

HOUSE BILL REPORT

HB 1616

As Reported by House Committee On: Local Government

Title: An act relating to lien authority of public utility districts providing water or sewer service.

Brief Description: Authorizing lien authority of public utility districts providing water or sewer service.

Sponsors: Representatives Hunt, Appleton and Reykdal.

Brief History:

Committee Activity:

Local Government: 2/2/11, 2/15/11 [DP].

Brief Summary of Bill

- Authorizes a public utility district (PUD or district) to impose penalties of not more than 10 percent and interest of 8 percent on delinquent rates and charges for water and sewer services.
- Provides a process through which a district may certify delinquent accounts for water and sewer services to the county auditor, causing such delinquencies to become a lien against the property served.
- Establishes that a district may initiate foreclosure proceedings if the delinquent account remains unpaid for 30 days after it is certified to the county auditor.
- Applies chapter 60.80 RCW (pertaining to satisfaction of unrecorded utility liens at the time of sale of real property) to liens stemming from delinquent PUD accounts relating to water and sewer services.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 5 members: Representatives Takko, Chair; Tharinger, Vice Chair; Fitzgibbon, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 4 members: Representatives Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Rodne and Smith.

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.

Staff: Heather Emery (786-7136).

Background:

Overview of Public Utility Districts.

A public utility district (PUD or district) is a type of special purpose district authorized for the purpose of generating and distributing electricity, providing water and sewer services, and providing telecommunications services. A PUD may operate on a countywide basis or may encompass a smaller jurisdiction. There are currently 28 operating PUDs in the state, many of which provide a mix of services: 23 provide electrical services; 19 provide water and/or wastewater services; and 13 provide wholesale broadband telecommunications services. Public utility districts are governed by a board of either three or five elected commissioners.

Public utility districts are authorized to impose rates and charges for providing utility service. However, they lack the authority to impose liens or to initiate foreclosure proceedings to collect outstanding debts. Section 1 of this bill is modeled on similar provisions included in Title 57, which governs water-sewer districts.

Interest and Penalties.

Many public utilities, including water-sewer districts and cities and towns that operate their own sewer services, are authorized to charge interest on delinquent account balances. State law limits the maximum interest rate, which is published on a monthly basis in the Washington State Register. Specific statutes may further limit the amount of interest a utility may charge.

Additionally, a subset of utilities authorized to charge interest on delinquent account balances is authorized to impose penalties. Those jurisdictions authorized to impose utility-related penalties include counties operating a water or sewer system and water-sewer districts.

Liens for Unrecorded Utility Charges.

In 1996 the Legislature adopted Substitute House Bill 2388 (Chapter 43, Laws of 1996; codified as chapter 60.80 RCW), which provides a process by which, at the time of sale of real property, certain public entities may collect unrecorded utility charges pertaining to the following:

- garbage, water, electric light, and electric heating provided under chapter 35.21 RCW;
- sewer service provided under chapter 35.67 RCW;
- water service or on-site sewage disposal for aquifer protection areas provided under chapter 36.36 RCW;
- stormwater control provided under chapter 36.89 RCW;
- water and sewer service provided under chapter 36.94 RCW;
- water and sewer service provided under chapter 57.08 RCW; and
- irrigation service provided under chapter 87.03 RCW.

The unpaid charges may include all lawful charges assessed by a utility, even if such charges are not evidenced by a utility lien.

At closing, the seller of an interest in real property is responsible for satisfying any utility lien. The closing agent must send a written request for a final billing of utility service for the property to be sold, after which the utility provider must provide a written estimate or actual final billing. If the utility provider fails to respond within a prescribed timeframe, it is prohibited from recovering the charges from the purchaser of the property. The utility retains the right to recover unpaid utility charges from the seller of the property.

Of the unrecorded utility liens subject to satisfaction pursuant to chapter 60.80 RCW, a limited number are also subject to foreclosure. In most instances, the statute providing for foreclosure identifies which statutory scheme the foreclosure process should follow. However, the provision providing for foreclosure of liens associated with water and sewer service provided by water-sewer districts (RCW 57.08.081), which is the statute upon which section 1 of this bill is premised, is silent as to the specific civil process to be followed.

Foreclosure.

Foreclosure proceedings are governed by different statutes, depending on the basis of the action and the type of security interest at issue. Among the more commonly referenced methods of foreclosure are the following:

- *Mortgage:* A mortgage is a pledge of real property as security for a debt owed to the lender (mortgagee). A mortgage creates a lien on the real property and may be foreclosed only through a judicial proceeding according to detailed requirements set forth in chapter 61.12 RCW.
- *Deed of trust:* A deed of trust resembles a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary). Deeds of trust may be foreclosed either through a judicial process or a non-judicial trustee's sale process, as set forth in chapter 61.24 RCW.
- *Property tax lien:* Taxes and levies assessed on real property are a lien on the property from January 1 of the year they are assessed until they are paid. A county is authorized to foreclose on the tax lien and proceed to sale pursuant to a detailed process set forth in chapter 84.64 RCW.

Summary of Bill:

A district is authorized to impose penalties of not more than 10 percent and interest of 8 percent on delinquent rates and charges for water and sewer services. District commissioners may elect to adopt a resolution requiring the district to certify delinquencies to the county auditor if such delinquencies remain unpaid for any specified period of time. If the delinquency remains unpaid for 30 days after certification, the district may bring suit in foreclosure by civil action in superior court. However, no liens may be made against

property owned and occupied by a person with a household income level not exceeding 125 percent of the federal poverty guidelines.

The seller of property subject to a lien that is assessed by a PUD for a delinquent account related to water and sewer charges, but that is not evidenced by a recorded lien, covenant agreement, or special assessment roll, is responsible for satisfying the lien upon closing. The seller must inform the closing agent of the lien, and the closing agent must submit a written request for a final billing to the PUD. The closing agent must administer the disbursement of closing funds to satisfy any unpaid, unrecorded utility liens. If, however, the district does not respond to the closing agent's request for a final billing within three or seven days of receipt, depending on how the request was submitted, then the lien is extinguished as to the purchaser of the property. The district may continue to seek recovery of the delinquent account from the seller.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill represents an attempt to give PUDs enforcement tools that are in line with those granted to other utilities. The interest and penalty provisions of this bill are patterned after the authority already given to water-sewer districts. The interests of property owners who are low income and occupy the affected property are protected. As a matter of fairness, other rate-payers should not have to bear the burden of significant write-offs of delinquent accounts for customers who are not low income. Foreclosure authority would be used as a last resort. The lien authority granted in this bill is the most important factor; provisions pertaining to foreclosure and interest and penalty rates are flexible.

(Opposed) Locally-owned municipal utilities have foreclosure authority because their rates are far lower, and therefore they have less ability to absorb write-offs. Utility bills are typically in a tenant's name. It is conceivable that lien attachment or foreclosure proceedings could progress without the landlord having any knowledge of the delinquency.

Persons Testifying: (In support) Representative Hunt, prime sponsor; John Weidenfeller and Christopher L. Stearns, Thurston Public Utility District; and Vicki Christophersen, Washington Public Utility District Association.

(Opposed) Julie Johnson, Rental Housing Association of Puget Sound.

Persons Signed In To Testify But Not Testifying: None.