

SENATE BILL REPORT

SB 5795

As Reported by Senate Committee On:
Government Operations & Security, February 19, 2015

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: Senators Roach and Liias.

Brief History:

Committee Activity: Government Operations & Security: 2/17/15, 2/19/15 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

Majority Report: That Substitute Senate Bill No. 5795 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Liias, Ranking Minority Member; Dansel and McCoy.

Staff: Karen Epps (786-7424)

Background: Contract for Water or Sewer Facilities. The governing body of any county, city, town, or drainage district (municipality) may contract with the owners of real estate for the construction of certain water or sewer facilities to connect with public water or sewer systems to serve the affected real estate. At the owner's request, a municipality must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's own expense. An owner's request may only require a contract in certain locations, including the following:

- where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development;
- in locations where the proposed improvement or construction will be consistent with the comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve; and
- within the municipality's corporate limits or within ten miles of the municipality's corporate limits.

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.

Additionally, the owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality. The contracts must be filed and recorded with the county auditor and must contain conditions required by the municipality in accordance with its adopted policies and standards.

Unless the municipality notifies the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for the water or sewer facility, if required. Connection of the water or sewer facility to the municipal system must be conditioned upon specified requirements:

- construction of the water or sewer facility according to plans and specifications approved by the municipality;
- inspection and approval of the water or sewer facility by the municipality; and
- payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs.

Unless provided otherwise by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved through the contractually based process are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality. Municipalities seeking reimbursements are also entitled to collect fees that are reasonable and proportionate to expenses incurred in complying with provisions governing contracts with real estate owners for the construction or improvement of water or sewer facilities.

Contracts between municipalities and real estate owners must provide for the pro rata reimbursement to the owner or the owner's assigns for 20 or more years. The reimbursements must:

- be within the period of time that the contract is effective;
- be for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and
- be from latecomer fees received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

Within 120 days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

The provisions governing contracts with real estate owners for the construction or improvement of water or sewer facilities do not create a private right of action for damages against a municipality for failing to comply with specified requirements. A municipality or its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure with requirements for contracts with real estate owners for the construction or improvement of water or sewer facilities does not relieve a municipality of future compliance requirements.

Assessment Reimbursement Areas–Street Projects. For road or street improvements, counties, cities, and towns are currently authorized to create assessment reimbursement areas without the participation of property owners; finance the costs of improvements; and become the sole beneficiary of reimbursements for the project. The assessment 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 Bill (Recommended Substitute): As an alternative to the statutory procedures described above for financing the construction or improvement of water or sewer facilities, municipalities may create an assessment reimbursement area on their own initiative without the participation of a private property owner. Following the creation of an assessment reimbursement area, the municipality may finance all of the costs associated with the construction or improvement and become the sole beneficiary of reimbursements. A municipality may only establish an assessment reimbursement area in locations where a municipality's ordinances require water or sewer facilities to be improved or constructed as a prerequisite to further property development or redevelopment.

To create an assessment reimbursement area, a municipality must:

- define the boundaries of an assessment reimbursement area based upon a determination of which parcels in the proposed area would require construction or improvement of water or sewer facilities upon development or redevelopment, or would be allowed connection to or usage of constructed or improved water or sewer facilities;
- send by certified mail a preliminary determination of the assessment reimbursement area boundaries and assessments, along with a description of property owners' rights and options, to each owner of record of real property within the proposed assessment reimbursement area; and
- record the final determination of the assessment reimbursement area boundaries and assessments with the county auditor.

Within 20 days of the preliminary determination's mailing, property owners within the proposed area may submit a written request for a public hearing. If a written request is submitted, municipality must hold a public hearing on the assessment reimbursement area. Notice of the hearing must be provided to all affected property owners. Any rulings of the legislative authority of the municipality are determinative and final, subject to judicial review.

A municipality may be reimbursed only for the costs associated with construction or improvements of facilities that benefit property that will connect to or use the water or sewer facilities within the assessment reimbursement area. Reimbursement may only occur when a property is developed or redeveloped in a manner requiring connection to or use of the water or sewer facilities, or when a property is requesting connection to or use of the water or sewer facilities. The reimbursement may be no greater than a property's pro rata share of costs associated with construction of the water or sewer facilities required to meet utility service and fire suppression standards. The reimbursement share for each property owner

must be based on the benefit to the property owner from the project. The municipality's administrative and legal costs are not subject to reimbursement. A municipality may not receive reimbursement of costs for the portion of construction or improvements that benefit the general public, which is that portion of the water or sewer facilities that only benefit property outside of the assessment reimbursement area.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & SECURITY COMMITTEE (Recommended Substitute): Provides that a municipality may only establish an assessment reimbursement area (ARA) in locations where a municipality's ordinances require water or sewer facilities to be improved or constructed as a prerequisite to further property development or redevelopment. Modifies the criteria a municipality must consider in formulating the boundaries of an ARA. Provides that rulings of the municipality's legislative authority are subject to judicial review. Establishes that reimbursement may only occur when a property is developed or redeveloped in a manner requiring connection to or use of the water or sewer facilities, or when a property is requesting connection to or use of the water or sewer facilities. Establishes that the reimbursement assessment may be no greater than a property's pro rata share of costs associated with construction of the water or sewer facilities required to meet utility service and fire suppression standards. Modifies the criteria used by a municipality to determine reimbursement assessments. Makes technical changes.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is about latecomer agreements in which someone who is redeveloping a piece of property and has to develop utility services such as water and sewer infrastructure can be reimbursed by the latecomers who benefit from the infrastructure. This bill will help cities direct growth and make sure that communities see good growth. This bill offers cities a valuable tool for facilitating growth. This bill would allow a city to build infrastructure that is required to support growth ahead of growth, and then equitably distribute and allow the city to be reimbursed for those costs by the property that benefits when the property is developed. Without this bill, infrastructure needs may go unaddressed because developers appeal the infrastructure requirement and the infrastructure requirements are waived. In that situation, growth happens and the infrastructure needs are not addressed. Another issue that occurs without this bill is that development does not occur at all because of the infrastructure requirement. This bill provides a tool to address those issues and allows costs to be more equitably distributed among benefitting properties when they develop. This bill gives the same infrastructure financing method that is currently available to private developers. This bill mirrors current existing authority for cities to finance street improvements. Legislation from two years ago enacted developer latecomer provisions and this bill would establish the same frameworks for cities.

OTHER: The bill represents an opportunity for needed infrastructure but it is important to make sure there are appropriate checks, balances, and procedures in place to make sure that the latecomer reimbursement is appropriately sized. In the best case, this would fund needed infrastructure and appropriate reimbursement from the private landowner, but in the worst case, it would create a situation in which the private landowner would be required to pay for a project that is over-designed and over-built. It is important to understand more clearly what the pro rata share is. It is important to make sure that what is paid for in the reimbursement is for the infrastructure itself and not administration and overhead. It is important that the infrastructure be appropriately sized. There needs to be an appeals process if there is a dispute with the city.

Persons Testifying: PRO: Carl Schroeder, Assn. of WA Cities; Dani Purnell, city of Seattle.

OTHER: Greg Hanon, Commercial Real Estate Development Assn.