
HOUSE BILL 1414

State of Washington

56th Legislature

1999 Regular Session

By Representative Sheahan

Read first time . Referred to Committee on .

1 AN ACT Relating to limiting charges for water, sewer, natural gas,
2 drainage utility, and drainage system capital costs to rate-based user
3 charges; amending RCW 82.02.020, 35.58.570, 35.67.020, 35.91.040,
4 35.92.020, 36.89.080, 36.94.140, and 53.08.040; and reenacting and
5 amending RCW 57.08.081.

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

7 **Sec. 1.** RCW 82.02.020 and 1997 c 452 s 21 are each amended to read
8 as follows:

9 Except only as expressly provided in chapters 67.28 and 82.14 RCW,
10 the state preempts the field of imposing taxes upon retail sales of
11 tangible personal property, the use of tangible personal property,
12 parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances,
13 and cigarettes, and no county, town, or other municipal subdivision
14 shall have the right to impose taxes of that nature. Except as
15 provided in RCW 82.02.050 through 82.02.090, no county, city, town, or
16 other municipal corporation shall impose any tax, fee, or charge,
17 either direct or indirect, on the construction or reconstruction of
18 residential buildings, commercial buildings, industrial buildings, or
19 on any other building or building space or appurtenance thereto, or on

1 the development, subdivision, classification, or reclassification of
2 land. However, this section does not preclude dedications of land or
3 easements within the proposed development or plat which the county,
4 city, town, or other municipal corporation can demonstrate are
5 reasonably necessary as a direct result of the proposed development or
6 plat to which the dedication of land or easement is to apply.

7 This section does not prohibit voluntary agreements with counties,
8 cities, towns, or other municipal corporations that allow a payment in
9 lieu of a dedication of land or to mitigate a direct impact that has
10 been identified as a consequence of a proposed development,
11 subdivision, or plat. A local government shall not use such voluntary
12 agreements for local off-site transportation improvements within the
13 geographic boundaries of the area or areas covered by an adopted
14 transportation program authorized by chapter 39.92 RCW. Any such
15 voluntary agreement is subject to the following provisions:

16 (1) The payment shall be held in a reserve account and may only be
17 expended to fund a capital improvement agreed upon by the parties to
18 mitigate the identified, direct impact;

19 (2) The payment shall be expended in all cases within five years of
20 collection; and

21 (3) Any payment not so expended shall be refunded with interest at
22 the rate applied to judgments to the property owners of record at the
23 time of the refund; however, if the payment is not expended within five
24 years due to delay attributable to the developer, the payment shall be
25 refunded without interest.

26 No county, city, town, or other municipal corporation shall require
27 any payment as part of such a voluntary agreement which the county,
28 city, town, or other municipal corporation cannot establish is
29 reasonably necessary as a direct result of the proposed development or
30 plat.

31 Nothing in this section prohibits cities, towns, counties, or other
32 municipal corporations from collecting reasonable fees from an
33 applicant for a permit or other governmental approval to cover the cost
34 to the city, town, county, or other municipal corporation of processing
35 applications, inspecting and reviewing plans, or preparing detailed
36 statements required by chapter 43.21C RCW.

37 This section does not limit the existing authority of any county,
38 city, town, or other municipal corporation to impose special

1 assessments on property specifically benefitted thereby in the manner
2 prescribed by law.

3 Nothing in this section prohibits counties, cities, or towns from
4 imposing or permits counties, cities, or towns to impose water, sewer,
5 natural gas, drainage utility, and drainage system charges: PROVIDED,
6 That (~~no such charge shall exceed the proportionate share of~~) such
7 utility or system's capital costs (~~which the county, city, or town can~~
8 ~~demonstrate are attributable to the property being charged:~~ PROVIDED
9 FURTHER, That these provisions shall not be interpreted to expand or
10 contract any existing authority of counties, cities, or towns to impose
11 such charges)) or any capacity charges must be recovered using rate-
12 based user charges and such utility or system may not charge hookup
13 fees that are above actual physical connection costs.

14 Nothing in this section prohibits a transportation benefit district
15 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
16 the legislative authority of a county, city, or town from approving the
17 imposition of such fees within a transportation benefit district.

18 Nothing in this section prohibits counties, cities, or towns from
19 imposing transportation impact fees authorized pursuant to chapter
20 39.92 RCW.

21 Nothing in this section prohibits counties, cities, or towns from
22 requiring property owners to provide relocation assistance to tenants
23 under RCW 59.18.440 and 59.18.450.

24 This section does not apply to special purpose districts formed and
25 acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority
26 conferred by these titles affected.

27 **Sec. 2.** RCW 35.58.570 and 1996 c 230 s 1602 are each amended to
28 read as follows:

29 (1) A metropolitan municipal corporation that is engaged in the
30 transmission, treatment, and disposal of sewage may impose a capacity
31 charge on users of the metropolitan municipal corporation's sewage
32 facilities when the user connects, reconnects, or establishes a new
33 service. The capacity charge shall be approved by the council of the
34 metropolitan municipal corporation and reviewed and reapproved
35 annually.

36 (2) The capacity charge shall be based upon the cost of the sewage
37 facilities' excess capacity that is necessary to provide sewerage

1 treatment for new users to the system. The capacity charge, which may
2 be collected over a period of fifteen years, shall not exceed:

3 (a) Seven dollars per month per residential customer equivalent for
4 connections and reconnections occurring prior to January 1, 1996; and

5 (b) Ten dollars and fifty cents per month per residential customer
6 equivalent for connections and reconnections occurring after January 1,
7 1996, and prior to January 1, 2001.

8 For connections and reconnections occurring after January 1, 2001,
9 the capacity charge (~~((shall not exceed fifty percent of the basic sewer
10 rate per residential customer equivalent established by the
11 metropolitan municipal corporation at the time of the connection or
12 reconnection))~~) must be recovered using rate-based user charges and the
13 metropolitan municipal corporation shall not charge hookup fees that
14 are above actual physical connection costs.

15 (3) The capacity charge for a building other than a single-family
16 residence shall be based on the projected number of residential
17 customer equivalents to be represented by the building, considering its
18 intended use.

19 (4) The council of the metropolitan municipal corporation shall
20 enforce the collection of the capacity charge in the same manner
21 provided for the collection, enforcement, and payment of rates and
22 charges for water-sewer districts provided in RCW 57.08.081. At least
23 thirty days before commencement of an action to foreclose a lien for a
24 capacity charge, the metropolitan municipal corporation shall send
25 written notice of delinquency in payment of the capacity charge to any
26 first mortgage or deed of trust holder of record at the address of
27 record.

28 (5) As used in this section, "sewage facilities" means capital
29 projects identified since January 1, 1982, to July 23, 1989, in the
30 metropolitan municipal corporation's comprehensive water pollution
31 abatement plan. "Residential customer equivalent" shall have the same
32 meaning used by the metropolitan municipal corporation in determining
33 rates and charges at the time the capacity charge is imposed.

34 **Sec. 3.** RCW 35.67.020 and 1997 c 447 s 8 are each amended to read
35 as follows:

36 Every city and town may construct, condemn and purchase, acquire,
37 add to, maintain, conduct, and operate systems of sewerage and systems
38 and plants for refuse collection and disposal together with additions,

1 extensions, and betterments thereto, within and without its limits,
2 with full jurisdiction and authority to manage, regulate, and control
3 them and to fix, alter, regulate, and control the rates and charges for
4 their use. The rates charged must be uniform for the same class of
5 customers or service and facilities furnished and any capacity charges
6 must be recovered using rate-based user charges and there shall not be
7 hookup fees that are above actual physical connection costs.

8 In classifying customers served or service and facilities furnished
9 by such system of sewerage, the city or town legislative body may in
10 its discretion consider any or all of the following factors: (1) The
11 difference in cost of service and facilities to the various customers;
12 (2) the location of the various customers within and without the city
13 or town; (3) the difference in cost of maintenance, operation, repair,
14 and replacement of the various parts of the system; (4) the different
15 character of the service and facilities furnished various customers;
16 (5) the quantity and quality of the sewage delivered and the time of
17 its delivery; (6) the achievement of water conservation goals and the
18 discouragement of wasteful water use practices; (7) capital
19 contributions made to the system, including but not limited to,
20 assessments; (8) the nonprofit public benefit status, as defined in RCW
21 24.03.490, of the land user; and (9) any other matters which present a
22 reasonable difference as a ground for distinction. Rates or charges
23 for on-site inspection and maintenance services may not be imposed
24 under this chapter on the development, construction, or reconstruction
25 of property.

26 A city or town may provide assistance to aid low-income persons in
27 connection with services provided under this chapter.

28 Under this chapter, after July 1, 1998, any requirements for
29 pumping the septic tank of an on-site sewage system should be based,
30 among other things, on actual measurement of accumulation of sludge and
31 scum by a trained inspector, trained owner's agent, or trained owner.
32 Training must occur in a program approved by the state board of health
33 or by a local health officer.

34 Before adopting on-site inspection and maintenance utility
35 services, or incorporating residences into an on-site inspection and
36 maintenance or sewer utility under this chapter, notification must be
37 provided, prior to the applicable public hearing, to all residences
38 within the proposed service area that have on-site systems permitted by
39 the local health officer. The notice must clearly state that the

1 residence is within the proposed service area and must provide
2 information on estimated rates or charges that may be imposed for the
3 service.

4 A city or town shall not provide on-site sewage system inspection,
5 pumping services, or other maintenance or repair services under this
6 section using city or town employees unless the on-site system is
7 connected by a publicly owned collection system to the city or town's
8 sewerage system, and the on-site system represents the first step in
9 the sewage disposal process. Nothing in this section shall affect the
10 authority of state or local health officers to carry out their
11 responsibilities under any other applicable law.

12 **Sec. 4.** RCW 35.91.040 and 1965 c 7 s 35.91.040 are each amended to
13 read as follows:

14 No person, firm or corporation shall be granted a permit or be
15 authorized to tap into, or use any such water or sewer facilities or
16 extensions thereof during the period of time prescribed in such
17 contract without first paying to the municipality, in addition to any
18 and all other costs and charges made or assessed for such tap, or use,
19 or for the water lines or sewers constructed in connection therewith,
20 the amount required by the provisions of the contract under which the
21 water or sewer facilities so tapped into or used were constructed. All
22 amounts so received by the municipality shall be paid out by it under
23 the terms of such contract within sixty days after the receipt thereof.
24 Whenever any tap or connection is made into any such contracted water
25 or sewer facilities without such payment having first been made, the
26 governing body of the municipality may remove, or cause to be removed,
27 such unauthorized tap or connection and all connecting tile, or pipe
28 located in the facility right of way and dispose of unauthorized
29 material so removed without any liability whatsoever. Any capacity
30 charges must be recovered using rate-based user charges and a
31 municipality shall not charge hookup fees that are above actual
32 physical connection costs.

33 **Sec. 5.** RCW 35.92.020 and 1997 c 447 s 9 are each amended to read
34 as follows:

35 A city or town may construct, condemn and purchase, purchase,
36 acquire, add to, alter, maintain, and operate systems, plants, sites,
37 or other facilities of sewerage as defined in RCW 35.67.010, or solid

1 waste handling as defined by RCW 70.95.030, and shall have full
2 authority to manage, regulate, operate, control, and to fix the price
3 of service and facilities of those systems, plants, sites, or other
4 facilities within and without the limits of the city or town. The
5 rates charged shall be uniform for the same class of customers or
6 service and facilities. Any capacity charges must be recovered using
7 rate-based user charges and a city or town shall not charge hookup fees
8 that are above actual physical connection costs. In classifying
9 customers served or service and facilities furnished by a system or
10 systems of sewerage, the legislative authority of the city or town may
11 in its discretion consider any or all of the following factors: (1)
12 The difference in cost of service and facilities to customers; (2) the
13 location of customers within and without the city or town; (3) the
14 difference in cost of maintenance, operation, repair, and replacement
15 of the parts of the system; (4) the different character of the service
16 and facilities furnished to customers; (5) the quantity and quality of
17 the sewage delivered and the time of its delivery; (6) capital
18 contributions made to the systems, plants, sites, or other facilities,
19 including but not limited to, assessments; (7) the nonprofit public
20 benefit status, as defined in RCW 24.03.490, of the land user; and (8)
21 any other factors that present a reasonable difference as a ground for
22 distinction. Rates or charges for on-site inspection and maintenance
23 services may not be imposed under this chapter on the development,
24 construction, or reconstruction of property.

25 A city or town may provide assistance to aid low-income persons in
26 connection with services provided under this chapter.

27 Under this chapter, after July 1, 1998, any requirements for
28 pumping the septic tank of an on-site sewage system should be based,
29 among other things, on actual measurement of accumulation of sludge and
30 scum by a trained inspector, trained owner's agent, or trained owner.
31 Training must occur in a program approved by the state board of health
32 or by a local health officer.

33 Before adopting on-site inspection and maintenance utility
34 services, or incorporating residences into an on-site inspection and
35 maintenance or sewer utility under this chapter, notification must be
36 provided, prior to the applicable public hearing, to all residences
37 within the proposed service area that have on-site systems permitted by
38 the local health officer. The notice must clearly state that the
39 residence is within the proposed service area and must provide

1 information on estimated rates or charges that may be imposed for the
2 service.

3 A city or town shall not provide on-site sewage system inspection,
4 pumping services, or other maintenance or repair services under this
5 section using city or town employees unless the on-site system is
6 connected by a publicly owned collection system to the city or town's
7 sewerage system, and the on-site system represents the first step in
8 the sewage disposal process. Nothing in this section shall affect the
9 authority of state or local health officers to carry out their
10 responsibilities under any other applicable law.

11 **Sec. 6.** RCW 36.89.080 and 1998 c 74 s 1 are each amended to read
12 as follows:

13 Any county legislative authority may provide by resolution for
14 revenues by fixing rates and charges for the furnishing of service to
15 those served or receiving benefits or to be served or to receive
16 benefits from any storm water control facility or contributing to an
17 increase of surface water runoff. Any capacity charges must be
18 recovered using rate-based user charges and a county shall not charge
19 hookup fees that are above actual physical connection costs. In fixing
20 rates and charges, the county legislative authority may in its
21 discretion consider: (1) Services furnished or to be furnished; (2)
22 benefits received or to be received; (3) the character and use of land
23 or its water runoff characteristics; (4) the nonprofit public benefit
24 status, as defined in RCW 24.03.490, of the land user; (5) income level
25 of persons served or provided benefits under this chapter, including
26 senior citizens and disabled persons; or (6) any other matters which
27 present a reasonable difference as a ground for distinction. The
28 service charges and rates collected shall be deposited in a special
29 fund or funds in the county treasury to be used only for the purpose of
30 paying all or any part of the cost and expense of maintaining and
31 operating storm water control facilities, all or any part of the cost
32 and expense of planning, designing, establishing, acquiring,
33 developing, constructing and improving any of such facilities, or to
34 pay or secure the payment of all or any portion of any issue of general
35 obligation or revenue bonds issued for such purpose.

36 **Sec. 7.** RCW 36.94.140 and 1997 c 447 s 12 are each amended to read
37 as follows:

1 Every county, in the operation of a system of sewerage and/or
2 water, shall have full jurisdiction and authority to manage, regulate,
3 and control it and to fix, alter, regulate, and control the rates and
4 charges for the service and facilities to those to whom such service
5 and facilities are available, and to levy charges for connection to the
6 system. The rates for availability of service and facilities, and
7 connection charges so charged must be uniform for the same class of
8 customers or service and facility.

9 In classifying customers served, service furnished or made
10 available by such system of sewerage and/or water, or the connection
11 charges, the county legislative authority may consider any or all of
12 the following factors:

13 (1) The difference in cost of service to the various customers
14 within or without the area;

15 (2) The difference in cost of maintenance, operation, repair and
16 replacement of the various parts of the systems;

17 (3) The different character of the service and facilities furnished
18 various customers;

19 (4) The quantity and quality of the sewage and/or water delivered
20 and the time of its delivery;

21 (5) Capital contributions made to the system or systems, including,
22 but not limited to, assessments;

23 (6) The cost of acquiring the system or portions of the system in
24 making system improvements necessary for the public health and safety;

25 (7) The nonprofit public benefit status, as defined in RCW
26 24.03.490, of the land user; and

27 (8) Any other matters which present a reasonable difference as a
28 ground for distinction.

29 A county may provide assistance to aid low-income persons in
30 connection with services provided under this chapter.

31 The service charges and rates shall produce revenues sufficient to
32 take care of the costs of maintenance and operation, revenue bond and
33 warrant interest and principal amortization requirements, and all other
34 charges necessary for the efficient and proper operation of the system.
35 Any capacity charges must be recovered using rate-based user charges
36 and a county shall not charge hookup fees that are above actual
37 physical connection costs.

1 **Sec. 8.** RCW 53.08.040 and 1989 c 298 s 1 are each amended to read
2 as follows:

3 A district may improve its lands by dredging, filling, bulkheading,
4 providing waterways or otherwise developing such lands for industrial
5 and commercial purposes. A district may also acquire, construct,
6 install, improve, and operate sewer and water utilities to serve its
7 own property and other property owners under terms, conditions, and
8 rates to be fixed and approved by the port commission. Any capacity
9 charges must be recovered using rate-based user charges and a district
10 shall not charge hookup fees that are above actual physical connection
11 costs. A district may also acquire, by purchase, construction, lease,
12 or in any other manner, and may maintain and operate other facilities
13 for the control or elimination of air, water, or other pollution,
14 including, but not limited to, facilities for the treatment and/or
15 disposal of industrial wastes, and may make such facilities available
16 to others under terms, conditions and rates to be fixed and approved by
17 the port commission. Such conditions and rates shall be sufficient to
18 reimburse the port for all costs, including reasonable amortization of
19 capital outlays caused by or incidental to providing such other
20 pollution control facilities: PROVIDED, That no part of such costs of
21 providing any pollution control facility to others shall be paid out of
22 any tax revenues of the port: AND PROVIDED FURTHER, That no port shall
23 enter into an agreement or contract to provide sewer and/or water
24 utilities or pollution control facilities if substantially similar
25 utilities or facilities are available from another source (or sources)
26 which is able and willing to provide such utilities or facilities on a
27 reasonable and nondiscriminatory basis unless such other source (or
28 sources) consents thereto.

29 In the event that a port elects to make such other pollution
30 control facilities available to others, it shall do so by lease, lease
31 purchase agreement, or other agreement binding such user to pay for the
32 use of said facilities for the full term of the revenue bonds issued by
33 the port for the acquisition of said facilities, and said payments
34 shall at least fully reimburse the port for all principal and interest
35 paid by it on said bonds and for all operating or other costs, if any,
36 incurred by the port in connection with said facilities: PROVIDED,
37 HOWEVER, That where there is more than one user of any such facilities,
38 each user shall be responsible for its pro rata share of such costs and
39 payment of principal and interest. Any port intending to provide

1 pollution control facilities to others shall first survey the port
2 district to ascertain the potential users of such facilities and the
3 extent of their needs. The port shall conduct a public hearing upon
4 the proposal and shall give each potential user an opportunity to
5 participate in the use of such facilities upon equal terms and
6 conditions.

7 **Sec. 9.** RCW 57.08.081 and 1998 c 285 s 2 and 1998 c 106 s 9 are
8 each reenacted and amended to read as follows:

9 (1) The commissioners of any district shall provide for revenues by
10 fixing rates and charges for furnishing sewer and drainage service and
11 facilities to those to whom service is available or for providing
12 water, such rates and charges to be fixed as deemed necessary by the
13 commissioners, so that uniform charges will be made for the same class
14 of customer or service and facility. Rates and charges may be combined
15 for the furnishing of more than one type of sewer or drainage service
16 and facilities. Any capacity charges must be recovered using rate-
17 based user charges and the district shall not charge hookup fees that
18 are above actual physical connection costs.

19 (2) In classifying customers of such water, sewer, or drainage
20 system, the board of commissioners may in its discretion consider any
21 or all of the following factors: The difference in cost to various
22 customers; the location of the various customers within and without the
23 district; the difference in cost of maintenance, operation, repair, and
24 replacement of the various parts of the system; the different character
25 of the service furnished various customers; the quantity and quality of
26 the service and facility furnished; the time of its use; the
27 achievement of water conservation goals and the discouragement of
28 wasteful practices; capital contributions made to the system including
29 but not limited to assessments; and any other matters which present a
30 reasonable difference as a ground for distinction. Rates shall be
31 established as deemed proper by the commissioners and as fixed by
32 resolution and shall produce revenues sufficient to take care of the
33 costs of maintenance and operation, revenue bond and warrant interest
34 and principal amortization requirements, and all other charges
35 necessary for efficient and proper operation of the system. Prior to
36 furnishing services, a district may require a deposit to guarantee
37 payment for services. However, failure to require a deposit does not
38 affect the validity of any lien authorized by this section.

1 (3) The commissioners shall enforce collection of connection
2 charges, and rates and charges for water supplied against property
3 owners connecting with the system or receiving such water, and for
4 sewer and drainage services charged against property to which and its
5 owners to whom the service is available, such charges being deemed
6 charges against the property served, by addition of penalties of not
7 more than ten percent thereof in case of failure to pay the charges at
8 times fixed by resolution. The commissioners may provide by resolution
9 that where either connection charges or rates and charges for services
10 supplied are delinquent for any specified period of time, the district
11 shall certify the delinquencies to the auditor of the county in which
12 the real property is located, and the charges and any penalties added
13 thereto and interest thereon at the rate of not more than the prime
14 lending rate of the district's bank plus four percentage points per
15 year shall be a lien against the property upon which the service was
16 received, subject only to the lien for general taxes.

17 (4) The district may, at any time after the connection charges or
18 rates and charges for services supplied or available and penalties are
19 delinquent for a period of sixty days, bring suit in foreclosure by
20 civil action in the superior court of the county in which the real
21 property is located. The court may allow, in addition to the costs and
22 disbursements provided by statute, attorneys' fees, title search and
23 report costs, and expenses as it adjudges reasonable. The action shall
24 be in rem, and may be brought in the name of the district against an
25 individual or against all of those who are delinquent in one action.
26 The laws and rules of the court shall control as in other civil
27 actions.

28 (5) In addition to the right to foreclose provided in this section,
29 the district may also cut off all or part of the service after charges
30 for water or sewer service supplied or available are delinquent for a
31 period of thirty days.

32 (6) A district may determine how to apply partial payments on past
33 due accounts.

34 (7) A district may provide a real property owner or the owner's
35 designee with duplicate bills for service to tenants, or may notify an
36 owner or the owner's designee that a tenant's service account is
37 delinquent. However, if an owner or the owner's designee notifies the
38 district in writing that a property served by the district is a rental
39 property, asks to be notified of a tenant's delinquency, and has

1 provided, in writing, a complete and accurate mailing address, the
2 district shall notify the owner or the owner's designee of a tenant's
3 delinquency at the same time and in the same manner the district
4 notifies the tenant of the tenant's delinquency or by mail. When a
5 district provides a real property owner or the owner's designee with
6 duplicates of tenant utility service bills or notice that a tenant's
7 utility account is delinquent, the district shall notify the tenant
8 that it is providing the duplicate bills or delinquency notice to the
9 owner or the owner's designee. After January 1, 1999, if a district
10 fails to notify the owner of a tenant's delinquency after receiving a
11 written request to do so and after receiving the other information
12 required by this subsection (7), the district shall have no lien
13 against the premises for the tenant's delinquent and unpaid charges.

--- END ---