
HOUSE BILL 1947

State of Washington 61st Legislature 2009 Regular Session

By Representatives Simpson, Wood, Flannigan, Upthegrove, and Ormsby

Read first time 02/03/09. Referred to Committee on Transportation.

1 AN ACT Relating to the regulation and preservation of urban streets
2 through a local option street utility; amending RCW 82.80.070; adding
3 a new chapter to Title 35 RCW; creating a new section; repealing RCW
4 82.80.040, 82.80.050, and 82.80.060; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** FINDINGS--PURPOSE. The legislature finds
7 that:

8 (1) The construction, maintenance, and preservation of the streets
9 and the provision of street utility service in urban areas is essential
10 for the protection and convenience of users receiving the service.
11 Inadequate and poorly maintained streets and poor street utility
12 service adversely affect the health, safety, and welfare of the lives
13 and property of residents and the success of businesses located in
14 these areas. Harmful impacts include slowing traffic, decreased
15 vehicle fuel efficiency, and a consequent severe adverse impact on air
16 quality. Further adverse impacts are traffic congestion, vehicle
17 damage, increased accident frequency and more serious accidents, and
18 decreased access to needed services and businesses.

1 (2) Residents and businesses in areas with poorly maintained
2 streets and poor street utility service have slowed and decreased
3 access to service and delivery vehicle support, including decreased
4 access to public transportation and taxi service, the delivery of goods
5 and services, and slower fire, police, and emergency medical vehicle
6 services.

7 (3) Poor street utility service in urban areas accelerates
8 deterioration of private vehicles, increases traffic volumes, and
9 exacerbates peak flow traffic problems.

10 (4) The benefits for city residents and businesses in areas with
11 well-constructed and maintained streets and good street utility service
12 are the opposite of the burdens, and include improved air quality, fuel
13 efficiency, travel speed, travel safety, reduction of damage and
14 deterioration of vehicles, lower insurance rates, and better public
15 transportation, fire, police, and emergency medical vehicle access.

16 (5) Access to and use of the street system and street utility
17 service is necessary for the use of all developed real property.

18 (6) Construction, maintenance, repair, and preservation of the
19 streets and other street utility service in urban areas has
20 traditionally been funded by general taxes without regard to the
21 burdens placed upon streets by different classes of users or the
22 respective benefits derived by them.

23 (7) Objective means are available to assess pavement conditions to
24 identify distressed areas of the streets in cities.

25 (8) Objective measures are available to assess the relative burdens
26 placed upon streets and street utility service users in urban areas by
27 different classes of users and the respective benefits derived by them.

28 (9) Maintenance and preservation of streets and street utility
29 service in urban areas should be funded by rates charged to users of
30 the streets consistent with the burden placed on the streets by various
31 classes of users and the respective benefits derived by them as utility
32 supported users of the street system.

33 (10) A street utility is a more equitable and efficient means to
34 monitor, regulate, and maintain the streets and to provide street
35 utility service than general tax funding.

36 (11) Since 1980, vehicle registration has increased by sixty
37 percent and vehicle miles traveled on municipal streets have increased
38 far in excess of the rate of population growth.

1 (12) Pavement surfaces in urban areas are subjected to much heavier
2 use and have much higher maintenance needs than pavement in rural
3 areas. When pavement is not properly maintained, the pavement
4 deterioration process, amount of work to restore the pavement, and
5 costs of restoration all accelerate exponentially. This creates a
6 downward spiral of increasing pavement deterioration and higher costs
7 to remediate the problem.

8 (13) The institute of transportation engineers is an international
9 educational and scientific professional association. It has developed
10 reports, which fairly measure the relative benefits of streets to
11 different classes of property use. The institute of transportation
12 engineers reports provide a reasonable basis to apportion a part of the
13 costs of street utility service.

14 (14) A street utility created and governed by the legislative
15 authority of a city consistent with the requirements of this chapter
16 provides an appropriate and efficient means to monitor, regulate, and
17 maintain public streets.

18 (15) The preservation of streets through a utility service program
19 will directly serve and benefit those who pay street utility rates by
20 allocating street utility rates to those who place servicing burdens
21 within the street utility service area.

22 (16) The purpose of this chapter is to authorize the creation of a
23 street utility by cities to serve the residents and businesses in
24 utility areas through the preservation and maintenance of streets for
25 areas with an identified street utility service. Street utility rates
26 are determined in proportion to the levels of use of different classes
27 of residents and businesses who depend upon access to and use of the
28 street system and burdens placed upon the streets by different classes
29 of residential and business users.

30 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
31 section apply throughout this chapter unless the context clearly
32 requires otherwise.

33 (1) "City" means an incorporated city or town.

34 (2) "Sound engineering principles" means principles or learning
35 reasonably accepted within the civil engineering or traffic engineering
36 profession, including the department of transportation extended method
37 in paving distress ratings, the department of transportation pavement

1 distress manual, the department of transportation local agency pavement
2 management guide, materials developed by the institute of
3 transportation engineers, including manuals or materials
4 differentiating types of property uses and correlating property use and
5 the expected number of annual automobile and pedestrian trips generated
6 by these uses, and other studies, manuals, or materials that are
7 reliable and based on sound engineering practice as may be developed by
8 professional engineering staff or consultants.

9 (3) "Street" means a city's public right-of-way within the outer
10 boundaries of areas used for pedestrian, bicycle, or motor vehicle
11 traffic. "Street" includes bridges, gutters, curbs, and sidewalks,
12 including those that have barrier-free design features and are
13 wheelchair and stroller accessible.

14 (4) "Street utility" means a municipal utility providing street
15 utility services in accordance with this chapter.

16 (5) "Street utility rates" means street utility user charges
17 authorized under this chapter for street utility services.

18 (6) "Street utility service" means actions by a city established
19 street utility to design, condemn, construct, own, manage, maintain,
20 operate, and preserve all or any described portion of its roads,
21 streets, sidewalks, and other transportation improvements as a separate
22 enterprise and facility. These improvements may include traffic
23 control devices, sidewalks, curbs, gutters, parking facilities, and
24 drainage facilities. Street utility activities may further be
25 identified by ordinance consistent with these purposes. Street utility
26 services may also include (a) repayment of revenue or general
27 obligation bonds repayable from charges listed in section 5 of this act
28 issued in accordance with chapter 35.41, 35.92, or 39.46 RCW, or (b)
29 other evidences of indebtedness issued to pay costs for which street
30 utility service revenues may be used.

31 (7) "Street utility service area" means an area in which street
32 utility services are provided and street utility rates are charged, as
33 established under this chapter.

34 NEW SECTION. **Sec. 3.** LEGISLATIVE AUTHORITY ACTION. Subject to
35 section 4 of this act, the legislative authority of a city may
36 establish a street utility to provide street utility service, with the
37 authority to own and operate the street utility. The legislative

1 authority of the city is the governing body of the street utility. The
2 legislative authority of the city may not assess a street utility user
3 rate outside its jurisdictional limits.

4 NEW SECTION. **Sec. 4.** FORMATION PROCESS. (1) The legislative
5 authority of a city shall conduct a public hearing prior to the
6 formation of a street utility. Notice of the hearing must include an
7 explanation of the proposal and the proposed street utility service
8 areas. The notice may include a description of the condition of the
9 pavement areas for the proposed street utility service area, summaries
10 of pertinent studies, field investigations, and pavement condition
11 scores, including areas classified, or at risk to be classified, for no
12 further maintenance without street utility support. The notice must
13 include a general proposed plan for street utility service to be
14 carried out with street utility rates, a summary of the proposed street
15 utility rates, a description of the proposed area or areas for utility
16 service, and any other pertinent information. The notice must be
17 published once a week for two consecutive weeks in a newspaper of
18 general circulation within the proposed street utility service area.
19 Alternatively, there may be one publication, combined with the
20 presentation of the notice information on a government cable television
21 channel at least ten times in the two-week period and prominently
22 posting the required information on a municipal web site.

23 (2) At the hearing, the city's legislative authority shall review
24 the proposal and consider comments from any interested party and may
25 modify the proposal in response to those comments, as well as any
26 information, opinion polls, or other material relevant to the question
27 presented. The hearing may be continued from time to time.

28 (3) Upon the conclusion of the hearing, the city's legislative
29 authority may adopt an ordinance creating a street utility service area
30 or areas, together with the street utility rates to support the
31 utility, which must be supported by an evidentiary record with findings
32 in accordance with this section and consistent with the findings and
33 purposes of this chapter.

34 (4)(a) The street utility ordinance must include:

35 (i) A finding that the creation of a street utility is in the
36 interest of the public health and safety as supported by findings from
37 the hearing and any other basis;

1 (ii) A finding that the street utility will allocate the burdens
2 placed on the streets by various classes of users and benefit the
3 various classes of users;

4 (iii) A description of the street utility service area and user
5 rate schedule consistent with section 5 of this act setting forth the
6 amounts to be charged to residential and business street users located
7 in the street utility service area; and

8 (iv) A provision that a street utility advisory committee may be
9 established to advise the city from time to time regarding the street
10 utility. If established, the street utility advisory committee must be
11 appointed by the mayor or mayor's designee and confirmed by the city's
12 legislative authority. Committee membership may not exceed seven
13 members, a majority of which must be city residents. Committee
14 membership may include paving contractors, civil engineers,
15 professional traffic engineering staff, and other persons with special
16 training or expertise relevant to the issues presented. Members must
17 serve without compensation, but approved committee expenses and staff
18 support must be provided by the city.

19 (b) The street utility ordinance may include a description or
20 summary of the condition of the pavement in the street utility service
21 area, based on field investigations, pavement condition scores, or
22 other information. The description or summary may include a proposed
23 timetable for street utility services, summary of the services, budget,
24 including projected revenues from street utility rates or other
25 sources, and any other factors deemed relevant.

26 NEW SECTION. **Sec. 5. RATES.** (1)(a) If a street utility is
27 established, street utility rates may be established by ordinance not
28 inconsistent with this section.

29 (b) Street utility rates only apply to residents and businesses
30 located in the street utility service area or areas. Rates may be
31 expressed as a designated dollar amount per trip generated, type of
32 household unit, or type of business. Rates may be collected no more
33 frequently than monthly and no less frequently than annually. Rates
34 set for users other than households may be expressed in equivalents of
35 household units or as specified by ordinance.

36 (2) In establishing street utility rates, the following factors may
37 be considered:

1 (a) A cost component for the street utility's ongoing base level
2 operations and variations in capacity access demands; and the estimated
3 number of vehicle trips generated by specific types of property
4 occupancies or uses. The correlation between property uses and the
5 estimated number of automobile trips from these uses may be considered.
6 The ordinance must consider the institute of transportation engineers
7 manual or other resources of comparable acceptance or reliability.

8 (b) User location; differences in costs of service to different
9 user classes; user proximity to arterial streets; differences in costs
10 or character of the service to users; times of use; number, type, and
11 weight of vehicles associated with household units or businesses;
12 differences in the cost of maintenance, operation, repair, and
13 replacement of various parts of the street system, by capital
14 contributions made to the system including, but not limited to,
15 assessments, achievement of traffic reduction, and air quality
16 improvement goals; capital contributions made to the system including,
17 but not limited to, assessments; special assessments, such as limited
18 improvement districts, for streets and street-related improvements; and
19 any other matters that present a reasonable difference as a basis for
20 distinction. For undeveloped property, a trip rate or fee component
21 may not be assessed and only that base rate portion reasonably
22 attributed to the benefit received or burden created by the undeveloped
23 property on the services provided by the street utility may be charged.
24 Street utility rates must not include an exemption or credit for the
25 payment of any tax.

26 (c) Any other matters that present a reasonable difference as a
27 grounds for distinction of relative costs and benefits among classes of
28 users.

29 (3)(a) A city may reduce or exempt rates on residential properties
30 to the extent of their occupancy by low-income senior citizens and
31 other low-income citizens as provided in RCW 74.38.070, or to the
32 extent of their occupancy by the needy or infirm, as these terms are
33 defined by the city in the street utility ordinance.

34 (b) A city may reduce or exempt rates on other governmental
35 entities to the extent such governmental entities are providing for
36 streets, street-related improvements, and street utility services.

37 (4) If feasible, the ordinance must provide for mitigation for

1 incidental trips that are often combined with other trips, as compared
2 to destination trips that are associated with creating separate trip
3 burdens on the streets.

4 (5) The ordinance may provide for user rate reduction:

5 (a) Based on mitigation through impact fees or other mitigation
6 fees paid for the same improvements as the street authority; or

7 (b) If there is a showing of trip reduction, including reductions
8 for residential users participating in regular carpool or vanpool
9 arrangements or for commercial users offering carpool, vanpool, public
10 transit passes, or a trip reduction program approved under provisions
11 as established by ordinance.

12 (6) Street utility rates must be uniform for the same class of
13 persons receiving services provided or imposing burdens on a
14 transportation system. Street utility rates collected by a street
15 utility must not be established in excess of the amount authorized by
16 the ordinance. Street utility rates may not be collected from vacant
17 parcels not developed for occupancy or use.

18 (7) Street utility rates may supplement but may not duplicate or
19 replace transportation impact fees authorized under growth management
20 laws designed to pay for increasing the capacity of the street system
21 to accommodate the needs for new growth and development rather than
22 street maintenance or remediation of existing deficiencies in the
23 street system.

24 (8) A city may provide or contract to provide billing and
25 collection services of the street utility rates as a part of or
26 separate from other utility services provided. The ordinance may use
27 the connection or consumption of other utility services as a basis to
28 establish occupancy or use.

29 (9) Street utility rates may not be computed based on the ad
30 valorem value of the underlying real property or its improvements.

31 (10) The rates established under this section are not intended to
32 be regarded as tolls, but to the extent that the rates may be
33 determined to be tolls by a court of competent jurisdiction,
34 legislative approval is granted consistent with the requirements of
35 this chapter.

36 (11) Street utility rates established under this section do not
37 constitute taxes or fees as provided under RCW 82.02.050 through

1 82.02.090 or chapter 39.92 RCW. A street utility may be funded by
2 rates or any other lawful revenue source.

3 NEW SECTION. **Sec. 6.** CITIZEN'S APPEAL BOARD. (1) The street
4 utility ordinance under section 5 of this act must include provision
5 for a user to appeal a rate or rate classification upon a showing that
6 the user does not generate equivalent trips, on the average, to other
7 parcels in the same rate class or another good cause. The appeal may
8 also request a review of whether the base rate is adequate to cover
9 ongoing base level operations and variations in capacity access demands
10 or other base rate items allocated to the base rate for a given class
11 of customers. Refunds on collected rates are not required for any
12 period before the time a written appeal is received under procedures
13 established by ordinance. A reasonable charge, not to exceed actual
14 cost of the appeal, may be required to be paid by an appealing
15 ratepayer.

16 (2) Ratepayer appeals must be considered by a three-member
17 citizen's appeal board appointed by the chief executive of the city
18 with the approval of the legislative authority. Members serve
19 staggered three-year terms. For the first terms, one member serves one
20 year, one member serves two years, and one member serves three years,
21 and thereafter, the terms are three years. Board members are not
22 subject to removal except for misfeasance or malfeasance in office.
23 Board members serve without compensation, except reasonable staff
24 support is provided for their administrative needs.

25 (3) The jurisdiction of the citizen's appeal board extends to
26 appeals about rate classifications or rates charged to an individual
27 user. Questions within the board's jurisdiction include whether a rate
28 or rate computation is consistent with state law and the authorizing
29 street utility ordinance. The board may also consider whether any
30 given class or classes of ratepayers are unfairly burdened with street
31 utility rates compared to another class or classes of ratepayers. A
32 class or classes of ratepayers shall not subsidize or support any other
33 class or classes of ratepayers and each class shall bear its own fair
34 pro rata share of street utility expenses.

35 (4) The board's jurisdiction does not extend to any other aspects
36 of street utility operation, enforcement of the street utility
37 ordinance, or any management or control of the city's streets. Appeals

1 from decisions of the board acting within its jurisdictional duties
2 must be directly made to the superior court. Additional provisions
3 that govern appeals under this section must be provided by ordinance.

4 NEW SECTION. **Sec. 7.** RATE COLLECTION. (1) A street utility
5 ordinance may include provision of a penalty for rates sixty days past
6 due, but not to exceed one percent per month thereafter on the unpaid
7 balance. All unpaid street utility rates may be collected against the
8 owner, tenant, or occupant in any manner as provided by law, but for a
9 tenant or occupant, rates collected may not be outside the period of
10 tenancy or occupancy.

11 (2) As a supplemental remedy, a street utility ordinance may: (a)
12 Provide that any unpaid rates and applicable penalties are a lien
13 against the real property for which the street utility services were
14 provided, which amounts may be foreclosed in the manner of a lien for
15 labor and materials furnished on the subject premises. A lien may not
16 exceed twelve months of unpaid rates, plus any applicable penalties; or
17 (b) provide that unpaid street utility rates are a lien against the
18 property to which the rates are provided, which may be enforced in the
19 same manner as rates and charges for the use of systems of sewerage
20 under chapter 35.67 RCW.

21 NEW SECTION. **Sec. 8.** USE OF REVENUES. (1) All street utility
22 rate revenues must be deposited in a special fund or account dedicated
23 to permissible street utility service and must be used for those
24 purposes only.

25 (2) Permitted purposes include any identified street utility
26 service.

27 NEW SECTION. **Sec. 9.** DISSOLUTION. The legislative authority of
28 a city may dissolve a street utility by ordinance upon a finding that
29 the dissolution is in the public interest, but any unexpended funds
30 must be held in trust to be expended for only those permissible
31 purposes as provided in section 8 of this act.

32 NEW SECTION. **Sec. 10.** OTHER RESOURCES. A city electing to
33 establish a street utility under this chapter may use any other

1 resources for street utility service otherwise permitted by law,
2 consistent with any limitations on the service.

3 NEW SECTION. **Sec. 11.** SCOPE. (1) This chapter or any action
4 taken under its authority does not diminish any other general or
5 specific municipal regulatory or funding powers otherwise permitted by
6 law.

7 (2) This chapter is not intended to create or enhance any duty upon
8 any city with respect to the maintenance and preservation of its
9 streets beyond that which now exists under the general law.

10 NEW SECTION. **Sec. 12.** SEVERABILITY. If any provision of this act
11 or its application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 13.** REPEALER. The following acts or parts of
15 acts are each repealed:

16 (1) RCW 82.80.040 (Street utility--Establishment) and 1991 c 141 s
17 1;

18 (2) RCW 82.80.050 (Street utility--Charges, credits) and 2006 c 301
19 s 5, 2000 c 103 s 21, & 1991 c 141 s 2; and

20 (3) RCW 82.80.060 (Use of other proceeds by utility) and 1991 c 141
21 s 3.

22 **Sec. 14.** RCW 82.80.070 and 2005 c 319 s 139 are each amended to
23 read as follows:

24 (1) The proceeds collected pursuant to the exercise of the local
25 option authority of RCW 82.80.010(~~(7)~~) and 82.80.030(~~(7) and 82.80.050~~)
26 (hereafter called "local option transportation revenues") shall be used
27 for transportation purposes only, including but not limited to the
28 following: The operation and preservation of roads, streets, and other
29 transportation improvements; new construction, reconstruction, and
30 expansion of city streets, county roads, and state highways and other
31 transportation improvements; development and implementation of public
32 transportation and high capacity transit improvements and programs; and
33 planning, design, and acquisition of right-of-way and sites for such
34 transportation purposes. The proceeds collected from excise taxes on

1 the sale, distribution, or use of motor vehicle fuel and special fuel
2 under RCW 82.80.010 shall be used exclusively for "highway purposes" as
3 that term is construed in Article II, section 40 of the state
4 Constitution.

5 (2) The local option transportation revenues shall be expended for
6 transportation uses consistent with the adopted transportation and land
7 use plans of the jurisdiction expending the funds and consistent with
8 any applicable and adopted regional transportation plan for
9 metropolitan planning areas.

10 (3) Each local government with a population greater than eight
11 thousand that levies or expends local option transportation funds, is
12 also required to develop and adopt a specific transportation program
13 that contains the following elements:

14 (a) The program shall identify the geographic boundaries of the
15 entire area or areas within which local option transportation revenues
16 will be levied and expended.

17 (b) The program shall be based on an adopted transportation plan
18 for the geographic areas covered and shall identify the proposed
19 operation and construction of transportation improvements and services
20 in the designated plan area intended to be funded in whole or in part
21 by local option transportation revenues and shall identify the annual
22 costs applicable to the program.

23 (c) The program shall indicate how the local transportation plan is
24 coordinated with applicable transportation plans for the region and for
25 adjacent jurisdictions.

26 (d) The program shall include at least a six-year funding plan,
27 updated annually, identifying the specific public and private sources
28 and amounts of revenue necessary to fund the program. The program
29 shall include a proposed schedule for construction of projects and
30 expenditure of revenues. The funding plan shall consider the
31 additional local tax revenue estimated to be generated by new
32 development within the plan area if all or a portion of the additional
33 revenue is proposed to be earmarked as future appropriations for
34 transportation improvements in the program.

35 (4) Local governments with a population greater than eight thousand
36 exercising the authority for local option transportation funds shall
37 periodically review and update their transportation program to ensure

1 that it is consistent with applicable local and regional transportation
2 and land use plans and within the means of estimated public and private
3 revenue available.

4 (5) In the case of expenditure for new or expanded transportation
5 facilities, improvements, and services, priorities in the use of local
6 option transportation revenues shall be identified in the
7 transportation program and expenditures shall be made based upon the
8 following criteria, which are stated in descending order of weight to
9 be attributed:

10 (a) First, the project serves a multijurisdictional function;

11 (b) Second, it is necessitated by existing or reasonably
12 foreseeable congestion;

13 (c) Third, it has the greatest person-carrying capacity;

14 (d) Fourth, it is partially funded by other government funds, such
15 as from the state transportation improvement board, or by private
16 sector contributions, such as those from the local transportation act,
17 chapter 39.92 RCW; and

18 (e) Fifth, it meets such other criteria as the local government
19 determines is appropriate.

20 (6) It is the intent of the legislature that as a condition of
21 levying, receiving, and expending local option transportation revenues,
22 no local government agency use the revenues to replace, divert, or loan
23 any revenues currently being used for transportation purposes to
24 nontransportation purposes.

25 (7) Local governments are encouraged to enter into interlocal
26 agreements to jointly develop and adopt with other local governments
27 the transportation programs required by this section for the purpose of
28 accomplishing regional transportation planning and development.

29 (8) Local governments may use all or a part of the local option
30 transportation revenues for the amortization of local government
31 general obligation and revenue bonds issued for transportation purposes
32 consistent with the requirements of this section.

33 (9) Subsections (1) through (8) of this section do not apply to a
34 regional transportation investment district imposing a tax or fee under
35 the local option authority of this chapter. Proceeds collected under
36 the exercise of local option authority under this chapter by a district
37 must be used in accordance with chapter 36.120 RCW.

1 NEW SECTION. **Sec. 15.** Captions used in this act are not any part
2 of the law.

3 NEW SECTION. **Sec. 16.** Sections 1 through 12 of this act
4 constitute a new chapter in Title 35 RCW.

5 NEW SECTION. **Sec. 17.** This act takes effect August 1, 2009.

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