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HOUSE BILL 1616

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Hunt, Appleton, and Reykdal

Read first time 01/27/11. Referred to Committee on Local Government.

1            AN ACT Relating to lien authority of public utility districts  
2 providing water or sewer service; amending RCW 60.80.005, 60.80.010,  
3 and 60.80.020; and adding a new section to chapter 54.24 RCW.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 54.24 RCW  
6 to read as follows:

7            (1) The commissioners may enforce collection of connection charges,  
8 and rates and charges for water supplied against property owners  
9 connecting with the system or receiving such water, and for sewer  
10 services charged against property to which and its owners to whom the  
11 service is available, such charges being deemed charges against the  
12 property served, by addition of penalties of not more than ten percent  
13 thereof in case of failure to pay the charges at times fixed by  
14 resolution and interest at the rate of eight percent per annum on such  
15 delinquent charges.

16            (2) Except as provided in subsection (3) of this section, the  
17 commissioners may, in their discretion, provide by resolution that  
18 where the rates and charges for services supplied are delinquent for  
19 any specified period of time, the district shall certify the

1 delinquencies to the auditor of the county where the real property is  
2 located, and the charges and interest thereon at a rate of eight  
3 percent per annum, and penalties shall be a lien against the real  
4 property upon which service was received, provided that said real  
5 property is correctly described in the certification and subject only  
6 to the lien for general taxes.

7 (3) No liens may be made on real property for charges as described  
8 in subsection (1) of this section, if such charges are for services  
9 provided to a residence occupied by the owner who is a person of low  
10 income at time of certification by the district in subsection (2) of  
11 this section. For the purposes of this section a person of low income  
12 is a person who individually or as a family occupying the residence has  
13 an income level that does not exceed one hundred twenty-five percent of  
14 the federal poverty guidelines adopted by the United States department  
15 of health and human services and published in the federal register.

16 (4) If the rates and charges remain unpaid after the certification  
17 of the delinquencies to the auditor of the county in which the property  
18 is located for thirty days after the certification, then the district  
19 may bring suit in foreclosure by civil action in superior court in the  
20 county in which the real property is located. The court shall allow,  
21 in addition to the costs and disbursements provided by statute,  
22 reasonable attorneys' fees, reasonable fees for title search, and other  
23 such expenses and such other costs that the court determines to be  
24 reasonable. This action shall be an action in rem and may be brought  
25 in the name of the district against the individuals who are delinquent  
26 and may be brought in one action. The laws and rules of the court  
27 shall control as in other civil actions.

28 **Sec. 2.** RCW 60.80.005 and 2004 c 215 s 7 are each amended to read  
29 as follows:

30 Unless the context clearly requires otherwise, the definitions in  
31 this section apply throughout this chapter:

32 (1) Except as otherwise provided in this subsection (1), "charges"  
33 include: (a) All lawful charges assessed by a utility operated under  
34 chapter 35.21, 35.67, 36.36, 36.89, 36.94, 54.16, or 57.08 RCW, but not  
35 evidenced by a recorded lien, recorded covenant, recorded agreement, or  
36 special assessment roll filed with the city or county treasurer or

1 assessor, and not billed and collected with property taxes; and (b)  
2 penalties and interest, and reasonable attorneys' fees and other costs  
3 of foreclosure if foreclosure proceedings have been commenced.

4 (2) "Closing agent" means an escrow agent as defined in RCW  
5 18.44.011(~~(+6)~~) (7) or a person exempt from licensing requirements  
6 under RCW 18.44.021, handling the escrow on the sale of the real  
7 property.

8 (3) "Real estate agent" means a real estate broker, real estate  
9 salesperson, associate real estate broker, or person as defined in RCW  
10 18.85.010 (1) through (4).

11 (4) "Business day" means a day the offices of the county or  
12 counties in which the utility in question provides service are open for  
13 business.

14 **Sec. 3.** RCW 60.80.010 and 2004 c 215 s 8 are each amended to read  
15 as follows:

16 (1) Unless otherwise stated and acknowledged in writing by the  
17 purchaser, the seller of a fee interest in real property is responsible  
18 for satisfying, upon closing, any lien provided for by RCW 35.21.290,  
19 35.67.200, 36.36.045, (~~(36.89.090, or)~~) 36.89.065, 36.94.150, or  
20 section 1 of this act.

21 (2) No closing agent may refuse a written request by the seller or  
22 purchaser of a fee interest in real property to administer the  
23 disbursement of closing funds necessary to satisfy unpaid charges as  
24 charges are defined in RCW 60.80.005. Except as otherwise provided in  
25 this subsection (2), a closing agent who refuses such a written request  
26 is liable to the purchaser for unpaid charges for utility services  
27 covered by the request. A closing agent is not liable if the closing  
28 agent's refusal is based on the seller's inaccurate or incomplete  
29 identification of utilities providing service to the property, or if a  
30 utility fails to provide an estimated or actual final billing, or  
31 written extension of the per diem rate, as required by RCW 60.80.020,  
32 or if disbursement of closing funds necessary to satisfy the unpaid  
33 charges would violate RCW 18.44.400.

34 (3) A closing agent may charge a fee for performing the services  
35 required of the closing agent by this chapter, which fee may be in  
36 addition to other fees or settlement charges collected in the course of  
37 ordinary settlement practices.

1       **Sec. 4.** RCW 60.80.020 and 2004 c 215 s 9 are each amended to read  
2 as follows:

3       (1) Unless the seller and purchaser waive, in writing, the services  
4 of a closing agent in administering the disbursement of closing funds  
5 necessary to satisfy unpaid charges as charges are defined in RCW  
6 60.80.005, the seller shall, as a provision in a written agreement for  
7 the purchase and sale of real estate, inform the closing agent for the  
8 sale of the names and addresses of all utilities, including special  
9 districts, providing service to the property under chapter 35.21,  
10 35.67, 36.36, 36.89, 36.94, 54.16, or 57.08 RCW. The provision of the  
11 information in a written agreement for the purchase and sale of real  
12 estate constitutes a written request to the closing agent to administer  
13 disbursement of closing funds necessary to satisfy unpaid charges.

14       Unless the seller and purchaser have waived the services of a  
15 closing agent as provided in this subsection, the closing agent shall  
16 submit a written request for a final billing to each utility identified  
17 by the seller as providing service to the property under chapter 35.21,  
18 35.67, 36.36, 36.89, 36.94, 54.16, or 57.08 RCW. Either the seller or  
19 purchaser may submit a written request for a final billing to each  
20 utility identified by the seller as providing service to the property  
21 under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 54.16, or 57.08 RCW.

22       The written request must identify the property by both legal  
23 description and address. The closing agent, seller, or purchaser may  
24 submit a written request to a utility by facsimile. In requesting  
25 final billings for utility services, the closing agent may rely upon  
26 information provided by the seller, and a closing agent or a real  
27 estate agent who is not the seller is not liable for inaccurate or  
28 incomplete information.

29       (2) After receiving a written request for a final billing for  
30 utility services to real property to be sold, a utility operated under  
31 chapter 35.21, 35.67, 36.36, 36.89, 36.94, 54.16, or 57.08 RCW shall  
32 provide the requesting party with a written estimated or actual final  
33 billing as provided in this section. If the utility is unable to  
34 provide a written estimated or actual final billing or written  
35 extension of the per diem rate, due to insufficient information to  
36 identify the account, the utility shall notify the requesting party in  
37 writing that the information is insufficient to identify the account.

1 The utility shall provide the written estimated or actual final  
2 billing, or statement that the information in the request is  
3 insufficient to identify the account, to the requesting party within  
4 seven business days of receipt of the written request if the request  
5 was mailed to the utility, or within three business days if the request  
6 was sent to the utility by facsimile or delivered to the utility by  
7 messenger. A utility may provide a written estimated or actual final  
8 billing to the requesting party by facsimile.

9 (a) The final billing must include all outstanding charges and, in  
10 addition to the estimated or actual final amount owing as of the stated  
11 closing date, must state the average per diem rate for the utility or  
12 utilities involved, including taxes and other charges, which shall  
13 apply for up to thirty days beyond the stated closing date if the  
14 closing date is delayed.

15 (b) If closing is delayed beyond thirty days, a new estimated or  
16 actual final billing must be requested in writing. In lieu of  
17 furnishing a written revised final billing, the utility may extend, in  
18 writing, the number of days for which the per diem charge applies. The  
19 utility shall respond within seven business days of receipt of the  
20 written request for a new estimated or actual final billing if the  
21 request was mailed to the utility, or within three business days if the  
22 request was sent to the utility by facsimile or delivered to the  
23 utility by messenger.

24 (c) If a utility fails to provide a written estimated or actual  
25 final billing, written extension of the per diem rate, or statement  
26 that the information in the request is insufficient to identify the  
27 account, within seven business days of receipt of a written request if  
28 the request was mailed to the utility, or within three business days if  
29 the request was sent to the utility by facsimile or delivered to the  
30 utility by messenger, an unrecorded lien provided for by RCW 35.21.290,  
31 35.67.200, 36.36.045, (~~(36.89.090, or)~~) 36.89.065, 36.94.150, or  
32 section 1 of this act for charges incurred prior to the closing date is  
33 extinguished, and the utility may not recover the charges from the  
34 purchaser of the property.

35 (d) A closing agent shall inform the seller and purchaser of all  
36 applicable estimated and actual final billings furnished by utilities.

37 In performing his or her duties under this chapter, a closing agent

1 may rely upon information provided by utilities and is not liable if  
2 information provided by utilities is inaccurate or incomplete.

3 (3) If closing occurs no later than the last date for which per  
4 diem charges may be applied, full payment of the estimated or actual  
5 final billing plus per diem charges extinguishes a lien of the utility  
6 provided for by RCW 35.21.290, 35.67.200, 36.36.045, (~~36.89.090, or~~)  
7 36.89.065, 36.94.150, or section 1 of this act for charges incurred  
8 prior to the closing date.

9 (4)(a) Except as otherwise provided in this subsection (4)(a), this  
10 section does not limit the right of a utility to recover from the  
11 purchaser of the property unpaid utility charges incurred prior to  
12 closing, if the utility did not receive a written request for a final  
13 billing or if the utility complied with subsection (2) of this section.

14 A utility may not recover from a purchaser unpaid utility charges  
15 incurred prior to closing in excess of an estimated final billing.

16 (b) This section does not limit the right of a utility to recover  
17 unpaid utility charges incurred prior to closing, including unpaid  
18 utility charges in excess of an estimated final billing, from the  
19 seller of the property, or from the person or persons who incurred the  
20 charges.

21 (c) If an estimated final billing is in excess of the actual final  
22 billing, unless otherwise directed in writing by the seller and  
23 purchaser, a utility shall refund any overcharge to the seller of the  
24 property by sending the refund in the seller's name to the last address  
25 provided by the seller. A utility shall refund the overcharge within  
26 fourteen business days of the date the utility receives payment for the  
27 final billing, unless a county treasurer acts in an ex officio capacity  
28 as the treasurer of a utility, in which case the utility shall refund  
29 the overcharge within thirty business days of the date the utility  
30 receives payment for the final billing.

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