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SECOND SUBSTITUTE HOUSE BILL 2031

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State of Washington                      54th Legislature                      1996 Regular Session

By House Committee on Transportation (originally sponsored by Representative K. Schmidt)

Read first time 02/02/96.

1            AN ACT Relating to storm water facility charges for highway rights  
2 of way; amending RCW 90.03.525; adding a new section to chapter 90.03  
3 RCW; adding a new chapter to Title 90 RCW; creating a new section; and  
4 providing an expiration date.

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

6            **Sec. 1.** RCW 90.03.525 and 1986 c 278 s 54 are each amended to read  
7 as follows:

8            (1) The rate charged by a local government utility to the  
9 department of transportation with respect to state highway right of way  
10 or any section of state highway right of way for the construction,  
11 operation, and maintenance of storm water control facilities under  
12 chapters 35.67, 35.92, 36.89, 36.94, 56.08, and 86.15 RCW, shall be  
13 thirty percent of the rate for comparable real property, except as  
14 otherwise provided in this section. The rate charged to the department  
15 with respect to state highway right of way or any section of state  
16 highway right of way within a local government utility's jurisdiction  
17 shall not, however, exceed the rate charged for comparable city street  
18 or county road right of way within the same jurisdiction. The  
19 legislature finds that the aforesaid rates are presumptively fair and

1 equitable because of the traditional and continuing expenditures of the  
2 department of transportation for the construction, operation, and  
3 maintenance of storm water control facilities designed to control  
4 surface water or storm water runoff from state highway rights of way.

5 (2) Charges paid under subsection (1) of this section by the  
6 department of transportation must be used solely for storm water  
7 control facilities that directly reduce state highway runoff impacts or  
8 implementation of best management practices that will reduce the need  
9 for such facilities. By January 1st of each year, beginning with  
10 calendar year 1997, the local government utility, in coordination with  
11 the department, shall develop a plan for the expenditure of the charges  
12 for that calendar year. The plan must be consistent with the  
13 objectives identified in section 3 of this act. In addition, beginning  
14 with the submittal for 1998, the utility shall provide a progress  
15 report on the use of charges assessed for the prior year. No charges  
16 may be paid until the plan and report have been submitted to the  
17 department.

18 (3) The utility imposing the charge and the department of  
19 transportation may, however, agree to either higher or lower rates with  
20 respect to the construction, operation, or maintenance of any specific  
21 storm water control facilities based upon the ((~~extent and adequacy of~~  
22 ~~storm water control facilities constructed by the department and upon~~  
23 ~~the actual benefits to state highway rights of way from the storm water~~  
24 ~~control facilities constructed by the local government utility)) annual~~  
25 plan prescribed in subsection (2) of this section. If a different rate  
26 is agreed to, a report so stating shall be submitted to the legislative  
27 transportation committee. If, after mediation, the local government  
28 utility and the department of transportation cannot agree upon the  
29 proper rate, and after a report has been submitted to the legislative  
30 transportation committee and after ninety days from submission of such  
31 report, either may commence an action in the superior court for the  
32 county in which the state highway right of way is located to establish  
33 the proper rate. The court in establishing the proper rate shall take  
34 into account the extent and adequacy of storm water control facilities  
35 constructed by the department and the actual benefits to the sections  
36 of state highway rights of way from storm water control facilities  
37 constructed, operated, and maintained by the local government utility.  
38 Control of surface water runoff and storm water runoff from state  
39 highway rights of way shall be deemed an actual benefit to the state

1 highway rights of way. The rate for sections of state highway right of  
2 way as determined by the court shall be set forth in terms of the  
3 percentage of the rate for comparable real property, but shall in no  
4 event exceed the rate charged for comparable city street or county road  
5 right of way within the same jurisdiction.

6 (4) The legislature finds that the federal Clean Water Act  
7 (national pollution discharge elimination system, 40 C.F.R. parts 122-  
8 124), the state water pollution control act, chapter 90.48 RCW, and the  
9 highway runoff program under chapter 90.70 RCW, mandate the treatment  
10 and control of storm water runoff from state highway rights of way  
11 owned by the department of transportation. Appropriations made by the  
12 legislature to the department of transportation for the construction,  
13 operation, and maintenance of storm water control facilities are  
14 intended to address applicable federal and state mandates related to  
15 storm water control and treatment. This section is not intended to  
16 limit opportunities for sharing the costs of storm water improvements  
17 between cities, counties, and the state.

18 NEW SECTION. Sec. 2. The legislature finds that the increasing  
19 population and continued development throughout the state have  
20 increased the need for storm water control. Storm water impacts have  
21 resulted in increased public health risks related to drinking water and  
22 agricultural and seafood products; increased disruption of economic  
23 activity, transportation facilities, and other public and private land  
24 and facilities due to the lack of adequate flood control measures;  
25 adverse affects on state fish populations; and contamination of  
26 sediments.

27 In addition, current storm water control and management efforts  
28 related to transportation projects lack necessary coordination on a  
29 watershed, regional, and state-wide basis; have inadequate funding; and  
30 fail to maximize use of available resources.

31 More stringent regulatory requirements have increased the costs  
32 that state and local governments must incur to deal with significant  
33 sources of pollution such as storm water. The costs estimated to  
34 properly maintain and construct storm water facilities far exceed  
35 available revenues.

36 Therefore, it is the intent of the legislature to establish a  
37 program to develop a state-wide coordination mechanism for the funding  
38 of state highway-related storm water management and control projects

1 that will facilitate the completion of the state's most urgently needed  
2 storm water projects in the most cost-effective manner.

3 NEW SECTION. **Sec. 3.** The department of transportation, in  
4 cooperation with the department of ecology, cities, towns, counties,  
5 Indian tribes, and port districts, shall develop a storm water  
6 management funding and implementation program to address state highway-  
7 related problems. As part of the program, the department may provide  
8 grants to facilitate the construction of the highest priority state and  
9 local storm water management projects based on cost-effectiveness and  
10 contribution toward improved water quality and reduced flooding in a  
11 watershed.

12 The program shall address, but is not limited to, the following  
13 objectives: (1) Greater state-wide coordination of the construction of  
14 storm water treatment facilities; (2) encouraging multijurisdictional  
15 projects; (3) developing priorities and approaches for implementing  
16 activities within watersheds; (4) identification and prioritization of  
17 storm water retrofit programs; (5) evaluating methods to determine cost  
18 benefits of proposed projects; (6) identifying ways to facilitate the  
19 sharing of technical resources; (7) developing methods for monitoring  
20 and evaluating activities carried out under the program; and (8)  
21 identifying potential funding sources for continuation of the program.

22 NEW SECTION. **Sec. 4.** The department of transportation may provide  
23 grants to implement state highway-related storm water control measures.  
24 Cities, towns, counties, port districts, Indian tribes, and the  
25 department of transportation are eligible to receive grants, on a  
26 matching basis. A committee consisting of two representatives each  
27 from the department of transportation, with one as chair, the  
28 department of ecology, cities, and counties, shall oversee the grant  
29 program. The committee may add representatives of other agencies,  
30 organizations, or interest groups to serve as members of the committee  
31 or in an advisory capacity. In developing project criteria, the  
32 committee shall identify the most urgent state highway-related storm  
33 water management and control problems; develop methods for applying  
34 priorities across watersheds; give added weight to projects based on  
35 local contribution, multijurisdictional involvement, and whether the  
36 project is a priority for a local storm water utility; and determine  
37 the benefits of, and, if appropriate, provide incentives for off-site

1 placement of storm water facilities and out-of-kind mitigation for  
2 storm water impact.

3 NEW SECTION. **Sec. 5.** This chapter expires July 1, 2003.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW  
5 to read as follows:

6 In the development of highway construction projects, the department  
7 of transportation shall coordinate with adjacent local governments,  
8 ports, and other public and private organizations to determine  
9 opportunities for cost effective joint storm water treatment facilities  
10 for both new and existing impervious surfaces.

11 NEW SECTION. **Sec. 7.** By December 1, 1996, the department of  
12 transportation shall submit to the legislative transportation committee  
13 and the office of financial management a report on the implementation  
14 of the storm water funding and implementation program. The report must  
15 include proposed criteria for project selection, procedures for  
16 managing the program, and recommendations for achieving program  
17 objectives identified in section 3 of this act. The report must make  
18 recommendations for ongoing funding of the program after evaluating  
19 potential sources including, but not limited to, the federal  
20 transportation enhancements program, the motor vehicle fund, the  
21 transportation fund, the water quality account, the state toxics  
22 control account, the local toxics control account, local and private  
23 contributions, user fees, and other grant sources.

24 NEW SECTION. **Sec. 8.** Sections 2 through 5 of this act constitute  
25 a new chapter in Title 90 RCW.

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