

HOUSE BILL REPORT

HB 1911

As Reported by House Committee On:
Local Government

Title: An act relating to authorizing municipalities to create assessment reimbursement areas for the construction or improvement of water or sewer facilities.

Brief Description: Authorizing municipalities to create assessment reimbursement areas for the construction or improvement of water or sewer facilities.

Sponsors: Representatives Fitzgibbon and Tarleton.

Brief History:

Committee Activity:

Local Government: 2/12/15, 2/18/15 [DPS].

Brief Summary of Substitute Bill

- Authorizes a municipality (a county, city, town, or drainage district) to create an assessment reimbursement area (ARA) on its own initiative, finance all of the costs associated with construction or improvement of water or sewer facilities (facilities), and become the sole beneficiary of reimbursements.
- Requires the municipality to notify affected property owners of its preliminary determination of the ARA's boundaries and assessments, and record its final determination with the county auditor.
- Establishes that reimbursements to the municipality may not exceed a property's pro rata share of costs associated with construction of facilities required to meet utility service and fire suppression standards, and may not include costs for construction or improvements of any portion of a facility that only benefits the general public.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Takko, Chair; Gregerson, Vice Chair; Fitzgibbon, McBride and Peterson.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; McCaslin and Pike.

Staff: Michaela Murdock (786-7289).

Background:

Contract for Water or Sewer Facilities.

A property owner may request a county, city, town, or drainage district (municipality) to contract with the owner for the construction or improvement of water or sewer facilities (facility or facilities), to be installed solely at the owner's expense. A municipality may participate in financing such facility development projects, if authorized to do so by ordinance or contract. "Water or sewer facilities" means: (a) storm, sanitary, or combination sewers; (b) pumping stations; and (c) disposal plants, water mains, hydrants, reservoirs, or appurtenances.

In locations where a municipality's ordinances require facilities to be improved or constructed as a prerequisite to further property development, the municipality must contract with the owner at the owner's request. A municipality is only required to contract with an owner for facilities that are consistent with all applicable comprehensive plans and development regulations. Contracts must be filed and recorded with the county auditor (auditor).

Connection of the facility to the municipal system must be conditioned upon various criteria, including:

- construction in accordance with approved plans and specifications, and inspection and approval of the facility by the municipality;
- transfer of the facility, without cost, to the municipality;
- provision of sufficient security to the municipality; and
- payment by the owner of all costs of the municipality associated with the facility, including engineering, legal, and administrative costs.

Following completion of construction or improvement of facilities, the owner must submit the total cost to the municipality. This information must be used as a basis for determining reimbursements.

Reimbursement of Costs and Latecomer Fees.

A contract between a property owner and a municipality for the construction or improvement of facilities must provide for pro rata reimbursement to the property owner, or his or her assigns, for a period of 20 years or longer, if extended. A municipality that participates in financing the construction or improvement of facilities has the same rights to reimbursement as contributing property owners. Pro rata shares are based on the respective contributions of the owners and the municipality.

Reimbursements are paid from latecomer fees received by the municipality. A latecomer fee is a fee charged by a municipality, either as a separate fee or as part of a connection fee for providing access to a municipal system. The fee is charged to property owners who connect to or use a facility that was constructed or improved pursuant to a contract.

A municipality may also collect amounts for additional expenditures not subject to the applicable ordinance, contract, or agreement. A municipality may collect fees that are reasonable and proportionate to the total expenses incurred by the municipality.

Assessment Reimbursement Areas—Street Projects.

For road or street improvements, counties, cities, and towns are currently authorized to: (a) create assessment reimbursement areas (ARA) without the participation of property owners; (b) finance the costs of improvements; and (c) become the sole beneficiary of reimbursements for the project. The ARA is formulated by the county, city, or town based on a determination of which parcels adjacent to the improvements would require similar street improvements upon development. Reimbursements are a pro rata share of the construction and administration costs of the project, and the share of each property owner is determined using a method of cost apportionment based on benefits to the property owner.

Summary of Substitute Bill:

As an alternative to the statutory contract and financing procedures for construction or improvement of facilities initiated at the request of a property owner, municipalities are authorized to: (1) create ARAs in areas where facilities are required by ordinance to be constructed prior to development or redevelopment; (2) create the ARA on their own initiative without the participation of a property owner; (3) finance all of the costs associated with facility construction or improvement; and (4) become the sole beneficiary of reimbursements.

In creating an ARA, the municipality must:

- define the boundaries of the ARA by determining which parcels in the area would require construction or improvement of facilities, or would be allowed to connect to or use such facilities, upon development or redevelopment;
- send a preliminary determination of the boundaries and assessments of the ARA with an explanation of property owners' rights and options to each property owner within the ARA; and
- record the final determination of the ARA's boundaries and assessments with the auditor.

Within 20 days of receiving the preliminary determination, property owners may request a public hearing on the ARA. Notice of the hearing must be sent to all affected property owners. Any rulings of the municipality's legislative authority are determinative and final. A person who has exhausted available administrative remedies may seek judicial review of the municipality's final determination under the Land Use Petition Act.

A municipality may be reimbursed for the costs of construction or improvements of facilities that benefit property that will connect to or use the facilities within the ARA. Reimbursement may be assessed only when property is developed or redeveloped, or a property owner requests to connect to or use facilities.

The municipality must determine the reimbursement share of each property owner. Shares are determined using a method of cost apportionment based on the benefit to the property owner from the project, consistent with provisions for determining costs and reimbursement shares under a statute governing owner-initiated and contracted-for facilities. The reimbursement assessment may not exceed a property's pro rata share of costs associated with construction of facilities required to meet utility service and fire suppression standards.

A municipality may not receive reimbursement of costs for any portion of facility construction or improvements that benefits the general public. The term "general public" is defined as property outside of the ARA.

Substitute Bill Compared to Original Bill:

The substitute bill authorizes a municipality to establish an ARA only in locations where construction or improvement of facilities would be required by ordinance as a prerequisite to further property development or redevelopment. Additionally, the criteria, as proposed in the underlying bill, that a municipality must consider when formulating the boundaries of an ARA are modified to specify that the municipality must identify: (a) parcels that would require construction or improvement of facilities upon development or redevelopment, not just upon development; and (b) parcels that would be allowed, rather than required, to connect to or use the facilities.

Persons who have exhausted all available administrative remedies are authorized to seek judicial review of a municipality's final determination in accordance with provisions of the Land Use Petition Act.

The substitute bill specifies that reimbursements may be assessed only when: (a) property is developed or redeveloped and requires connection to or use of facilities; or (b) a property owner requests connection to or use of facilities. In addition, the criteria used by a municipality to determine reimbursement assessments are modified.

The substitute bill defines the term "general public," as used in the bill, to mean property outside of an ARA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Latecomer fees are a tool that exists in current law. Without latecomer fees, an initial developer in an area has to pay all of the costs of providing infrastructure to the area, such as extending water and sewer lines, and later development may connect to and use that

infrastructure without having to share the burden of those initial costs. Also, cities already have similar authority with respect to street and road improvements.

This bill continues an effort made by the committee a number of years ago to make infrastructure financing tools better. The previous bill was passed by the House of Representatives unanimously. That bill made sure that developers have the opportunity to construct water and sewer infrastructure and then get paid back. This makes that tool even more flexible.

Municipalities can currently construct or improve water and sewer facilities, but only in cooperation with a private owner, and only as a partial recipient of latecomer reimbursements. Under the bill, a municipality can be the sole initial investor in the water or sewer infrastructure, and can choose to take on the entire project without having to work in conjunction with a private owner.

This is a valuable, flexible tool that will promote development and growth. Cities will be able to make the initial investment, build infrastructure required to support growth ahead of growth occurring, equitably distribute costs, and receive reimbursement for those costs when the area is developed or redeveloped. Later developers in the area will only need to pay for their share of the facilities they connect to or use, rather than being required to absorb the up-front costs and wait 20 years to be paid back. This bill will also help with infill development, particularly in urban areas.

Seattle experiences a number of problems when it imposes infrastructure requirements. For example: (1) the entire cost burden often falls to the first-in developer; (2) infrastructure requirements often are not fully addressed; and (3) development does not occur in areas where the city wants it to occur. This bill will allow cities to use utility financing methods, procedures, and frameworks currently in place.

Stakeholders support the bill; however, some language may need to be modified. A substitute bill is being worked on, which will require, for example, that cities exercising the new authority do so through adoption of an ordinance.

(With concerns) This bill presents an opportunity for developing needed infrastructure; however, appropriate procedures need to be in place to provide checks and balances, ensure that latecomer reimbursements are appropriately sized, and ensure that projects are not oversized or overbuilt. Stakeholders are working together to suggest changes to the bill, such as linking the authority with an ordinance, further defining pro rata share, maintaining judicial remedies for making challenges to a municipality's final determination, and clarifying what costs are paid for with the reimbursement (*e.g.*, infrastructure costs, not overhead and administrative costs). Ultimately, the authority provided by the bill is of great interest to the private development community, because addressing lack of infrastructure is important.

(Opposed) None.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Carl Schroeder, Association of Washington Cities; Dani Purnell, City of Seattle; and Greg Hannan, National Association of Office and Industrial Properties.

(With concerns) Greg Hannan, National Association of Office and Industrial Properties.

Persons Signed In To Testify But Not Testifying: None.