

# HOUSE BILL REPORT

## HB 1929

---

### As Reported by House Committee On: Transportation

**Title:** An act relating to the regulation and preservation of urban streets through a local option street maintenance utility and allowing the imposition of a charge.

**Brief Description:** Concerning the regulation and preservation of urban streets through a local option street maintenance utility and allowing the imposition of a charge.

**Sponsors:** Representatives Liias, Ladenburg, Clibborn and Billig.

#### **Brief History:**

##### **Committee Activity:**

Transportation: 2/22/11, 2/24/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Authorizes certain cities and towns to establish, after voter approval, a jurisdiction-wide street maintenance utility.
- Authorizes the governing body of a street maintenance utility to impose charges on users to fund the preservation and maintenance of urban streets.
- Repeals the existing street utility statutes.

---

### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Clibborn, Chair; Billig, Vice Chair; Liias, Vice Chair; Eddy, Finn, Fitzgibbon, Jinkins, Ladenburg, Moeller, Moscoso, Reykdal, Rolfes, Ryu, Takko and Upthegrove.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Johnson, Klippert, Kristiansen, McCune, Overstreet, Rivers, Shea and Zeiger.

**Staff:** David Munnecke (786-7315).

---

*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.*

## **Background:**

The legislative authority of a city, town, or county may establish a regulatory fee pursuant to its police powers, but a local jurisdiction must have specific statutory authority to impose a tax.

The basic characteristic of a tax is that it is a charge imposed to raise money for any governmental purpose. In other words, a tax need not have a direct connection between the charge and the benefit to the taxpayer. Article VII, section 1 of the state Constitution requires that all property taxes be applied uniformly upon the same class of property within the jurisdiction imposing the tax. Tax uniformity requires both an equal tax rate and equality in valuing the property taxed.

A true regulatory fee is a charge to cover the cost of the governmental entity's regulatory program, and the cost is allocated to those who are either voluntarily or involuntarily receiving special attention from government regulators. Such fees usually cover public expenses for inspections, recordkeeping, and processing, and are limited to the proportionate cost of giving the fee payer that special attention. Examples of true regulatory fees include building permit fees, inspection fees, and professional license fees.

Other charges may be imposed by a governmental entity that are neither true regulatory fees nor taxes. Examples of such charges include electrical rates and storm water utility fees.

### Street Utilities, in General.

The legislative authority of a city or town (city) may establish a street utility by ordinance, and may impose charges to be used solely for transportation purposes. The governing body of the street utility is the legislative authority of the city that establishes the street utility.

"Transportation purposes" includes owning, preserving, maintaining, and constructing streets; developing and implementing public transportation and high capacity transit improvements; and planning and designing such transportation purposes. Street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities, and drainage facilities may also be included in the street utility.

### Street Utility Rates and Credits.

Cities that establish a street utility may impose periodic charges for the use or availability of streets in a total annual amount of up to 50 percent of the actual costs for maintenance, operation, and preservation. The rates must be uniform for the same class of service, and all business and residential properties must be subject to the utility charge.

Charges imposed on businesses must be measured solely by the number of employees and may not exceed the equivalent of \$2 per month per full-time employee. Charges imposed against residential owners or occupants may not exceed \$2 per month per housing unit.

In establishing the different classes of service provided to businesses and residential properties, the governing body of the street utility may consider several factors, including:

- the difference in cost of service to the various users or traffic generators;
- location of the various users or traffic generators within the city or town;

- the time of use or traffic generation;
- capital contributions made to the facility; and
- any other matters that present a reasonable difference as a ground for distinction.

Certain property and property owners are exempt from the street utility rate, including certain property used for nonprofit or sectarian purposes; and property exclusively owned by the federal government, the state, any county or municipal corporation, and all property located in Washington that is used exclusively for essential government services and is owned by any federally recognized Indian tribe.

The governing body of the street utility may reduce or exempt charges on residential properties to the extent they are occupied by persons with low income. The street utility ordinance or resolution must also include a provision granting any business a credit against the street utility charge for the full amount of any commuter or employer tax paid for transportation purposes by that business.

#### Relevant Court Decisions.

In 1992 the City of Seattle (City) created a street utility by ordinance. The ordinance called for the collection of a street utility charge for the use or availability of city streets, and set the residential charge at \$2 per month per housing unit for single-family residences and \$1.35 per month per housing unit for multiple-family residences. In 1993 certain residential street utility ratepayers filed a class action lawsuit alleging that the charge was an unconstitutional property tax which violated the uniformity requirement of the state Constitution. *Covell v. City of Seattle*, 127 Wn.2d 874 (1995).

The City conceded that the street utility charges would be unconstitutional if they were property taxes because they were not imposed in a uniform manner. The City argued, however, that the utility charge was a regulatory fee imposed pursuant to its police powers.

Ultimately, the state Supreme Court found that the street utility charge imposed by the City was unconstitutional because it was a property tax (not a fee or charge) that violated the uniformity requirements of the Constitution. The *Covell* Court (Court) explained that whether a charge imposed by a governmental entity is a tax or regulatory fee depends on three factors:

- whether the primary purpose is to accomplish desired public benefits which cost money, or whether the primary purpose is to regulate;
- whether the money collected must be allocated only to the authorized regulatory purpose; and
- whether there is a direct relationship between the charge and the service received by those who pay the charge and the burden produced by the payer.

In concluding that the street utility charges were an unconstitutional property tax, the Court noted several factors, including:

- the primary concern of the enabling ordinances was on collecting money to pay for street improvements rather than with public health, safety, or welfare;
- the ordinances made no attempt to regulate residential housing or to regulate the use of city streets by residential occupants;

- there was no justification or practical basis for the \$2 charge, and this charge amount in no way reflected a residential property owner's use of city streets or the burden the owner placed on the system; and
- the charges were not individually determined and could not be avoided.

The Court also noted that the statutes authorizing the creation of a street utility provide exemptions and credits that are more consistent with a tax than a fee. For example, RCW 82.80.050 provides that: (1) all property belonging to the federal government and other governmental bodies are exempt from the street utility charge, however, governmental entities must pay reasonable user fees; and (2) businesses that pay a commuter or employee tax for transportation purposes must be credited that full amount against the utility charge, which would not be necessary or appropriate unless it was intended to ensure that a business was not taxed twice for the same purpose.

Subsequent court opinions applying *Covell* provide that regulatory fees need not be "individually" determined, and if a direct relationship exists, only a practical basis for the rate is required.

---

### **Summary of Substitute Bill:**

#### Street Maintenance Utilities, in General.

The existing street utility statutes are repealed and replaced with provisions authorizing the legislative authority of a city or town (city) to establish, after voter approval, a jurisdiction-wide street maintenance utility (SMU) and to impose charges to fund the maintenance, preservation, and operation of existing streets.

Numerous legislative findings are made, establishing, among other things, that:

- the maintenance, preservation, and operation of streets in urban areas is essential for the safety, protection, and convenience of persons, businesses, and other entities using the streets;
- the preservation of streets through a SMU program will directly serve and benefit those who pay the SMU rates; and
- street maintenance utility rates are determined in proportion to the levels of the use of different classes of residents, businesses, governmental entities, and all other users who depend on access to and use of the street system.

#### Eligibility.

The ability to establish a street maintenance utility is limited to cities meeting the following population thresholds:

- cities with a population between 150,000 and 300,000;
- cities in a county with a population of 1,500,000 and a population between 9,000 and 10,000, 20,000 and 21,000, 45,000 and 48,000, 54,000 and 60,000, and 110,000 and 115,000;
- cities in a county with a population between 700,000 and 750,000 with a population between 40,000 and 50,000; and

- cities with a population greater than 60,000 located in both a county with a population greater than 1,500,000 and in a county with a population between 750,000 and 900,000.

#### Formation and Governance.

After notice, a public hearing, and approval of an authorizing proposition by the voters, the legislative authority of a city that obtains vote approval prior to December 31, 2017, is authorized to adopt an ordinance creating a SMU and establishing the SMU rates. The city legislative authority is the governing body of the SMU. The ordinance must include findings that: (1) the creation of the SMU is in the interest of the public health and safety; (2) the SMU will allocate the relative burdens placed on the streets by various classes of users; and (3) the SMU rates are intended to be adequate to provide revenues sufficient for the SMU service, including payment of principal and interest on any bonds.

In addition, the ordinance must provide:

- a description of the SMU service area and user rate schedule;
- a provision that a SMU Advisory Committee must be created;
- a description or summary of the condition of the pavement in the SMU service area;
- a material change policy to address major plan changes that affect project delivery or the ability to finance identified projects. At minimum, the city must consult with the SMU Advisory Committee on how the plan changes should be resolved; and
- appeal provisions that allow a ratepayer to challenge a rate, a rate classification, and the base rate.

The SMU ordinance may include penalty provisions for rates 60 days past due and establish that such unpaid rates and penalties are a lien against the ratepayer's real property.

#### Street Maintenance Utility Rates.

Street maintenance utility rates apply to residents, businesses, governmental entities, and other users located in the SMU service area. Street maintenance utility rates must be uniform for the same class of ratepayers and must be established using sound engineering principles.

The SMU rates must also take into consideration:

- the correlation between property uses and the estimated number of vehicle trips from these uses; and
- the Institute of Transportation Engineers manual or other resources of comparable acceptance or reliability.

Street maintenance utility rates may take into consideration, among other things:

- a "base-level operations" cost component (for example, general system-wide costs based on the threshold costs of operating the utility per subscriber unit without regard for level of use or intensity of service);
- user location (for example, proximity to arterial streets or SMU boundaries);
- time of use;
- number and type of vehicles associated with household units, governmental entities, or businesses;
- differences in costs of service to different user classes;
- special assessments for streets and street-related improvements;
- capital contributions to the system; and

- any other matters that present a reasonable difference as a grounds for distinction.

Street maintenance utility rates may not be computed based on the ad valorem value of the underlying real property or its improvements.

#### Exemptions and Credits.

Street maintenance utility rates may not:

- include an exemption or credit for the payment of any tax;
- be imposed on undeveloped property; or
- duplicate or replace transportation impact fees imposed pursuant to the Growth Management Act.

Street maintenance utility rate credits or reductions may be provided:

- to owners of vacant premises upon proof of vacancy;
- on residential properties for persons with low income;
- on business and governmental entities to the extent these entities are providing for streets or street-related improvements within the SMU service area;
- on residences, businesses, and other users served by private streets to the extent these entities are providing for streets or street-related improvements;
- to mitigate incidental trips, if feasible; and
- if there is a showing of trip reduction (including carpooling).

#### Revenue Use.

Street maintenance utility revenues must be deposited in a special fund or account and dedicated to permissible SMU services. Permissible SMU services include maintaining, operating, and preserving streets, bridges, gutters, curbs, and sidewalks.

#### Advisory Committee.

A SMU Advisory Committee must be formed in conjunction with the SMU. The SMU Advisory Committee may include up to seven members, and a majority of the members must be city residents or business owners that represent the different SMU user classifications. Members are appointed by the mayor and confirmed by the city's legislative authority, and serve without compensation. The SMU Advisory Committee may review proposed maintenance projects, rates, credits, plan changes, or other matters established by the ordinance.

#### Appeals.

The legislative authority of the city must appoint an independent examiner to consider ratepayer appeals to a rate, rate classification, and any base rate. Ratepayers may be required to pay a reasonable charge not to exceed the actual cost of the appeal. Appeals from the examiner's findings and decision must be made directly to the superior court.

#### Reports.

The governing body of a SMU must issue an annual report indicating the status of program revenues, annual revenues received, the portion of revenues that are bonded, a summary of annual expenditures on projects, and construction schedules for the next budget year. The report must also provide a means of describing if rates and revenues are sufficient to obtain

and maintain the city's system-wide pavement condition index standard. The city must make copies of the annual report available to ratepayers upon request.

Cities that establish a SMU are required to submit a report to the Transportation committees of the Legislature by December 31, 2017. The report must include a description of how the SMU was established, the creation of the rate system, and the establishment of the Advisory Committee.

Dissolution.

The legislative authority of a city may dissolve a SMU by ordinance upon a finding that dissolution is in the public interest. Any unexpended funds must be held in trust to be expended only as permitted by the SMU statutes.

**Substitute Bill Compared to Original Bill:**

The ability to establish a SMU is limited to cities meeting the following population thresholds:

- cities with a population between 150,000 and 300,000;
- cities in a county with a population of 1,500,000 and a population between 9,000 and 10,000, 20,000 and 21,000, 45,000 and 48,000, 54,000 and 60,000, and 110,000 and 115,000;
- cities in a county with a population between 700,000 and 750,000 with a population between 40,000 and 50,000; and
- cities with a population greater than 60,000 located in both a county with a population greater than 1,500,000 and in a county with a population between 750,000 and 900,000.

Cities that establish a SMU are required to submit a report to the Transportation committees of the Legislature by December 31, 2017. The report must include a description of how the SMU was established, the creation of the rate system, and the establishment of the Advisory Committee.

The ability to enter into interlocal agreements with other jurisdictions authorized to establish a SMU is removed, as is language regarding approval of taxes and tolls in the event of a court determination of the existence of such.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect August 1, 2011.

**Staff Summary of Public Testimony:**

(In support) This bill helps local jurisdictions by providing a dedicated revenue source for transportation projects just like the counties and the state have. It uses a utility that measures

the amount of use and bills people on that basis, which is an approach that is already used in Oregon. There is a four-year phase period before the full rates are in effect, which should help businesses, and the money can only be used for street preservation and maintenance. The bill is the culmination of six years of discussions with the business community. It has been refined to require voter approval, and the use is limited to just a number of interested cities.

The gas tax distribution from the state is not sufficient for the costs that are associated with street maintenance. It is a declining revenue source and currently provides enough money to fill about half the potholes that are created in a given year. Transportation benefit districts (TBDs) do not provide enough funding, and do not measure the amount of activity and bill people on that basis. A TBD also provides funding for all types of transportation purposes, rather than just for maintenance. The vehicle license fee allowed under a TBD does not cover trucks, so it forces the local citizens to cover the costs of through traffic on arterials. A local improvement district only works for a one-time capital cost, rather than ongoing maintenance.

This bill is about the stewardship of community resources, and it always costs less to maintain the roads rather than to reconstruct them. People want a funding option that works, so that we stop falling further and further behind on necessary maintenance. The roads do not care about the funding situation, they just need to be maintained. Businesses also operate in cities where the infrastructure is failing, not just people, and the cost to businesses will be far greater if roads have to be closed.

The City of Tacoma has a maintenance backlog of \$800 million and needs \$30 million per year in order to catch up. The overall street rating in Washington is 68 percent, and it is only 51 percent in Tacoma.

The SMU that used to exist in Walla Walla was very popular, and when it was overturned by the *Covell* decision, very few people were interested in getting their money back. When Auburn raised the property tax rate 4-1/2 years ago to pay for improvements to the roads in the business area, 67 percent of the voters approved. Auburn still has a maintenance backlog of more than 23 years.

The City of Burien needs \$2.8 million per year to maintain its streets. It only receives \$1 million from the gas tax, and a SMU will help fill this gap. The \$10 vehicle license fee that the city has imposed is not enough.

The value of peoples' homes is diminished if the street in front of the home deteriorates. Peoples' access to emergency service is important, and it too is affected by the quality of the roads. Voters want the right to choose how to fund the roads.

In Snoqualmie, the historic infrastructure has failed, and the new infrastructure is due for its first round of maintenance. The city needs \$4 million per year for maintenance, and the funds from a street utility could not be used for anything but maintenance.



The seven-member SMU Advisory Committee required by the act should help to maintain citizen involvement in the process. Vacant properties are not charged, so it is like a utility in that regard.

(With concerns) Cities and counties both have problems with funding sources. Counties are responsible for providing significant facilities that generate a significant number of trips. There is no exemption for counties, so the costs to them would be significant.

For larger ports, the question is how you deal with a larger facility. Industrial properties would pay the most, but there is no guarantee the money would be spent in industrial districts.

(Opposed) This bill will hurt low-profit businesses if it is used. Otherwise, it is one more tool that cities will not use. It creates a costly and expensive process for measuring and taxing, and would require even more expenditures in the event that a business wants to appeal the rates, which has been a problem in Oregon. The better approach is to look to a statewide strategy.

Restaurants are reeling because of the recession. Per capita spending on restaurants is down 6.6 percent and restaurant profit margins are down 4.5 percent. Labor costs and food costs are already high in Washington, so the average employment in Washington restaurants is three fewer people than the national average. Now is not the time to add to these costs.

This tax would impact grocery stores a great deal. Profit margins in the industry are already around 1 percent. The number of trips involved and the use of trucks will both increase the rates the stores will pay. There are no exemptions or credits, and the trips cannot be mitigated because people are coming to shop. This bill will also decrease city sales tax receipts if fewer people come to shop.

Now is not the time to increase costs to retailers. Malls in particular will be significantly impacted, and now is certainly not the time to increase their costs. When a Walmart goes in, it is required to put in streetlights, turn lanes, sidewalks, and other infrastructure. This bill would require them to cover the cost of maintaining this infrastructure as well.

These are tough economic times, and both auto-dealers and the maritime industry have seen a decrease in revenue.

Street maintenance is a general government service and it should be funded with general government revenues. The SMU charge is a tax and increases to the tax should be required to be approved by the voters.

**Persons Testifying:** (In support) Representative Liias, prime sponsor; Dick McKinley, City of Tacoma; Pete Lewis and Dennis Dowdy, City of Auburn; Don McReynolds, Parametrix; Joan McGilton and Larry Blanchard, City of Burien; Jim Chambers, Transportation, Transit and Trails Committee and City of Auburn; Matt Larson, City of Snoqualmie; Roger Thordorson; and Ashley Probart, Association of Washington Cities.

(With concerns) Scott Merriman, Association of Counties; and Eric Johnson, Washington Ports Association.

(Opposed) Amber Carter, Association of Washington Business; Denny Eliason, Washington Restaurant Association; Carolyn Logue, Washington Food Industry; Mark Johnson, Washington Retail Association; Scott Hazlegrove, Washington State Auto Dealers Association and Pacific Shipping Association; and Steve Gano, Walmart, AT&T, Key Bank, and Wells Fargo Bank.

**Persons Signed In To Testify But Not Testifying:** None.