

# HOUSE BILL REPORT

## HB 2733

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### As Reported by House Committee On: Transportation

**Title:** An act relating to rates and charges for storm water control facilities.

**Brief Description:** Concerning rates and charges for storm water control facilities.

**Sponsors:** Representatives Jinkins, Upthegrove and Clibborn.

#### **Brief History:**

##### **Committee Activity:**

Transportation: 1/31/12, 2/6/12 [DPS].

#### **Brief Summary of Substitute Bill**

- Removes the requirement that a local government utility charge its own streets or roads for storm water impacts in order to charge the state.
- Sets the rate to be charged to the state by utilities that do not charge the state during fiscal year 2013 at 10 percent of the rate of comparable real property in fiscal year 2014, 20 percent of the rate in fiscal year 2015, and 30 percent of the rate in fiscal year 2016 and thereafter.
- Allows local government utilities to charge their own streets or other local entities at any rate determined by the legislative authority of that local government utility.
- Requires that state payments to local government utilities be used for facilities that reduce state highway runoff rather than those that directly reduce state highway runoff.
- Removes current planning and reporting requirements.
- Directs local government utilities and the state to develop a simplified planning and reporting process; this may determine the comparable property upon which the rate to be charged to the state is based.
- Requires the Washington State Department of Transportation to request supplemental appropriations when the amounts charged by local government utilities exceed the amount of funds appropriated for this purpose.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Asay, Eddy, Finn, Fitzgibbon, Hansen, Jinkins, Ladenburg, Moeller, Morris, Moscoso, Reykdal, Ryu, Takko, Upthegrove and Zeiger.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Johnson, Klippert, Kristiansen, McCune, Overstreet, Rivers and Shea.

**Staff:** Christie Parker (786-7322).

### **Background:**

State law allows local government utilities to charge the Washington State Department of Transportation (WSDOT) for the construction, operation, and maintenance of storm water control facilities. The rate to be charged is 30 percent of the rate for comparable real property. The rate is only charged for limited-access facilities. The rate charged to the state may not be greater than the rate charged to cities and counties within the same jurisdiction; thus, local entities must charge themselves for storm water impacts if they are to charge the state. These charges to the state are declared to be presumptively fair and equitable because the state invests in the construction, operation, and maintenance of storm water control facilities that control runoff from state highways. Funds paid by the state must be used solely for storm water control facilities that directly reduce state highway runoff impacts or to implement best management practices that reduce the need for storm water control facilities. Local government utilities are required to develop an annual plan for the expenditure of the storm water charges and provide a progress report on the use of charges assessed for the prior year.

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### **Summary of Substitute Bill:**

Local government utilities may charge the state regardless of whether the utility charges its own streets or roads for storm water impacts. Utilities that do not charge the state for storm water impacts during fiscal year 2013 may charge the state at 10 percent of the rate for comparable real property during fiscal year 2014, 20 percent of the rate during fiscal year 2015, and 30 percent of the rate during fiscal year 2016 and thereafter. Local government utilities may charge their own streets or other local entities at any rate determined by the legislative authority of that local government utility. Utilities shall clearly demonstrate that funds received by local storm water utilities from the state are used solely for storm water facilities that reduce state highway runoff impacts or that implement practices that reduce the need for storm water facilities. Current planning and reporting requirements are removed. Local government utilities and the WSDOT are directed to develop a simplified planning and reporting process for storm water fees; this process may include a determination of the comparable property upon which the rate charged to the state is based. If charges to the state

exceed appropriations for this purpose, the WSDOT must seek additional appropriations from the Legislature.

**Substitute Bill Compared to Original Bill:**

The amended bill sets new rates for utilities that did not charge the state in fiscal year 2013; these rates are 10 percent of the rate for comparable real property in fiscal year 2014, 20 percent in fiscal year 2015, and 30 percent in fiscal year 2016 and thereafter. The original bill removed the requirement that state payments to local government utilities be used solely for facilities that directly reduce state highway runoff and added that payments must be used for purposes consistent with the 18th Amendment of the state Constitution. The substitute bill restores current law language requiring that payments be used for facilities that reduce state highway runoff and removes the reference to the 18th Amendment of the state Constitution. The substitute bill removes language from the original bill declaring that rates determined by local government utilities for local highway rights-of-way are presumptively fair and equitable. The substitute bill directs local government utilities and the state to develop a simplified planning and reporting process and allows them to determine what the "comparable real property" upon which the rate to be charged to the state should be based. The substitute bill directs the WSDOT to request supplemental appropriations if amounts charged exceed appropriations.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect July 1, 2013.

**Staff Summary of Public Testimony:**

(In support) Various cities are involved in mitigating storm water impacts from facilities they do not own. Current law prohibits them from seeking reimbursement from the state for runoff on Interstate 5 in Tacoma. All rate payers are not treated fairly and Tacoma residents subsidize the state. The Joint Transportation Committee (JTC) conducted a study during the 2011 interim; this provided an opportunity to take a thoughtful approach to the matter. The study presented a modest option that eliminates the requirement that cities charge their own streets in order to charge the state; it also eliminates the reporting requirement. The bill has an implementation date in 2013 because this bill results in a cost shift to the WSDOT. The legislation keeps intact the WSDOT's ability to approve the charges. A fiscal impact of \$4 million per biennium is not very much, especially if compared to the costs of contamination of the Thea Foss waterway. Cities have a fiduciary duty to use funds from these charges for storm water treatment. Under current law, the WSDOT staff can unilaterally decide not to approve a plan so many cities do not try to develop a plan or to charge the state. There is confusion as to what current law means and what authority local jurisdictions have. The bill will help prevent court challenges.

(Opposed) This bill would significantly increase costs to the WSDOT's maintenance program. It reduces the benefit that the WSDOT derives from expenditures and reduces accountability for use of the funds. The JTC study estimated that by eliminating the requirement that cities charge their own streets, state costs could increase by \$4 million a biennium. However, this could be as high as \$6 million because cities in eastern Washington might also charge the state. If cities are no longer required to charge their own streets, there is no basis for determining comparable real property. The term "local highway rights-of-way" is not defined; having this language in the bill may open the door to charging the state for non-limited access highways. Under current law, local governments must demonstrate how charges paid improve impacts from state highway runoff. The bill broadens this to allow funds to be used for any highway purpose; this means that the funds could be used to mitigate impacts from city roads and county roads rather than from state highways. Under current law, the WSDOT pays \$4 million in fees and gets \$4 million in benefits; if this bill passes, the WSDOT might spend \$4 million and get zero benefit.

**Persons Testifying:** (In support) Representative Jinkins, prime sponsor; Ashley Probart, Association of Washington Cities; Dick McKinley, City of Tacoma; and Will Patton, City of Bainbridge Island.

(Opposed) Chris Christopher and Rico Baroga, Washington State Department of Transportation.

**Persons Signed In To Testify But Not Testifying:** None.