

**Joint Municipal Utility Services Act**  
**ESHB 1332**  
**Section-by-Section Analysis**

**Overview**

This legislation would establish an improved interlocal mechanism for cooperation among local government utilities that provide water, wastewater, stormwater and/or flood control services. The bill is a result of a six-month statewide collaborative process that was convened by the State Departments of Ecology and Health and involved more than 30 local governments and associations. That process identified two dozen specific technical and structural issues that municipal utilities encounter when they use existing statutes (including the Interlocal Cooperation Act, Chap. 39.34 RCW) for collaborative service delivery. The legislation was drafted to address these specific issues, and does not provide any new powers or alter existing powers of local government utilities. The legislation authorizes cities, towns, counties, and special purpose districts voluntarily to form an intergovernmental municipal corporation that could provide services to those local utilities and their customers.

**Section 1. Title of Act – Declaration of Purpose**

The legislation is entitled the “Joint Municipal Utility Services Act.”

The purpose of the Act is to improve the ability of local government utilities to plan, finance, construct, operate and provide facilities and services on a joint basis and thereby to improve public services and reduce costs. This section expressly provides that the legislation is not intended to expand the types of services that local government utilities provide or to alter the regulatory powers of state or local agencies.

**Section 2. Definitions**

This section provides five key definitions that are used in the legislation: “Agreement,” “Authority,” “Board of Directors,” “Member,” and “Utility Services.”

A “Member” is a city, county, special purpose district or other unit of government of Washington or another state that provides utility services and that is a party to an Agreement forming an Authority, together with any federally-recognized Indian Tribe that signs an Agreement with those local governments. “Utility Services” is defined as the provision of water supply and conservation services, wastewater collection, treatment and disposal, water pollution monitoring programs, the management of reclaimed water, and the management of handling storm and flood waters.

**Section 3. Formation of Authority – Characteristics – Substantive Powers**

Under this section, an Authority may be formed by two or more members by executing a Joint Municipal Utility Services Agreement. An Agreement must be approved by the legislative authority of each of the Members and filed with the Secretary of State. Upon filing, the Authority is deemed to have been formed and then exists as a municipal corporation.

An Authority may perform Utility Services that all of its non-tribal members may perform under applicable law. The boundary and the service area of an Authority is the boundary and service area of its Members.

When a local government enters into an Authority, it does not reduce that Member's powers in connection with the provision of Utility Services or its taxing power with respect to those services. Further, the legislation does not diminish the authority of local governments to enter into other agreements under the Interlocal Cooperation Act (Chapter 39.34 RCW) or other law. Nothing in the legislation is to impair or diminish a valid water right.

#### **Section 4. Authority Corporate Powers**

This section provides a detailed list of the types of powers that a joint municipal utility services authority may exercise in providing Utility Services. These include, among other things, the power to sue and be sued, to acquire control, lease and dispose of property, to borrow money, to enter into contracts, to receive loans and grants, to hire employees and to indemnify those employees and the officers of the Authority, to impose fees, rates and charges, to impose a lien for unpaid retail rates and charges, and to promote its conservation and other programs. With the consent of the member within whose geographic boundaries an Authority so acting, an Authority may require property owners to connect to a wastewater collection system, to participate in a septic system inspection program, or to create a local improvement district or a utility local improvement district.

An Authority, as a public body, is subject to the Public Records Act (Chapter 42.56 RCW), the Open Public Meetings Act (Chapter 42.30 RCW), and the Code of Ethics for Municipal Officers (Chapter 42.23 RCW). An Authority is audited by the State Auditor.

An Authority is subject to a number of restrictions. It may not levy taxes. It may exercise eminent domain only if all of its members can do so. When exercising the power of eminent domain, an Authority may use the eminent domain statute applicable to any of its members, as set forth in the formation Agreement. If all of the members are the same type of local government, it must use the eminent domain statute applicable to that category of municipality.

As a public body without taxing power, an Authority may not issue general obligation bonds, but may issue only revenue obligations. However, an Authority is permitted to pledge its full faith and credit to amounts due under a financing contract under the state treasurer's certificate-of-participation program or other federal or state financing program. An Authority's obligations are its own, and are not obligations of its individual members except to the extent

established under the provisions of a formation agreement or otherwise expressly provided by contract.

In order for an Authority to provide retail utility services in a geographic area, one or more of its members must have the legal authority to provide utility service in that area under applicable law.

### **Section 5. Elements of Joint Municipal Utility Services Agreements**

This section details the topics that must be covered in an agreement that forms an Authority. However, the failure to provide for one of the listed elements is not fatal to formation.

A Joint Municipal Utility Services Agreement must, among other things: specify the utility services to be provided, specify how board directors will be appointed and how they will vote, how the Agreement may be amended, how additional Members may join and leave, how an Authority may be dissolved (subject to bond and other obligations), list any powers that the Authority will not be permitted to exercise, specify which personnel, public works, lien, and eminent domain laws will apply, specify how its treasurer will be appointed (which for smaller Authorities must be a county or city treasurer), and describe how budgets, rates and charges and borrowing will be handled.

All members of the board of directors of an Authority must be elected officials of governmental members of that Authority.

### **Section 6. Authority of Members to Assist Authority and to Transfer Funds, Property and other Assets**

This section expressly authorizes Members of an Authority to transfer funds, property and other assets to an Authority, with or without compensation.

### **Section 7. Tax Matters**

This section states that the property of an Authority, as a governmental body, is not subject to property taxation and is eligible to receive other tax exemptions that may be available to its local government Members under other laws.

### **Section 8. Conversion of Existing Entities into Authorities**

This section permits interlocal entities that are formed under Chapter 39.34 RCW or other laws to become Authorities by filing amended or restated agreements that materially comply with the requirements of Section 5 of the Act. If one of the original participants in an existing Interlocal Agreement that relates to Utility Services is a City or County that does not provide or no longer provides Utility Services, that entity may continue to be a Member of the Authority.

### **Section 9. Powers Are Supplemental**

This section confirms that the legislation is meant to confer powers that are supplemental to those already provided by law.

### **Section 10. Tort Claims**

This section makes it clear that a Joint Municipal Utility Services Authority or an entity created under the Interlocal Cooperation Act is subject to the both the liabilities and the protection provided under Chapter 4.96 RCW (the tort claims statute).

### **Sections 11 through 14. Exemptions from Specified Excise Taxes**

These sections add new sections to RCW chapters 82.04, 82.08, 82.12 and 82.16 to make it clear that payments between a Joint Municipal Utility Services Authority and its Members do not constitute taxable events under the Business and Occupations Tax, the Retail Sales and Use Taxes, the Public Utility Tax, respectively.

### **Section 15. Flood Control Districts**

This section makes it clear that Flood Control Districts may participate in inter-governmental entities created under either the Interlocal Cooperation Act (Chapter 39.34 RCW) or the Joint Municipal Utility Services Act.

### **Section 16. Flood Control Zone Districts**

This section clarifies the power of a Flood Control Zone District to participate in inter-governmental entities created under either the Interlocal Cooperation Act (Chapter 39.34 RCW) or the Joint Municipal Utility Services Act.

### **Section 17. Codification**

Sections 1 through 9 of the legislation are codified as a new chapter in Title 39, RCW.