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SENATE BILL 6110

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State of Washington

62nd Legislature

2012 Regular Session

By Senator Carrell

Read first time 01/11/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to fees and charges related to the operation of  
2 sewerage systems operated by the county; amending RCW 35.23.251,  
3 35.27.330, 35A.47.040, 36.94.170, and 36.94.180; adding a new section  
4 to chapter 35.21 RCW; adding a new section to chapter 35A.47 RCW;  
5 adding a new section to chapter 35.22 RCW; creating new sections; and  
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
9 clarify when a fee can be imposed by a city or town on a county in  
10 connection with a county's operation of a sewerage system. While fees  
11 that are imposed in conjunction with a franchise agreement are seen as  
12 regulatory fees, these fees often exceed the amount necessary for the  
13 cost and administration of a franchise. While the state supreme court  
14 held in *Lakewood v. Pierce County*, 106 Wn. App. 63 (2001) that a  
15 franchise fee was permissible as long as the amount of the fee is  
16 limited to the costs associated with the franchise, the state supreme  
17 court has condoned under specific facts the imposition of other fees in  
18 conjunction with a franchise agreement in *Burns v. The City of Seattle*,  
19 161 Wn.2d 129 (2007). The legislature finds that publicly provided

1 essential service such as sewerage should not be utilized by cities and  
2 towns as a source of general fund revenue outside their legislatively  
3 authorized taxing authority. Therefore, the legislature intends to  
4 limit fees and charges associated with a franchise agreement to the  
5 amount necessary to administer the franchise, prohibit any other fee or  
6 charge of any nature, and require all revenue be reserved in a  
7 dedicated account for the allowed purposes.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW  
9 to read as follows:

10 (1) No city or town may impose a franchise fee or any other fee or  
11 charge of whatever nature or description upon a county in connection  
12 with a franchise to allow the use of the right-of-way when the purpose  
13 of the franchise is to allow the county to construct, own, operate, or  
14 maintain a sewerage system.

15 (2) No city or town may impose a fee or charge of whatever nature  
16 or description for foregoing the right to establish a sewerage system  
17 as provided in RCW 36.94.170, the promise not to compete with a county  
18 sewerage system by establishing their own sewerage system as provided  
19 for in RCW 36.94.170, or foregoing the right to assume all or part of  
20 a county sewerage system pursuant to an annexation as provided for in  
21 RCW 36.94.180.

22 (3) No city or town may impose any fee or charge of whatever nature  
23 in relation to or in conjunction with a franchise agreement with a  
24 county relating to the county's ability to construct, own, operate, or  
25 maintain a sewerage system unless the fee or charge compensates such  
26 city or town for its reasonable costs, expenses, and obligations  
27 actually incurred or contracted which are directly related to and which  
28 benefit the area which the county proposes to serve.

29 (4) Any fee or charge of whatever nature or description collected  
30 by a city or town from a county in relation to or in conjunction with  
31 a franchise agreement relating to sewerage system shall be placed in a  
32 dedicated account and used for the specific purposes provided in  
33 subsection (3) of this section.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.47 RCW  
35 to read as follows:

36 (1) No code city may impose a franchise fee or any other fee or

1 charge of whatever nature or description upon a county in connection  
2 with a franchise to allow the use of the right-of-way when the purpose  
3 of the franchise is to allow the county to construct, own, operate, or  
4 maintain a sewerage system.

5 (2) No code city may impose a fee or charge of whatever nature or  
6 description for foregoing the right to establish a sewerage system as  
7 provided in RCW 36.94.170, the promise not to compete with a county  
8 sewerage system by establishing their own sewerage system as provided  
9 for in RCW 36.94.170, or foregoing the right to assume all or part of  
10 a county sewerage system pursuant to an annexation as provided for in  
11 RCW 36.94.180.

12 (3) No code city may impose any fee or charge of whatever nature in  
13 relation to or in conjunction with a franchise agreement with a county  
14 relating to the county's ability to construct, own, operate, or  
15 maintain a sewerage system unless the fee or charge compensates such  
16 code city for its reasonable costs, expenses, and obligations actually  
17 incurred or contracted which are directly related to and which benefit  
18 the area which the county proposes to serve.

19 (4) Any fee or charge of whatever nature or description collected  
20 by a code city from a county in relation to or in conjunction with a  
21 franchise agreement relating to sewerage system shall be placed in a  
22 dedicated account and used for the specific purposes provided in  
23 subsection (3) of this section.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.22 RCW  
25 to read as follows:

26 The authority to grant franchises is subject to the restriction  
27 under section 2 of this act regarding agreements between cities and  
28 counties relating to sewerage systems.

29 **Sec. 5.** RCW 35.23.251 and 1965 c 7 s 35.24.250 are each amended to  
30 read as follows:

31 No ordinance or resolution granting any franchise for any purpose  
32 shall be passed by the city council on the day of its introduction, nor  
33 for five days thereafter, nor at any other than a regular meeting nor  
34 without first being submitted to the city attorney.

35 No franchise or valuable privilege shall be granted unless by the  
36 vote of at least five members of the city council.

1 The city council may require a bond in a reasonable amount for any  
2 person or corporation obtaining a franchise from the city conditioned  
3 for the faithful performance of the conditions and terms of the  
4 franchise and providing a recovery on the bond in case of failure to  
5 perform the terms and conditions of franchise.

6 The authority granted in this section is subject to the restriction  
7 under section 2 of this act regarding agreements between cities and  
8 counties relating to sewerage systems.

9 **Sec. 6.** RCW 35.27.330 and 2009 c 549 s 2063 are each amended to  
10 read as follows:

11 No ordinance or resolution granting any franchise for any purpose  
12 shall be passed by the council on the day of its introduction, nor  
13 within five days thereafter, nor at any other than a regular meeting,  
14 and no such ordinance or resolution shall have any validity or effect  
15 unless passed by the vote of at least three councilmembers. The town  
16 council may require a bond in a reasonable amount from any persons and  
17 corporations obtaining a franchise from the town conditioned for the  
18 faithful performance of the conditions and terms of the franchise and  
19 providing a recovery on the bond in case of failure to perform the  
20 terms and conditions of the franchise.

21 The authority granted in this section is subject to the restriction  
22 under section 2 of this act regarding agreements between towns and  
23 counties relating to sewerage systems.

24 **Sec. 7.** RCW 35A.47.040 and 1967 ex.s. c 119 s 35A.47.040 are each  
25 amended to read as follows:

26 Every code city shall have authority to permit and regulate under  
27 such restrictions and conditions as it may set by charter or ordinance  
28 and to grant nonexclusive franchises for the use of public streets,  
29 bridges or other public ways, structures or places above or below the  
30 surface of the ground for railroads and other routes and facilities for  
31 public conveyances, for poles, conduits, tunnels, towers and  
32 structures, pipes and wires and appurtenances thereof for transmission  
33 and distribution of electrical energy, signals and other methods of  
34 communication, for gas, steam and liquid fuels, for water, sewer and  
35 other private and publicly owned and operated facilities for public

1 service. The power hereby granted shall be in addition to the  
2 franchise authority granted by general law to cities.

3 No ordinance or resolution granting any franchise in a code city  
4 for any purpose shall be adopted or passed by the city's legislative  
5 body on the day of its introduction nor for five days thereafter, nor  
6 at any other than a regular meeting nor without first being submitted  
7 to the city attorney, nor without having been granted by the approving  
8 vote of at least a majority of the entire legislative body, nor without  
9 being published at least once in a newspaper of general circulation in  
10 the city before becoming effective.

11 The city council may require a bond in a reasonable amount for any  
12 person or corporation obtaining a franchise from the city conditioned  
13 upon the faithful performance of the conditions and terms of the  
14 franchise and providing a recovery on the bond in case of failure to  
15 perform the terms and conditions of the franchise.

16 A code city may exercise the authority hereby granted,  
17 notwithstanding a contrary limitation of any preexisting charter  
18 provision.

19 The authority granted in this section is subject to the restriction  
20 under section 3 of this act regarding agreements between code cities  
21 and counties relating to sewerage systems.

22 **Sec. 8.** RCW 36.94.170 and 1971 ex.s. c 96 s 7 are each amended to  
23 read as follows:

24 The primary authority to construct, operate and maintain a system  
25 of sewerage and/or water within the boundaries of a municipal  
26 corporation which lies within the area of the county's sewerage and/or  
27 water general plan shall remain with such municipal corporation. A  
28 county, after it has adopted and received the necessary approvals of  
29 its sewer and/or water general plan under the provisions of chapter  
30 36.94 RCW may construct, own, operate and maintain a system of sewerage  
31 and/or water within the boundaries of a city or town with the written  
32 consent of such city or town and within any other municipal corporation  
33 provided such municipal corporation (1) has the legislative authority  
34 to operate such a utility; and (2)(a) has given its written consent to  
35 the county to operate therein; or (b) after adoption of a comprehensive  
36 plan or an amendment thereto for the area involved, the municipal

1 corporation has not within twelve months after receiving notice by the  
2 county of its intention to serve that area held a formation hearing for  
3 a utility local improvement district.

4 Prior to exercising any authority granted in this section, the  
5 county shall compensate such municipal corporation for its reasonable  
6 costs, expenses and obligations actually incurred or contracted which  
7 are directly related to and which benefit the area which the county  
8 proposes to serve. The county may contract with a municipal  
9 corporation to furnish such utility service within any municipal  
10 corporation.

11 Except in the case of annexations provided for in RCW 36.94.180,  
12 once a county qualifies under this section to serve within a municipal  
13 corporation, no municipal corporation may construct or operate a  
14 competing utility in the same territory to be served by the county if  
15 the county proceeds within a reasonable period of time with the  
16 construction of its proposed facilities including the sale of any bonds  
17 to finance the same.

18 When the county has established a sewerage system under this  
19 subsection in part or throughout all of a city or town, the city or  
20 town may not impose a fee or charge of whatever nature or description  
21 in relation to or in conjunction with the county's franchise agreement  
22 relating to sewerage system, including a fee in exchange for the city  
23 or town's promise not to compete with the county in any part of the  
24 town or city, unless the fee is directly related to its reasonable  
25 costs, expenses, and obligations actually incurred or contracted which  
26 are directly related to and which benefit the area which the county is  
27 servinq.

28 The authority granted in this section shall be subject to the  
29 restriction under sections 2 and 3 of this act regarding agreements  
30 between cities or towns and counties relating to sewerage.

31 As may be permitted by other statutes, a city or town may provide  
32 water or sewer service outside of its corporate limits, but such  
33 service may not conflict with the county plan or any county, sewer or  
34 water facilities installed or being installed.

35 A county proposing to exercise any authority granted in this  
36 section shall give written notice of such intention to the municipal  
37 corporation involved and to the boundary review board, if any, of such  
38 county. Within sixty days of the filing of such notice of intention,

1 review by the boundary review board of the proposed action may be  
2 requested as provided by the provisions of RCW 36.93.100 through  
3 36.93.180. In the event of such review, the board shall consider the  
4 factors set forth in this section in addition to the factors and  
5 objectives set forth in RCW 36.93.170 and 36.93.180.

6 **Sec. 9.** RCW 36.94.180 and 1986 c 234 s 34 are each amended to read  
7 as follows:

8 (1) In the event of the annexation to a city or town of an area, or  
9 incorporation of an area, in which a county is operating a sewerage  
10 and/or water system, the property, facilities, and equipment of such  
11 sewerage and/or water system lying within the annexed or incorporated  
12 area may be transferred to the city or town if such transfer will not  
13 materially affect the operation of any of the remaining county system,  
14 subject to the assumption by the city or town of the county's  
15 obligations relating to such property, facilities, and equipment, under  
16 the procedures specified in, and pursuant to the authority contained  
17 in, chapter 35.13A RCW.

18 (2) The right to assume a sewerage system provided in subsection  
19 (1) of this section shall not be used by the city or town to impose a  
20 fee or charge of whatever nature or description in relation to or in  
21 conjunction with a franchise agreement relating to sewerage system,  
22 including a fee in exchange for the city or town's promise not to  
23 compete with the county in the newly annexed area, on a county unless  
24 the fee is directly related to its reasonable costs, expenses, and  
25 obligations actually incurred or contracted that are directly related  
26 to and that benefit the area that is being annexed and the county is  
27 serving.

28 (3) The authority granted in this section is subject to the  
29 restriction under sections 2 and 3 of this act, regarding agreements  
30 between cities or towns and counties relating to sewerage systems.

31 NEW SECTION. **Sec. 10.** This act applies to all agreements between  
32 a city or town and a county that exist on or after the effective date  
33 of this section, regardless of when the agreement was entered into. To  
34 this extent, this act applies retroactively, but in all other respects  
35 it applies prospectively.

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

5        NEW SECTION.    **Sec. 12.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 immediately.

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