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HOUSE BILL 1424

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives O'Brien, Schindler and Miloscia

Read first time 01/24/2005. Referred to Committee on Housing.

1            AN ACT Relating to filing a claim of lien for utility services  
2 against the owner of a manufactured housing community; and amending RCW  
3 35.21.290, 35.67.200, 36.94.150, 57.08.081, and 80.28.010.

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

5            **Sec. 1.** RCW 35.21.290 and 1965 c 7 s 35.21.290 are each amended to  
6 read as follows:

7            Cities and towns owning their own waterworks, or electric light or  
8 power plants shall have a lien against the premises to which water,  
9 electric light, or power services were furnished for four months  
10 charges therefor due or to become due, but not for any charges more  
11 than four months past due: PROVIDED, That the owner of the premises or  
12 the owner of a delinquent mortgage thereon may give written notice to  
13 the superintendent or other head of such works or plant to cut off  
14 service to such premises accompanied by payment or tender of payment of  
15 the then delinquent and unpaid charges for such service against the  
16 premises together with the cut-off charge, whereupon the city or town  
17 shall have no lien against the premises for charges for such service  
18 thereafter furnished, nor shall the owner of the premises or the owner  
19 of a delinquent mortgage thereon be held for the payment thereof.

1 If a tenant in a manufactured housing community, as defined under  
2 RCW 59.20.030, fails to pay for services and a claim of lien is filed  
3 against the premises, then execution of the lien is the exclusive  
4 remedy and assignment of the outstanding service charges to a  
5 collection agency is prohibited.

6 **Sec. 2.** RCW 35.67.200 and 1991 c 36 s 2 are each amended to read  
7 as follows:

8 Cities and towns owning their own sewer systems shall have a lien  
9 for delinquent and unpaid rates and charges for sewer service,  
10 penalties levied pursuant to RCW 35.67.190, and connection charges,  
11 including interest thereon, against the premises to which such service  
12 has been furnished or is available, which lien shall be superior to all  
13 other liens and encumbrances except general taxes and local and special  
14 assessments. The city or town by ordinance may provide that delinquent  
15 charges shall bear interest at not exceeding eight percent per annum  
16 computed on a monthly basis: PROVIDED, That a city or town using the  
17 property tax system for utility billing may, by resolution or  
18 ordinance, adopt the alternative lien procedure as set forth in RCW  
19 35.67.215.

20 If a tenant in a manufactured housing community, as defined under  
21 RCW 59.20.030, fails to pay for services and a claim of lien is filed  
22 against the premises, then execution of the lien is the exclusive  
23 remedy and assignment of the outstanding service charges to a  
24 collection agency is prohibited.

25 **Sec. 3.** RCW 36.94.150 and 1997 c 393 s 9 are each amended to read  
26 as follows:

27 All counties operating a system of sewerage and/or water shall have  
28 a lien for delinquent connection charges and charges for the  
29 availability of sewerage and/or water service, together with interest  
30 fixed by resolution at eight percent per annum from the date due until  
31 paid. Penalties of not more than ten percent of the amount due may be  
32 imposed in case of failure to pay the charges at times fixed by  
33 resolution. The lien shall be for all charges, interest, and penalties  
34 and shall attach to the premises to which the services were available.  
35 The lien shall be superior to all other liens and encumbrances, except  
36 general taxes and local and special assessments of the county.

1 The county department established in RCW 36.94.120 shall certify  
2 periodically the delinquencies to the auditor of the county at which  
3 time the lien shall attach.

4 Upon the expiration of sixty days after the attachment of the lien,  
5 the county may bring suit in foreclosure by civil action in the  
6 superior court of the county where the property is located. Costs  
7 associated with the foreclosure of the lien, including but not limited  
8 to advertising, title report, and personnel costs, shall be added to  
9 the lien upon filing of the foreclosure action. In addition to the  
10 costs and disbursements provided by statute, the court may allow the  
11 county a reasonable attorney's fee. The lien shall be foreclosed in  
12 the same manner as the foreclosure of real property tax liens.

13 If a tenant in a manufactured housing community, as defined under  
14 RCW 59.20.030, fails to pay for services and a claim of lien is filed  
15 against the premises, then execution of the lien is the exclusive  
16 remedy and assignment of the outstanding service charges to a  
17 collection agency is prohibited.

18 **Sec. 4.** RCW 57.08.081 and 2003 c 394 s 6 are each amended to read  
19 as follows:

20 (1) Subject to RCW 57.08.005(6), the commissioners of any district  
21 shall provide for revenues by fixing rates and charges for furnishing  
22 sewer and drainage service and facilities to those to whom service is  
23 available or for providing water, such rates and charges to be fixed as  
24 deemed necessary by the commissioners, so that uniform charges will be  
25 made for the same class of customer or service and facility. Rates and  
26 charges may be combined for the furnishing of more than one type of  
27 sewer or drainage service and facilities.

28 (2) In classifying customers of such water, sewer, or drainage  
29 system, the board of commissioners may in its discretion consider any  
30 or all of the following factors: The difference in cost to various  
31 customers; the location of the various customers within and without the  
32 district; the difference in cost of maintenance, operation, repair, and  
33 replacement of the various parts of the system; the different character  
34 of the service furnished various customers; the quantity and quality of  
35 the service and facility furnished; the time of its use; the  
36 achievement of water conservation goals and the discouragement of  
37 wasteful practices; capital contributions made to the system including

1 but not limited to assessments; and any other matters which present a  
2 reasonable difference as a ground for distinction. Rates shall be  
3 established as deemed proper by the commissioners and as fixed by  
4 resolution and shall produce revenues sufficient to take care of the  
5 costs of maintenance and operation, revenue bond and warrant interest  
6 and principal amortization requirements, and all other charges  
7 necessary for efficient and proper operation of the system. Prior to  
8 furnishing services, a district may require a deposit to guarantee  
9 payment for services. However, failure to require a deposit does not  
10 affect the validity of any lien authorized by this section.

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

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

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

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

7 (7) A district may provide a real property owner or the owner's  
8 designee with duplicate bills for service to tenants, or may notify an  
9 owner or the owner's designee that a tenant's service account is  
10 delinquent. However, if an owner or the owner's designee notifies the  
11 district in writing that a property served by the district is a rental  
12 property, asks to be notified of a tenant's delinquency, and has  
13 provided, in writing, a complete and accurate mailing address, the  
14 district shall notify the owner or the owner's designee of a tenant's  
15 delinquency at the same time and in the same manner the district  
16 notifies the tenant of the tenant's delinquency or by mail. When a  
17 district provides a real property owner or the owner's designee with  
18 duplicates of tenant utility service bills or notice that a tenant's  
19 utility account is delinquent, the district shall notify the tenant  
20 that it is providing the duplicate bills or delinquency notice to the  
21 owner or the owner's designee. After January 1, 1999, if a district  
22 fails to notify the owner of a tenant's delinquency after receiving a  
23 written request to do so and after receiving the other information  
24 required by this subsection (7), the district shall have no lien  
25 against the premises for the tenant's delinquent and unpaid charges.

26 (8) If a tenant in a manufactured housing community, as defined  
27 under RCW 59.20.030, fails to pay for services and a claim of lien is  
28 filed against the premises, then execution of the lien is the exclusive  
29 remedy and assignment of the outstanding service charges to a  
30 collection agency is prohibited.

31 **Sec. 5.** RCW 80.28.010 and 1995 c 399 s 211 are each amended to  
32 read as follows:

33 (1) All charges made, demanded or received by any gas company,  
34 electrical company or water company for gas, electricity or water, or  
35 for any service rendered or to be rendered in connection therewith,  
36 shall be just, fair, reasonable and sufficient.

1 (2) Every gas company, electrical company and water company shall  
2 furnish and supply such service, instrumentalities and facilities as  
3 shall be safe, adequate and efficient, and in all respects just and  
4 reasonable.

5 (3) All rules and regulations issued by any gas company, electrical  
6 company or water company, affecting or pertaining to the sale or  
7 distribution of its product, shall be just and reasonable.

8 (4) Utility service for residential space heating shall not be  
9 terminated between November 15 through March 15 if the customer:

10 (a) Notifies the utility of the inability to pay the bill,  
11 including a security deposit. This notice should be provided within  
12 five business days of receiving a payment overdue notice unless there  
13 are extenuating circumstances. If the customer fails to notify the  
14 utility within five business days and service is terminated, the  
15 customer can, by paying reconnection charges, if any, and fulfilling  
16 the requirements of this section, receive the protections of this  
17 chapter;

18 (b) Provides self-certification of household income for the prior  
19 twelve months to a grantee of the department of community, trade, and  
20 economic development which administers federally funded energy  
21 assistance programs. The grantee shall determine that the household  
22 income does not exceed the maximum allowed for eligibility under the  
23 state's plan for low-income energy assistance under 42 U.S.C. 8624 and  
24 shall provide a dollar figure that is seven percent of household  
25 income. The grantee may verify information provided in the self-  
26 certification;

27 (c) Has applied for home heating assistance from applicable  
28 government and private sector organizations and certifies that any  
29 assistance received will be applied to the current bill and future  
30 utility bills;

31 (d) Has applied for low-income weatherization assistance to the  
32 utility or other appropriate agency if such assistance is available for  
33 the dwelling;

34 (e) Agrees to a payment plan and agrees to maintain the payment  
35 plan. The plan will be designed both to pay the past due bill by the  
36 following October 15 and to pay for continued utility service. If the  
37 past due bill is not paid by the following October 15, the customer  
38 shall not be eligible for protections under this chapter until the past

1 due bill is paid. The plan shall not require monthly payments in  
2 excess of seven percent of the customer's monthly income plus one-  
3 twelfth of any arrearage accrued from the date application is made and  
4 thereafter during November 15 through March 15. A customer may agree  
5 to pay a higher percentage during this period, but shall not be in  
6 default unless payment during this period is less than seven percent of  
7 monthly income plus one-twelfth of any arrearage accrued from the date  
8 application is made and thereafter. If assistance payments are  
9 received by the customer subsequent to implementation of the plan, the  
10 customer shall contact the utility to reformulate the plan; and

11 (f) Agrees to pay the moneys owed even if he or she moves.

12 (5) The utility shall:

13 (a) Include in any notice that an account is delinquent and that  
14 service may be subject to termination, a description of the customer's  
15 duties in this section;

16 (b) Assist the customer in fulfilling the requirements under this  
17 section;

18 (c) Be authorized to transfer an account to a new residence when a  
19 customer who has established a plan under this section moves from one  
20 residence to another within the same utility service area;

21 (d) Be permitted to disconnect service if the customer fails to  
22 honor the payment program. Utilities may continue to disconnect  
23 service for those practices authorized by law other than for nonpayment  
24 as provided for in this subsection. Customers who qualify for payment  
25 plans under this section who default on their payment plans and are  
26 disconnected can be reconnected and maintain the protections afforded  
27 under this chapter by paying reconnection charges, if any, and by  
28 paying all amounts that would have been due and owing under the terms  
29 of the applicable payment plan, absent default, on the date on which  
30 service is reconnected; and

31 (e) Advise the customer in writing at the time it disconnects  
32 service that it will restore service if the customer contacts the  
33 utility and fulfills the other requirements of this section.

34 (6) A payment plan implemented under this section is consistent  
35 with RCW 80.28.080.

36 (7) Every gas company and electrical company shall offer  
37 residential customers the option of a budget billing or equal payment  
38 plan. The budget billing or equal payment plan shall be offered low-

1 income customers eligible under the state's plan for low-income energy  
2 assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without  
3 limiting availability to certain months of the year, without regard to  
4 the length of time the customer has occupied the premises, and without  
5 regard to whether the customer is the tenant or owner of the premises  
6 occupied.

7 (8) Every gas company, electrical company and water company shall  
8 construct and maintain such facilities in connection with the  
9 manufacture and distribution of its product as will be efficient and  
10 safe to its employees and the public.

11 (9) An agreement between the customer and the utility, whether oral  
12 or written, shall not waive the protections afforded under this  
13 chapter.

14 (10) In establishing rates or charges for water service, water  
15 companies as defined in RCW 80.04.010 may consider the achievement of  
16 water conservation goals and the discouragement of wasteful water use  
17 practices.

18 (11) If a tenant in a manufactured housing community, as defined  
19 under RCW 59.20.030, fails to pay for services and a claim of lien is  
20 filed against the premises, then execution of the lien is the exclusive  
21 remedy and assignment of the outstanding service charges to a  
22 collection agency is prohibited.

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