

SENATE BILL REPORT

SB 5621

As of January 12, 2022

Title: An act relating to intergovernmental tax charges and conflict resolution regarding water and sewage facilities.

Brief Description: Concerning intergovernmental tax charges and conflict resolution regarding water and sewage facilities.

Sponsors: Senators Padden, Holy and Schoesler.

Brief History:

Committee Activity: Housing & Local Government: 1/12/22.

Brief Summary of Bill

- Exempts county-owned sewerage facilities and water facilities revenue from any tax or excise imposed by a city or town.
- Authorizes a city or town to charge counties to mitigate impacts directly attributable to sewerage or water facilities if demonstrated to be reasonably necessary.
- Identifies conflict resolution processes if a city or town and county are unable to reach agreement after good faith negotiations.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Staff: Maggie Douglas (786-7279)

Background: Sewerage Facilities. Sewerage facilities are defined as the sanitary sewage collection, treatment, and disposal facilities and services, or all. Sewerage facilities refer to the physical facilities through which sewage flows. Sewerage facilities accept sewage to be deposited into and carried off by a system of sewers, drains, and pipes for the transfer to treatment or disposal.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Water Facilities. Water facilities are defined as the water distribution system, including dams, reservoirs, aqueducts, plants, pumping stations, transmission and lateral distribution lines and other facilities for distribution of water for human consumption.

Utility Taxes. Any city or town in Washington may impose a utility business and occupation (B&O) tax upon the income of public and private utilities providing services within the boundaries of that city. Also referred to as a utility tax, the tax is imposed upon the utility itself and not the individual utility customers. Certain utility taxes, such as taxes on electricity, natural gas, steam, or telephone utilities, may not exceed 6 percent of the utilities income unless approved by voters. Water, sewer, solid waste, and stormwater utilities do not have a maximum limit for which they may be taxed. The revenue generated by a utility tax is unrestricted and may be used for any lawful governmental purpose.

Lakehaven Water and Sewer District et. al. v. City of Federal Way. In 2018, the City of Federal Way, facing a budget shortfall of more than \$850,000, passed an ordinance to levy an excise tax on water and sewer utilities within city limits. Lakehaven Water and Sewer District, Highline Water District, and Midway Sewer District provide water or sewer services, or both, to ratepayers within and without the city's limits.

Following the ordinance, the three districts petitioned for declaratory judgment. The districts alleged that the City of Federal Way lacked legislative authority to impose the tax and that the districts held governmental immunity defense under the premise that the provision of water and sewer services is mostly public or governmental in nature, thus precluding the imposition of the tax. The districts also argued the ordinance violated due process as void for vagueness under the Fourteenth Amendment of the United States Constitution—guaranteeing equal civil and legal rights for all citizens—and Article I, Section 3 of the Washington Constitution—granting due process.

In 2020, the Washington Supreme Court issued a summary judgment in favor of the city. The Supreme Court found that current statute delegates cities the broad authority to impose business and occupation excise taxes on all places and kinds of business, without distinction between public and private business entities. The court found that the governmental immunity doctrine does not bar the city from taxing the gross revenue generated from the districts' proprietary business activities transacted within the city's limits because water-sewer service providers operate under a ratepayer structure and thus perform a proprietary function. The Court concluded that municipal corporations, whether acting in a proprietary or governmental capacity, do not have the personhood that private corporations are granted. Washington's privileges and immunities clause provides that "No law shall be passed granting to any citizen, class of citizen, or corporation other than municipal, privileges or immunities..." As water and sewer districts are a municipal corporation and political subdivisions of the state, their state and federal constitutional argument was found to be without merit.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A county-owned sewerage facility or water facility and its revenues are exempt from any tax or excise imposed by any city or town. A city or town may charge a county operating a sewerage or water facility to mitigate impacts directly attributable to the facility if the city or town has demonstrated the charges are reasonably necessary to mitigate such impacts.

If a city or town and county are unable to reach an agreement after a reasonable period of good faith negotiations, either party may request a board of arbitrators to resolve the matter. The board of arbitrators must consist of the following three representatives:

- one from the city or town involved;
- one from the county; and
- one appointed by the other two representatives.

If the board of arbitrators are unable to reach agreement on a third representative, a judge from the superior court of the county owning the sewerage or water facility must appoint a third representative.

The board's final determination is binding on all parties, and each party must pay the cost of its individual representative and one-half of the cost of the third representative.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony On Proposed Substitute: PRO: City of Spokane has been in process of trying to implement a significant tax on a county wastewater facility within city boundaries. The county and other cities that comprise it are concerned that they are being subject to taxation without representation, as the residents bearing the greatest burden of the tax do not benefit from the additional tax revenue the City of Spokane would collect. While it is reasonable that the City of Spokane should be able to collect charges related to the mitigation of the facilities' impacts, there are only twenty-four customers residing within city boundaries and well over 30,000 customers existing outside the city boundaries that would be subject to the City's tax. This bill is an effort to ensure that a municipal taxing authority is representative of the ratepayers and residents being taxed.

CON: The City of Spokane had a tax on sewerage service prior to the county building the facility within city boundaries. The county was fully aware that the city had an existing utility tax prior to building the wastewater facility and had the opportunity to build

elsewhere. The county had an opportunity to negotiate payment in lieu of taxes and chose not to do so. The revenue from this utility tax would benefit the collective good of the entire region.

OTHER: We have concerns with the current scope of the bill and its broad application. A utility tax is by definition a business and occupation tax and the services provided by a wastewater facility are proprietary in nature. This bill could apply to other cities and counties that may be unintentionally impacted. This needs to be drafted so that it only applies to the specific jurisdiction, or the jurisdictions should seek a regional solution so that other jurisdictions are not impacted by the dispute.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Cary Driskell, City Attorney, City of Spokane Valley; Pam Haley, Mayor, City of Spokane Valley; Al French, Spokane County; Chelsea Hager, City of Spokane Valley; Cris Kaminskas, Mayor, City of Liberty Lake.

CON: Breean Beggs, Council President, City of Spokane.

OTHER: Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: No one.