

HOUSE BILL REPORT

HB 1405

As Reported by House Committee On: Judiciary

Title: An act relating to establishing a statute of limitation for toll collections.

Brief Description: Establishing a statute of limitation for toll collections.

Sponsors: Representatives Harmsworth, Bergquist, Orcutt, Rodne, Muri, Chandler, Stokesbary, Pollet, Stanford, Kilduff and Springer.

Brief History:

Committee Activity:

Judiciary: 1/31/17, 2/9/17 [DPS].

Brief Summary of Substitute Bill

- Requires that a toll bill be issued within six months of the date of occurrence of the toll transaction.
- Defines "toll transaction" to mean the individual instance in which a vehicle uses a toll facility and is assessed a toll for that use.
- Provides that the state may not assess further penalties, fines, or costs or take any further action to collect a toll unless the initial toll bill has been issued within six months of that particular transaction.
- Waives the state's sovereign immunity with respect to the application of statutes of limitation for toll recovery actions.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Audrey Frey (786-7289).

Background:

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.

Toll Facilities.

There are several toll facilities within the state, including the State Route 520 Floating Bridge, the Tacoma Narrows Bridge, the State Route 167 High Occupancy Toll Lanes Project, and the I-405 High Occupancy Toll Lanes. Vehicle owners are automatically assessed a toll for using any of these toll facilities. If the vehicle does not have a Good to Go pass with the Washington State Department of Transportation, the registered owner of the vehicle receives a toll bill in the mail.

If the registered owner fails to pay this toll bill within 80 days, it becomes a toll violation. A civil penalty of \$40 may be assessed for a toll violation along with administrative fees. A registered owner may contest or dispute a civil penalty within 15 days of the date of the notice of civil penalty, and the registered owner may request an in-person administrative hearing. An administrative law judge may consider valid mitigating circumstances and reduce or waive any civil penalties.

Nullum Tempus Doctrine, as codified by statute.

The common law *nullum tempus* doctrine, under which statutory time limitations do not run against the state, was codified in statute dating back to 1854. The *nullum tempus* doctrine is related, but not identical, to the doctrine of sovereign immunity and the principle that a sovereign's rules do not bind the sovereign itself unless the sovereign explicitly consents to be bound.

The state Supreme Court has interpreted the statute that codifies the *nullum tempus* doctrine to mean that no statute of limitation applies to actions brought in the name or for the benefit of the state unless there is an express provision to the contrary. In other words, when the state brings an action for the benefit of the public against a person, in order for that person to use a statute of limitation as a defense, the statute of limitation needs to contain an express provision stating that it applies to actions brought in the name or for the benefit of the state.

Express provisions of this nature appear in certain statutes of limitation. For example, as part of the Tort Reform Act of 1986, a statute of repose was amended to expressly provide that the state is subject to that statute, using language such as: "The limitations prescribed in this section apply to all claims or causes of action . . . brought in the name or for the benefit of the state." In conjunction, the statute that codifies the *nullum tempus* doctrine was amended to include an exception that expressly referenced the statute of repose.

Summary of Substitute Bill:

Legislative Intent. The Legislature intends "to establish a clear limit on the state's authority to assess and collect toll charges and related penalties from vehicle owners after the time periods established in this act have elapsed, whether the action is taken directly or delegated to a political subdivision, contractor, or agent."

Waiver of Sovereign Immunity. The state "waives its sovereign immunity with respect to the application of the statutes of limitation for recovery actions established under this act."

Statutes of Limitation. Each of the laws listed below is modified to: (1) require that a toll bill be issued within six months of the date of occurrence of the toll transaction; (2) define "toll transaction" as the individual instance in which a vehicle uses a toll facility and is assessed a toll for that use; and (3) prohibit the state from assessing further penalties, fines, or costs or take any further action to collect a toll unless the initial toll bill has been issued within six months of that particular transaction. The laws include:

- Public Highways: Public-Private Transportation Initiatives;
- Public Highways: Transportation Innovative Partnerships;
- Public Highways: State Toll Bridges, Tunnels, and Ferries; and
- Port Districts: Toll Facilities.

Substitute Bill Compared to Original Bill:

The provisions requiring that an action for recovery of certain tolls and toll-related civil penalties or fines be commenced within six months from the time the vehicle was present in the toll facility are removed and replaced with the requirement that a toll bill be issued within six months of the date of occurrence of the toll transaction for which the toll bill is issued.

The state may not assess further penalties, fines, or costs or take any further action to collect a toll or associated penalties, fines, or costs unless the initial toll bill has been issued within six months of that particular transaction.

"Toll transaction" is defined as the individual instance in which a vehicle uses a toll facility and is assessed a toll for that use.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are persons who used the 520 Floating Bridge who ended up with really big toll bills at the end of the year because of glitches in the system, even when these persons are calling the Washington State Department of Transportation (WSDOT) trying to figure out how much they owe on their tolls. This bill tries to seek a limitation on how long the WSDOT can come after a person for the tolls if the WSDOT has not tolled that person already. The crux of the issue is that the WSDOT needs to start billing a person within the 6-month window after a person has used a toll facility. This bill should solve the longer-term problem of people receiving really big toll bills, and it helps the WSDOT from a public relations perspective. The WSDOT will not be billing people for tens of thousands of dollars in back tolls, which is a very difficult situation to deal with.

(Opposed) None.

(Other) The intent of the bill is to ensure that toll bills are issued no later than six months after the toll transaction occurs. Unfortunately, that is not how the bill is currently written. As currently drafted, there are three major concerns. First, the bill language would remove the ability of the WSDOT to collect tolls, fees, and penalties if not collected in that first 6-month period unless the WSDOT takes action in superior court. Second, the bill would impose a much larger burden on toll customers who would now have to deal with those court proceedings. Third, as currently written, the bill could jeopardize the WSDOT's ability to meet repayment if it is unable to maintain the current high collection rate.

Persons Testifying: (In support) Representative Harmsworth, prime sponsor.

(Other) Patty Rubstello, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.