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HOUSE BILL 1735

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Murray, Jarrett, Gombosky, Romero, Simpson, Kenney and Wood

Read first time 02/06/2003. Referred to Committee on Transportation.

1 AN ACT Relating to regulation of streets; amending RCW 82.80.070;  
2 adding new sections to chapter 35.77 RCW; creating a new section;  
3 repealing RCW 82.80.040, 82.80.050, and 82.80.060; providing an  
4 effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature of the state of Washington  
7 finds:

8 (1) The maintenance and preservation of the streets and urban  
9 transportation systems in urban areas is essential for the protection  
10 of the public health and safety, particularly for residents and  
11 businesses served within such areas. Providing for adequate, reliable  
12 access for residents and business street users served by such streets  
13 and transportation systems requires a means to preserve and maintain  
14 such facilities and, where necessary, to rehabilitate and reconstruct  
15 them.

16 (2) The adverse impacts of failing to keep up maintenance of  
17 streets and transportation systems in urban areas are greatest upon the  
18 street users located in such areas. These impacts include increased  
19 traffic congestion, decreased air quality, vehicle damage, accident

1 frequency, and decreased street access service for residents and  
2 businesses in such areas, as well as decreased access for such street  
3 users to public transportation service and fire, police, and emergency  
4 medical vehicles. Likewise, the advantages of well-maintained and  
5 preserved streets and transportation system facilities in urban areas  
6 accrue to people and businesses located in such areas by providing  
7 better transportation system service access, lower insurance rates,  
8 increased property values, and better fire, police, and emergency  
9 medical vehicle access.

10 (3) Pavement surfaces and structure in urban areas are subjected to  
11 much heavier use and higher maintenance needs than rural areas. When  
12 pavement is not properly maintained, the deterioration process  
13 accelerates exponentially and the expense and amount of work to restore  
14 the pavement likewise increases, creating a downward spiral of  
15 increasing pavement deterioration and higher costs to correct the  
16 consequences. Absent proper street preservation and maintenance  
17 practices, a point of no further maintenance is quickly reached, where  
18 the pavement condition has deteriorated to the point that the expense  
19 of restoration is no longer cost-effective.

20 (4) When streets are not properly preserved and maintained, it also  
21 becomes less cost-effective to divert funds for more extensive repairs  
22 because such funds would then not be available for less deteriorated  
23 streets, causing those streets to slip into a higher repair cost  
24 category, ultimately at a greater net cost to the system. These  
25 problems are matters of great concern to the state legislature.

26 (5) Objective means based upon sound engineering principles are  
27 available to identify pavement conditions and distressed pavement  
28 areas. This is done through a pavement condition assessment process  
29 that uses a pavement management scoring system. Scoring may be based  
30 on factors such as in field examination, surface or subsurface  
31 examinations, testing, and other measurements. A pavement assessment  
32 condition score may be developed for given areas of pavement or entire  
33 roadway sections, ranging from a value of 100 for new paving to 0 for  
34 a completely deteriorated pavement structure. Alternative scoring  
35 systems relying on an overall condition index may also be used, based  
36 on sound engineering principles.

37 (6) Pavement assessment condition scoring identifies four general  
38 categories of pavement maintenance and repair needs, based upon the

1 level of remedial work needed to restore the structure: Preventive  
2 maintenance, resurfacing needed, pavement rehabilitation needed, and  
3 full pavement reconstruction required. Each level requires a  
4 progressively greater cost per mile to remedy. Each city or town  
5 should formulate these levels and appropriate responses in accord with  
6 differing local needs. The legislature finds this pavement management  
7 system reliable and based on sound engineering principles.

8 (7) Residences and businesses accessing the right-of-way enjoy  
9 different average levels of benefit from a transportation system. Such  
10 benefits can be classified based on different property uses.  
11 Residential and business street users likewise contribute differing  
12 average burden levels and contribute to street deterioration, based on  
13 property use classifications. A street utility mechanism considering  
14 such differences to determine user fees offers a means to assess a fair  
15 proportionate share of the cost of street maintenance and related  
16 transportation facility needs.

17 (8) Other operational factors of transportation systems in urban  
18 areas also contribute to enhanced pavement degradation. These include  
19 the need to maintain properly maintained and placed traffic signals,  
20 street lighting, traffic signs and markers, striping, street sweeping,  
21 street ice and snow control, guardrails, barriers, roadway vegetation,  
22 channelization devices, and parking enforcement to encourage reduced  
23 congestion and better traffic circulation.

24 (9) Increasing deterioration and degradation of streets and related  
25 transportation facilities in distressed or poorly maintained pavement  
26 areas poses an immediate threat to the health, safety, and welfare of  
27 the citizens of this state and its residents and businesses using those  
28 streets.

29 NEW SECTION. **Sec. 2.** (1) The purpose of this act is to protect  
30 the public health and safety by regulating urban streets and  
31 transportation systems, to provide for a street utility service for  
32 street preservation, maintenance, rehabilitation, and reconstruction  
33 and related urban transportation system needs of residential and  
34 business street users within a street utility service area, to provide  
35 a means to identify such areas, and to provide for street utility  
36 service charges reasonably proportionate to a street user's allocable  
37 share of street utility services.

1 (2) Notwithstanding any other provision, nothing in this act or  
2 action taken under its authority may be construed to create or increase  
3 any municipal liability to any particular person or entity, or to  
4 increase or enhance any municipal common law duty of care relating to  
5 the public right-of-way or the maintenance and repair thereof.

6 NEW SECTION. **Sec. 3.** The definitions in this section apply  
7 throughout sections 1 through 10 of this act unless the context clearly  
8 requires otherwise.

9 (1) "Sound engineering principles" means principles or learning  
10 reasonably accepted within the civil engineering or traffic engineering  
11 profession, including the Washington state department of transportation  
12 extended method in paving distress ratings, the Washington state  
13 department of transportation pavement distress manual, the Washington  
14 state department of transportation local agency pavement management  
15 guide, materials developed by the Institute of Transportation  
16 Engineers, including materials differentiating types of property uses  
17 and correlating property use and the expected number of automobile and  
18 pedestrian trips over a specified time interval generated by such use,  
19 and other studies, manuals, or materials shown to be reliable and based  
20 on good engineering practice as may be developed by professional  
21 engineering staff or consultants.

22 (2) "Street" means the traveled portion of the street right-of-way  
23 including bridges, gutters, curbs, shoulders, sidewalks, pedestrian  
24 walkways, and bikeways. "Street" also includes barrier-free access  
25 such as for wheelchairs and strollers and Americans with disabilities  
26 act design features.

27 (3) "Street maintenance" means activities that keep streets in good  
28 operating condition or that enhance public safety relating to street  
29 use, including, but not limited to, preservation, resurfacing, pothole  
30 filling, striping or restriping, street lights, traffic control  
31 devices, vegetation maintenance, and proper drainage facilities.

32 (4) "Street utility" means a municipally owned and operated utility  
33 service, created in accordance with sections 1 through 10 of this act.

34 (5) "Street utility service area" means an area in which street  
35 utility services are provided and user fees are charged, established in  
36 accord with the provisions of sections 1 through 10 of this act.

1 Sections 1 through 10 of this act create no authority for any city or  
2 town to assess a street utility user fee outside its jurisdictional  
3 limits.

4 (6) "Transportation system" means infrastructure of a city or town  
5 used for public travel and the street user needs of residences and  
6 businesses located within the street utility service area. It includes  
7 streets, street lighting, traffic control devices and signals, traffic  
8 signs and markers, striping, parking enforcement, and proper drainage  
9 facilities associated with impervious paved surfaces.

10 (7) "User fees" means street utility user fees for street utility  
11 services in accord with sections 1 through 10 of this act.

12 NEW SECTION. **Sec. 4.** The legislative authority of a city or town  
13 may by ordinance create a street utility service area or areas up to  
14 the entire limits of said city or town. A city or town may elect to  
15 own, maintain, operate, and preserve its streets and urban  
16 transportation system as a separate street utility and to support such  
17 utility with user fees for uses permitted by this act. All street  
18 utility user fees shall be deposited in a special fund or account  
19 dedicated to such permissible uses under sections 1 through 10 of this  
20 act.

21 NEW SECTION. **Sec. 5.** (1) The legislative body of a city or town  
22 shall conduct a public hearing prior to the formation of a street  
23 utility. Notice of the hearing shall include information about the  
24 street utility service area or areas, a general operational plan for  
25 services to be provided by the street utility, an initial proposed rate  
26 structure, and any other items deemed pertinent. Said notice shall be  
27 published at least five days before the hearing in a newspaper of  
28 general circulation within the proposed street utility service area.  
29 The hearing may be continued to other times, dates, and places  
30 announced at the hearing without further publication. A record of the  
31 hearing shall be maintained. At the hearing, the city or town  
32 legislative body shall review the proposal and consider objections and  
33 comments from any interested party and may modify the proposal in  
34 response thereto, as well as any information, opinion polls, or other  
35 material relevant to the question presented.

1 (2) After the hearing, the city or town legislative body may adopt  
2 an ordinance creating a street utility service area or areas, together  
3 with the utility user fees to support said utility, with findings in  
4 accord with this section, and consistent with sections 1 through 10 of  
5 this act.

6 (3) An ordinance creating a street utility shall include  
7 substantially the following items, except where local needs may  
8 require:

9 (a) A description of the condition of the pavement areas in the  
10 street utility service area, based on field investigations, pavement  
11 assessment condition scores, or other criteria;

12 (b) A general plan, as necessary, to preserve, maintain,  
13 rehabilitate, or reconstruct the pavement area and to remediate poorly  
14 maintained pavement areas, considering sound engineering principles,  
15 and prevent the growth and development of such areas. The general plan  
16 shall include a timetable and summary of the purposes of expenditures  
17 or projects to be included, projected revenues from user fees, and  
18 other sources;

19 (c) A description of the street utility service area;

20 (d) The establishment of a separate fund or account for all moneys  
21 collected from user fees, which amounts shall be held solely and  
22 separately to be used for the purposes listed in the ordinance;

23 (e) A user fee schedule consistent with section 6 of this act,  
24 supported by sound engineering principles as reflected in the record,  
25 setting forth amounts to be charged to residential and business street  
26 users located in the street utility service area;

27 (f) A description of the proposed uses for the fees consistent with  
28 section 6 of this act if not included in the general plan;

29 (g) Any other factors deemed relevant; and

30 (h) A finding that the creation of a street utility is in the  
31 public interest.

32 (4) An ordinance establishing a street utility may include a  
33 provision for a street utility advisory committee to advise the city or  
34 town from time to time regarding questions about administration of the  
35 street utility, guided by sound engineering principles. The street  
36 utility advisory committee shall be appointed by the mayor and  
37 confirmed by the city or town legislative body. Committee membership

1 may include paving contractors, civil engineers, citizens, and  
2 professional traffic engineering staff and other persons with special  
3 training or expertise relevant to the issues presented.

4 (5) Such ordinance shall further provide for a means of an  
5 administrative appeal by interested persons of disputed billings or  
6 user fee classifications or other matters deemed proper, including  
7 appropriate procedures as the legislative body may determine. The  
8 appealing party has the burden of proof. The judicial review standard  
9 of such decisions is arbitrary and capricious.

10 (6) After formation, the legislative body determines what further  
11 hearings are necessary in adopting or adjusting user fees, scope of  
12 services, and other utility operations.

13 NEW SECTION. **Sec. 6.** (1) A city or town legislative body may  
14 establish user fees within the street utility service area for  
15 residential and business users located in such service area. User fees  
16 shall be expressed as a dollar amount per household unit or type of  
17 business. User fees may be assessed no more frequently than monthly,  
18 nor less frequently than annually. Fees set for users other than  
19 households shall be expressed in equivalents of household units or as  
20 specified by ordinance.

21 (2) In classifying user fee rates, a city or town legislative body  
22 may in its discretion consider the following factors:

23 (a) A cost component for the street utility's ongoing base level  
24 operation and maintenance; variations in capacity access demands by  
25 transportation system users within the street utility service area;

26 (b) The estimated average daily number of vehicle trips generated  
27 by specific types of property occupancies or uses. In making this  
28 estimation, the legislative body may consider a correlation between  
29 each type of property use and the estimated number of automobile and  
30 pedestrian trips that each use generates. Such correlation may include  
31 use of trip generation data and information developed in accord with  
32 sound engineering principles;

33 (c) Location of users; differences in costs of service; the  
34 proximity of a user fee class to arterial streets and relative benefits  
35 derived therefrom; differences in costs of maintenance, operation,  
36 repair, or reconstruction; different character of the service furnished  
37 various users; times of use; the achievement of traffic reduction;

1 capital contributions made to the transportation system, including but  
2 not limited to limited improvement district assessments; special  
3 assessments for transportation system related improvements; and any  
4 other matters which present a reasonable difference as a ground for  
5 distinction. User fees shall not include any exemption or credit for  
6 the payment of any tax;

7 (d) User fees may reflect a reduction or exemption for designated  
8 classes consistent with Article VIII, section 7 of the state  
9 Constitution;

10 (e) There may be provision for user fee reduction through  
11 mitigation, which may include a ten percent reduction that may be  
12 allowed for residential users participating in regular carpool or  
13 vanpool arrangements or for commercial users offering carpool or  
14 vanpool programs approved under such provisions as may be further  
15 established by ordinance;

16 (f) Residents or businesses may apply for a user fee discount upon  
17 a showing that they do not generate equivalent trips, on the average,  
18 to abutting parcels. This might apply to where a residence or business  
19 does not directly abut the right-of-way, or for other reasons;

20 (g) All user fees shall be uniform for the same class of persons  
21 receiving services provided or imposing burdens on a transportation  
22 system.

23 (3) User fees shall not be in excess of the amount authorized by  
24 the ordinance. No fees shall be imposed on vacant parcels prior to  
25 development for occupancy or use. A city or town may use connection or  
26 consumption of other utility services such as water, sewer, or solid  
27 waste collection as a basis to establish occupancy or use.

28 (4) Where a party demonstrates on an individual basis that it  
29 neither enjoys a benefit from street use nor creates a burden on street  
30 use, no street utility user fees shall be charged, but this shall not  
31 prevent the legislative body from otherwise adopting a street utility  
32 rate schedule in accord with sections 1 through 10 of this act.

33 (5) Refunds on collected user fees are not required for any period  
34 before the time a written appeal is received from a party claiming by  
35 the refund a city or town under procedures it may establish therefore.

36 (6) User fees may not be computed on the basis of an ad valorem  
37 charge on the underlying real property or improvements. User fees



1 authorized under this section are not in lieu of impact or mitigation  
2 fees otherwise permitted by law.

3 (7) Street user fees established pursuant to sections 1 through 10  
4 of this act do not constitute taxes nor are they charges provided for  
5 under RCW 82.02.050 through 82.02.090, growth impact fees, or RCW  
6 39.92.010 through 39.92.901, transportation fees, or charges otherwise  
7 prohibited by law.

8 (8) A city or town may provide or contract to provide billing and  
9 collection services of the street utility user fees as a part of other  
10 utility services provided.

11 NEW SECTION. **Sec. 7.** Street utility service user fee revenues may  
12 fund only:

13 (1) Street maintenance, preservation, rehabilitation, or  
14 reconstruction;

15 (2) Other operational factors of transportation systems in urban  
16 areas including traffic signals placement and maintenance, street  
17 lighting, traffic signs and markers, striping, street sweeping, street  
18 ice and snow control, guardrails, barriers, roadway vegetation,  
19 channelization devices, and parking enforcement to encourage reduced  
20 congestion and better traffic circulation;

21 (3) Transportation system needs and expenses of doing business as  
22 a utility, consistent with the adopted transportation and land use  
23 plans of the jurisdiction expending the funds, and consistent with any  
24 applicable and adopted regional transportation plan for metropolitan  
25 planning areas;

26 (4) The preparation of a street utility operations and maintenance  
27 plan, street arterial plan adopted under RCW 36.70A.070(6), or other  
28 transportation planning process required or permitted by law to  
29 protect, preserve, and rehabilitate public rights-of-way;

30 (5) The costs of monitoring permitted funding needs as may be  
31 required or recommended for compliance with applicable standards and  
32 rules;

33 (6) The costs of:

34 (a) Ongoing implementation of a plan or plans developed under  
35 subsection (4) of this section;

36 (b) Enforcing compliance with standards and rules relating to the

1 quality and quantity of street, highway, or related pavement facility  
2 construction and maintenance;

3 (7) Street maintenance practices to improve air quality and dust  
4 control; and

5 (8) Creation of a prudent reserve fund for permissible uses and to  
6 repay bonds or other evidences of indebtedness issued to pay costs for  
7 which street utility service revenues may be used.

8 NEW SECTION. **Sec. 8.** (1) A city or town establishing a street  
9 utility in accord with sections 1 through 10 of this act shall have a  
10 lien for any delinquent user fees for street utility service, including  
11 any delinquency charges or interest, which shall attach to the street  
12 user's premises for which services were rendered, where at least two  
13 months have passed since a user fee has been billed as delinquent or  
14 past due to the premises served and at least two billing notices have  
15 been mailed to the premises explaining that a lien may be placed for  
16 any delinquencies.

17 (2) The lien may be foreclosed in the manner provided for sewerage  
18 service in chapter 35.67 RCW together with any other utility services  
19 provided by the city or town. Failure to record the lien does not  
20 affect its validity, but no party without actual or constructive notice  
21 shall be held responsible for payment thereof.

22 NEW SECTION. **Sec. 9.** The city or town legislative body may  
23 dissolve a street utility by ordinance upon a finding that the  
24 dissolution is in the public interest. In such event, all unexpended  
25 funds shall be held in trust to be expended only for purposes permitted  
26 under sections 1 through 10 of this act.

27 NEW SECTION. **Sec. 10.** (1) A city or town electing to establish a  
28 street utility under sections 1 through 10 of this act may also finance  
29 permitted street utility uses through any other means permitted by law,  
30 which shall include local improvement districts, utility local  
31 improvement districts, or with proceeds from general obligation bonds  
32 and revenue bonds payable from the charges issued in accordance with  
33 chapter 35.41, 35.92, or 39.46 RCW, or any combination thereof. The  
34 city or town may use, in addition to the user fees authorized in this

1 act, funds from any other federal, state, or local public or private  
2 sources.

3 (2) Nothing in sections 1 through 10 of this act or action taken  
4 under its authority shall diminish any other general or specific  
5 municipal regulatory or funding powers now or hereafter otherwise  
6 permitted by law.

7 NEW SECTION. **Sec. 11.** The provisions of this act shall be  
8 liberally construed to accomplish the intended purpose.

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

13 **Sec. 13.** RCW 82.80.070 and 2002 c 56 s 413 are each amended to  
14 read as follows:

15 (1) The proceeds collected pursuant to the exercise of the local  
16 option authority of RCW 82.80.010, 82.80.020, and 82.80.030(~~(, and~~  
17 ~~82.80.050)~~) (hereafter called "local option transportation revenues")  
18 shall be used for transportation purposes only, including but not  
19 limited to the following: The operation and preservation of roads,  
20 streets, and other transportation improvements; new construction,  
21 reconstruction, and expansion of city streets, county roads, and state  
22 highways and other transportation improvements; development and  
23 implementation of public transportation and high-capacity transit  
24 improvements and programs; and planning, design, and acquisition of  
25 right of way and sites for such transportation purposes. The proceeds  
26 collected from excise taxes on the sale, distribution, or use of motor  
27 vehicle fuel and special fuel under RCW 82.80.010 shall be used  
28 exclusively for "highway purposes" as that term is construed in Article  
29 II, section 40 of the state Constitution.

30 (2) The local option transportation revenues shall be expended for  
31 transportation uses consistent with the adopted transportation and land  
32 use plans of the jurisdiction expending the funds and consistent with  
33 any applicable and adopted regional transportation plan for  
34 metropolitan planning areas.

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

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

8 (b) The program shall be based on an adopted transportation plan  
9 for the geographic areas covered and shall identify the proposed  
10 operation and construction of transportation improvements and services  
11 in the designated plan area intended to be funded in whole or in part  
12 by local option transportation revenues and shall identify the annual  
13 costs applicable to the program.

14 (c) The program shall indicate how the local transportation plan is  
15 coordinated with applicable transportation plans for the region and for  
16 adjacent jurisdictions.

17 (d) The program shall include at least a six-year funding plan,  
18 updated annually, identifying the specific public and private sources  
19 and amounts of revenue necessary to fund the program. The program  
20 shall include a proposed schedule for construction of projects and  
21 expenditure of revenues. The funding plan shall consider the  
22 additional local tax revenue estimated to be generated by new  
23 development within the plan area if all or a portion of the additional  
24 revenue is proposed to be earmarked as future appropriations for  
25 transportation improvements in the program.

26 (4) Local governments with a population greater than eight thousand  
27 exercising the authority for local option transportation funds shall  
28 periodically review and update their transportation program to ensure  
29 that it is consistent with applicable local and regional transportation  
30 and land use plans and within the means of estimated public and private  
31 revenue available.

32 (5) In the case of expenditure for new or expanded transportation  
33 facilities, improvements, and services, priorities in the use of local  
34 option transportation revenues shall be identified in the  
35 transportation program and expenditures shall be made based upon the  
36 following criteria, which are stated in descending order of weight to  
37 be attributed:

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

1 (b) Second, it is necessitated by existing or reasonably  
2 foreseeable congestion;

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

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

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

10 (6) It is the intent of the legislature that as a condition of  
11 levying, receiving, and expending local option transportation revenues,  
12 no local government agency use the revenues to replace, divert, or loan  
13 any revenues currently being used for transportation purposes to  
14 nontransportation purposes. The association of Washington cities and  
15 the Washington state association of counties, in consultation with the  
16 legislative transportation committee, shall study the issue of  
17 nondiversion and make recommendations to the legislative transportation  
18 committee for language implementing the intent of this section by  
19 December 1, 1990.

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

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

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

33 NEW SECTION. **Sec. 14.** The following acts or parts of acts are  
34 each repealed:

35 (1) RCW 82.80.040 (Street utility--Establishment) and 1991 c 141 s  
36 1;

1 (2) RCW 82.80.050 (Street utility--Charges, credits) and 2000 c 103  
2 s 21 & 1991 c 141 s 2; and

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

5 NEW SECTION. **Sec. 15.** Sections 1 through 10 of this act are each  
6 added to chapter 35.77 RCW and codified with the subchapter heading of  
7 "Street Utility."

8 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 July 1, 2003.

--- END ---