
Transportation Committee

HB 1593

Brief Description: Concerning local transportation options.

Sponsors: Representatives McBride, Fey, Clibborn, Moscoso, Reykdal, Takko, Tarleton, Farrell, Sells and Kagi.

Brief Summary of Bill

- Allows cities and towns to establish transportation utilities to pay for transportation infrastructure maintenance and operation.
- Allows cities and counties with transportation benefit districts (TBDs) to eliminate the separate entity status of the TBD.
- Allows the TBDs to impose a vehicle fee of up to \$50 and a sales and use tax of up to 0.2 percent with a vote of the governing board.

Hearing Date: 2/4/15

Staff: David Munnecke (786-7315).

Background:

Taxes and Fees.

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. *Boeing Co. V. King County*, 75 Wn.2d 160, 165, 449 P.2d 404 (1969).

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.

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.

Relevant Court Decisions Regarding Street Utilities.

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, 905 P.2d 324 (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; that is, "...if such a direct relationship exists, this court can hold that the charge is a fee even though the charge is not individualized according to the benefit accruing to each fee payer or the burden the fee payer produced. Further, if a direct relationship exists, only a practical basis for the rate is required, as opposed to mathematical precision." *Storedahl Props., LLC v. Clark County*, 143 Wn. App. 489, 503 (2008).

Transportation Benefit Districts, In General.

A transportation benefit district (TBD or district) is a quasi-municipal corporation and independent taxing authority that may be established by a county or city for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the district.

When establishing the TBD's area, the county or city proposing to create the TBD may only include other jurisdictions through interlocal agreements. The TBD may include areas within more than one county, city, port district, county transportation authority, or public transportation benefit area. A TBD may be comprised of less than the entire area within each participating jurisdiction.

A TBD is governed by the legislative authority of the jurisdiction proposing to create it, or by a governance structure prescribed in an interlocal agreement among multiple jurisdictions. If a TBD includes more than one jurisdiction, the governing body must have at least five members, including at least one elected official from each of the participating jurisdictions. Port districts and transit districts may participate in the establishment of a TBD but may not initiate district formation.

Revenue Sources.

A TBD has independent taxing authority to implement the following revenue measures, all of which are subject to voter approval:

- a local sales and use tax of up to 0.2 percent;

- a local annual vehicle fee of up to \$100 on vehicle license renewals, \$20 of which may be imposed without voter approval;
- excess property taxes, for a period of up to one year; and
- tolls, subject to legislative authorization and approval by the Washington State Transportation Commission if imposed on state routes.

A TBD may impose the following revenue measures without voter approval through a majority vote of the governing body:

- transportation impact fees on commercial and industrial development; and
- except for passenger-only ferry improvements, up to \$20 in local annual vehicle fees if the TBD includes all the territory within the boundaries of the jurisdiction(s) establishing the TBD. When imposing this fee, if the TBD is countywide the revenues must be distributed to each city within the county by interlocal agreement.

Summary of Bill:

Transportation Utilities.

Transportation 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 transportation utility (TU) 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 TU program will directly serve and benefit those who pay the TU rates; and
- TU 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.

Formation and Governance.

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

In addition, the ordinance must provide:

- a description of the TU service area and user rate schedule;
- a provision that an TU Advisory Committee must be created;
- a description or summary of the condition of the pavement in the TU 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 TU 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 TU 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.

Transportation Utility Rates.

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

The TU 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 TU 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.

The TU rates may not be computed based on the ad valorem value of the underlying real property or its improvements.

Exemptions and Credits.

The TU 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.

The TU 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 TU 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.

The TU revenues must be deposited in a special fund or account and dedicated to permissible TU services. Permissible TU services include maintaining, operating, and preserving streets, bridges, gutters, curbs, other surface water management systems, and sidewalks.

Advisory Committee.

A TU Advisory Committee must be formed in conjunction with the TU. The TU 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 TU user classifications. Members are appointed by the mayor and confirmed by the city's legislative authority, and serve without compensation. The TU 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 TU 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. A city that establishes a TU prior to January 1, 2018, must also submit a report to the Transportation committees of the Legislature that includes the annual report and a description of how the TU, rate system, and advisory committee were established.

Dissolution.

The legislative authority of a city may dissolve a TU 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 TU statutes.

Transportation Benefit Districts.

Vesting of Governing Powers to the Transportation Benefit District.

Any city or county may assume the rights, powers, functions, and obligations of a TBD with boundaries coterminous with the boundaries of the city county. The city or county legislative authority may initiate this assumption of the rights, powers, functions, and obligations of a TBD by adopting an ordinance or resolution indicating its intent to conduct a hearing on the matter.

The city or county legislative authority must consider the assumption of the rights, powers, functions, and obligations of a TBD, as well as hear all protests and objections to it, at a public

hearing. If after the public hearing, the city county legislative authority finds that the public interest would be satisfied by such an assumption, it may declare and assume the rights, powers, functions, and obligations of a TBD. Subsequently, all rights, powers, functions, and obligations granted to or possessed by the TBD vest to the city or county, and the governing body of the TBD must be abolished.

Transferring of Powers, Duties, and Assets.

All pending business before the board of the transferred TBD must be continued and acted upon by the city or county. All existing contracts and obligations of the transferred TBD remain in full force and effect and must be performed by the city or county.

All documents relating to the administration of the TBD; all furniture, equipment, or vehicles; all funds, credits, or other assets; and any appropriations or federal grants to the TBD must be transferred, credited, or otherwise made available to the city or county.

The city or county must assume and agree to provide for the payment of all of the TBD's debts and obligations, including payment and retirement of outstanding general obligation and revenue bonds.

Revenue.

A TBD is allowed to impose a local annual vehicle fee of up to \$50 and a local sales and use tax of up to 0.2 percent with a vote of the governing board. The authority to impose a local sales and use tax with a vote of the governing board is, however, limited to TBDs that are entirely outside the boundaries of a regional transit authority that includes a county with a population of 1 million or more.

A TBD, when imposing up to \$50 of the vehicle fee without a vote of the people, must include all the territory within the boundaries of the jurisdiction(s) establishing the TBD, but exclude territory in which a vehicle fee is currently being collected. If the TBD is countywide, or less than countywide, the revenues must be distributed to each city within the district by interlocal agreement, which agreement must be effective prior to the imposition of the fee.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect on August 1, 2015.