Washington municipalities to provide water, wastewater, storm and flood water services on a joint basis.

The ESHB 1332 authorizes a new type of intergovernmental municipal corporation known as a “joint municipal utility services authority.” An authority can be created by existing local government utilities to provide either wholesale or retail services on a cooperative basis. The most likely users in the near term will be cities, counties and special purpose districts that desire to provide joint wholesale services to their existing utilities – services such as water supply sources or wastewater services. In the longer term, some local governments likely will form joint authorities to provide more cost-efficient retail services to customers. However, cities may be hesitant to completely transfer retail utility service to joint authorities if it adversely affects their ability to collect utility taxes.

ESHB 1332 allows municipal utilities to execute “formation agreements” that determine the services, the basic governance structure, the framework for capital planning, budgeting, rates, borrowing, asset transfer, and many other features of the entity they create. In other words, the participating governments can write their own “charter” for the new intergovernmental municipal corporation. ESHB 1332 also allows those governments to pick which personnel, public works, eminent domain and surplus property laws will govern the new entity; they are permitted to pick from among the laws that apply to any of the members. However, the new joint authority statute does not add any substantive powers beyond those that may already be exercised by the utility members.

A joint utility authority will have substantial advantages over the joint boards or nonprofit corporations that have been formed in the past under the Interlocal Cooperation Act (Chapter 39.34 RCW). Existing joint boards do not have clear legal authority to own property, to hire employees, or to enter into contracts. Governmentally-created nonprofit corporations frequently encounter uncertainty, among those with whom they contract, as to whether they are “private” or “public.” (They are public instrumentalities, but some are puzzled about how an organization created under the statute for private nonprofit corporations is actually a public entity.) A joint authority created under ESHB 1332 is clearly designated as a municipal corporation, so there should be no confusion that it is a true governmental entity. There should also be no more confusion about whether and which public works, procurement, surplus property and eminent domain laws apply. Finally, the ESHB 1332 specifies that payments and asset transfers among governmental members of a joint authority are exempt from taxation. Property owned by a joint authority will automatically be exempt from property tax because such an authority is clearly designated as a municipal corporation.

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ESHB 1332 will be a convenient tool and provide a significant opportunity for efficient services and cost savings for local government utilities and their ratepayers.

ESHB 1332 was developed by a committee comprised of representatives of more than 40 state and local entities and several local government associations. ESHB 1332 was drafted primarily by Hugh Spitzer of Foster Pepper PLLC. The process was encouraged by the State Departments of Ecology and Health, which are interested in encouraging efficiencies through interlocal cooperation in the utility field.

Allocation of General Fund Revenues to Ambulance Utilities (SHB 1596, Ch. 139, Laws of 2011)

Legislation was passed in 2005 in response to the Washington State Supreme Court ruling in *Arborwood, Idaho, L.L.C. v. City of Kennewick*, 151 Wn. 2d 359 (2004) that found the charges that cities were using to fund their ambulance utilities were taxes rather than fees. One of the requirements of the legislation was that 70 percent of the total costs of the utility, as of May 5, 2004, had to be funded by general fund money.

This bill repeals that requirement and gives cities more budget flexibility in their general fund. Before cities can reduce their general fund allocation, however, they must hold a public hearing with 30 days notice being given in the ratepayers bills. At that hearing they must present the most recent cost of service study for the utility, a summary of current utility revenue sources, a budget for the utility with the reduced allocation, and any proposed changes in utility rates and/or level of service.

State-shared Revenue Allocations Reduced in Operating Budget (2ESHB 1087, Ch. 50, Laws of 2011, 1st sp. sess.)

Several sections of the state's 2011-2013 operating budget reduce state-shared revenue allocations to cities and counties by 3.4 percent per year for the 2011-2013 biennium. Revenue allocations that are decreased include:

Section 960. Liquor revolving fund (Liquor board profits)

Section 969. Liquor excise tax

Sections 970-972. Criminal justice revenues under RCW 82.14.310, RCW 82.14.320, and RCW 82.14.330

Section 974. Streamlined sales tax mitigation

Section 975. City-county assistance account

In some cases the amendment to the statute explicitly states that the decrease is 3.4 percent. For example, section 970 amends RCW 82.14.310 by adding the following language:

During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the county criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent.