

# HOUSE BILL REPORT

## HB 2902

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**As Passed House:**

February 19, 2002

**Title:** An act relating to local government utility authority.

**Brief Description:** Affirming the authority of cities and towns to operate fire hydrants and streetlights.

**Sponsors:** By Representatives Santos, McDermott and Kenney.

**Brief History:**

**Committee Activity:**

Local Government & Housing: 2/5/02, 2/7/02 [DP].

**Floor Activity:**

Passed House: 2/19/02, 65-32.

**Brief Summary of Bill**

- Adds fire hydrants and street lights to the municipal utility statutes, and states they are integral utility service incorporated within general rates.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

**Majority Report:** Do pass. Signed by 6 members: Representatives Dunshee, Chair; Edwards, Vice Chair; Berkey, Hatfield, Kirby and Sullivan.

**Minority Report:** Without recommendation. Signed by 5 members: Representatives Mulliken, Ranking Minority Member; Crouse, DeBolt, Dunn and Mielke.

**Staff:** Scott MacColl (786-7106).

**Background:**

Cities and towns are authorized to operate as utilities and set the rates and charges for providing the service of water, sewer, electric power, heating fuel, solid waste removal, and transportation facilities.

Cities legislative authorities may order any local improvement to be constructed for a

number of services, including street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation, and water mains, hydrants, and apparatuses to trunk water.

The Attorney General's Office issued an opinion on January 17, 2001 [AGO 2001 No. 1] which answered the question brought by the state auditor's office of whether or not cities and towns have the authority to impose a charge on their utility customers for the maintenance and operation of street lights. The answer was in the negative.

The answer is predicated on the fact that street lighting is not specifically mentioned in the municipal utility statutes as a "utility" a city or town might operate. The opinion further states that street lighting cannot be easily matched with current authorized utility functions due to the fact that no one can use 'less' of a street light, whereas a customer can regulate the use of any other utility function. The opinion goes on to state that a utility necessarily involves the furnishing of a measurable service to particular persons and does not include services which benefit the general public.

Attorney general opinions are not legally binding to a court, but are persuasive.

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**Summary of Bill:**

Fire hydrants are included in the municipal utility authority for water service as an integral utility service incorporated within general rates.

Streetlights are included in the municipal utility authority for electricity service as an integral utility service incorporated within general rates.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

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

**Testimony For:** Numerous cities already have taken this measure, and virtually every city and town does this for fire hydrants. Water and sewer districts have authority to charge for street lights, and the same authority should be granted for cities. Two percent or less constitutes the cost of street lights on a person's electric bill. In the city's budget, \$5 to \$6 million is redirected to transportation due to not having to pay for street lights. This has been in effect for many years, and cities are simply seeking clarification on the matter.

**Testimony Against:** Utilities should not be allowed to charge their ratepayers this fee,

as street lights are a public safety responsibility, not a utility function. The State Auditor questioned this practice, and the attorney general opinion concluded that cities did not have the authority. Then, this November, King County Superior Court upheld that decision, and declared that the city didn't have authority to transfer rates for streetlights. This transfer amounts to \$7 million in 2002, and is added on to a 60 percent increase that was added to the rates in 2001. Now Tacoma and Puget Sound Energy have lower rates than Seattle. There are also provisions in statute that allow fire hydrants. No public or private utility can charge for street lights, and this change would affect poor and middle income folks unfairly. This imposition of utilities on customers for street lights constitutes a tax.

**Testified:** (In support) Dwight Dively, city of Seattle.

(Opposed) Rud Okeson, citizen; Walter Williams, citizen; Jorgen Bader, Seattle Community Council Federation; and Arthur T. Lane, citizen.