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HOUSE BILL 2125

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State of Washington

66th Legislature

2019 Regular Session

By Representative Fey

1 AN ACT Relating to the use of local stormwater charges paid by  
2 the department of transportation; and amending RCW 90.03.525.

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

4 **Sec. 1.** RCW 90.03.525 and 2015 c 231 s 1 are each amended to  
5 read as follows:

6 (1) The rate charged by a local government utility to the  
7 department of transportation with respect to state highway  
8 right-of-way or any section of state highway right-of-way for the  
9 construction, operation, and maintenance of stormwater control  
10 facilities under chapters 35.67, 35.92, 36.89, 36.94, 57.08, and  
11 86.15 RCW, shall be thirty percent of the rate for comparable real  
12 property, except as otherwise provided in this section. The rate  
13 charged to the department with respect to state highway right-of-way  
14 or any section of state highway right-of-way within a local  
15 government utility's jurisdiction shall not, however, exceed the rate  
16 charged for comparable city street or county road right-of-way within  
17 the same jurisdiction. The legislature finds that the aforesaid rates  
18 are presumptively fair and equitable because of the traditional and  
19 continuing expenditures of the department of transportation for the  
20 construction, operation, and maintenance of stormwater control

1 facilities designed to control surface water or stormwater runoff  
2 from state highway rights-of-way.

3 (2) Charges paid under subsection (1) of this section by the  
4 department of transportation(~~(, including charges paid prior to June~~  
5 ~~30, 2015,)~~) must be used solely for stormwater control facilities  
6 that directly reduce state highway runoff impacts or implementation  
7 of best management practices that will reduce the need for such  
8 facilities. By January 1st of each year, beginning with calendar year  
9 2020, the local government utility, in coordination with the  
10 department of transportation, shall develop a plan for the  
11 expenditure of the charges for that calendar year. The plan must be  
12 consistent with the objectives identified in former RCW 90.78.010. In  
13 addition, the utility shall provide a progress report on the use of  
14 charges assessed for the prior year. No charges may be paid until the  
15 plan and report have been submitted to the department of  
16 transportation.

17 (3) The utility imposing the charge and the department of  
18 transportation may, however, agree to either higher or lower rates  
19 with respect to the construction, operation, or maintenance of any  
20 specific stormwater control facilities based upon the annual plan  
21 prescribed in subsection (2) of this section. If, after mediation,  
22 the local government utility and the department of transportation  
23 cannot agree upon the proper rate, either may commence an action in  
24 the superior court for the county in which the state highway  
25 right-of-way is located to establish the proper rate. The court in  
26 establishing the proper rate shall take into account the extent and  
27 adequacy of stormwater control facilities constructed by the  
28 department and the actual benefits to the sections of state highway  
29 rights-of-way from stormwater control facilities constructed,  
30 operated, and maintained by the local government utility. Control of  
31 surface water runoff and stormwater runoff from state highway  
32 rights-of-way shall be deemed an actual benefit to the state highway  
33 rights-of-way. The rate for sections of state highway right-of-way as  
34 determined by the court shall be set forth in terms of the percentage  
35 of the rate for comparable real property, but shall in no event  
36 exceed the rate charged for comparable city street or county road  
37 right-of-way within the same jurisdiction.

38 (4) The legislature finds that the federal clean water act  
39 (national pollutant discharge elimination system, 40 C.F.R. parts  
40 122-124), the state water pollution control act, chapter 90.48 RCW,

1 and the highway runoff program under chapter 90.71 RCW, mandate the  
2 treatment and control of stormwater runoff from state highway  
3 rights-of-way owned by the department of transportation.  
4 Appropriations made by the legislature to the department of  
5 transportation for the construction, operation, and maintenance of  
6 stormwater control facilities are intended to address applicable  
7 federal and state mandates related to stormwater control and  
8 treatment. This section is not intended to limit opportunities for  
9 sharing the costs of stormwater improvements between cities,  
10 counties, and the state.

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