
HOUSE BILL 2650

State of Washington

54th Legislature

1996 Regular Session

By Representative Reams

Read first time 01/16/96. Referred to Committee on Government Operations.

1 AN ACT Relating to impact fees; amending RCW 82.02.100, 36.73.120,
2 39.92.040, 58.17.110, 82.02.060, and 82.02.020; adding a new section to
3 chapter 43.21C RCW; adding a new section to chapter 82.02 RCW; adding
4 a new chapter to Title 36 RCW; and recodifying RCW 82.02.020,
5 82.02.050, 82.02.060, 82.02.070, 82.02.080, 82.02.090, and 82.02.100.

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

7 **Sec. 1.** RCW 82.02.100 and 1992 c 219 s 2 are each amended to read
8 as follows:

9 A person who is required to pay a fee (~~(pursuant to RCW 43.21C.060~~
10 ~~for system improvements shall not be required to pay an impact fee~~
11 ~~under RCW 82.02.050 through 82.02.090)) for system improvements under
12 this chapter shall not be required to pay impact fees for those same
13 system improvements under RCW 36.73.120, RCW 39.92.040, or chapter
14 43.21C RCW.~~

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW
16 to read as follows:

17 A person who is required to pay an impact fee under this chapter
18 for system improvements, as defined in RCW 82.02.090 (as recodified by

1 this act), shall not be required to pay impact fees for those same
2 system improvements under RCW 36.73.120, RCW 39.92.040, or chapter
3 36.-- RCW (RCW 82.02.020 and 82.02.050 through 82.02.100 as recodified
4 by this act).

5 **Sec. 3.** RCW 36.73.120 and 1988 c 179 s 7 are each amended to read
6 as follows:

7 (1) A transportation benefit district may impose a fee or charge on
8 the construction or reconstruction of residential buildings, commercial
9 buildings, industrial buildings, or on any other building or building
10 space or appurtenance thereto, or on the development, subdivision,
11 classification, or reclassification of land only if done in accordance
12 with chapter 39.92 RCW.

13 (2) Any fee or charge imposed under this section shall be used
14 exclusively for transportation improvements constructed by a
15 transportation benefit district. The fees or charges so imposed must
16 be reasonably necessary as a result of the impact of development,
17 construction, or classification or reclassification of land on
18 identified transportation needs.

19 (3) When fees or charges are imposed by a district within which
20 there is more than one city or both incorporated and unincorporated
21 areas, the legislative authority for each city in the district and the
22 county legislative authority for the unincorporated area must approve
23 the imposition of such fees or charges before they take effect.

24 (4) A person who is required to pay a fee or charge under this
25 section for system improvements, as defined in RCW 82.02.090 (as
26 recodified by this act), shall not be required to pay impact fees for
27 those same system improvements under RCW 39.92.040, chapter 43.21C RCW,
28 or chapter 36.-- RCW (RCW 82.02.020 and 82.02.050 through 82.02.100 as
29 recodified by this act).

30 **Sec. 4.** RCW 39.92.040 and 1989 c 296 s 1 are each amended to read
31 as follows:

32 The program shall describe the formula or method for calculating
33 the amount of the transportation impact fees to be imposed on new
34 development within the plan area. The program may require developers
35 to pay a transportation impact fee for off-site transportation
36 improvements not yet constructed and for those jointly-funded
37 improvements constructed since the commencement of the program.

1 The program shall define the event in the development approval
2 process that triggers a determination of the amount of the
3 transportation impact fees and the event that triggers the obligation
4 to make actual payment of the fees. However, the payment obligation
5 shall not commence before the date the developer has obtained a
6 building permit for the new development or, in the case of residential
7 subdivisions or short plats, at the time of final plat approval, at the
8 developer's option. If the developer of a residential subdivision or
9 short plat elects to pay the fee at the date a building permit has been
10 obtained, the option to pay the transportation impact fee by
11 installments as authorized by this section is deemed to have been
12 waived by the developer. The developer shall be given the option to
13 pay the transportation impact fee in a lump sum, without interest, or
14 by installment with reasonable interest over a period of five years or
15 more as specified by the local government.

16 The local government shall require security for the obligation to
17 pay the transportation impact fee, in the form of a recorded agreement,
18 deed of trust, letter of credit, or other instrument determined
19 satisfactory by the local government. The developer shall also be
20 given credit against its obligations for the transportation impact fee,
21 for the fair market value of off-site land and/or the cost of
22 constructing off-site transportation improvements dedicated to the
23 local government. If the value of the dedication exceeds the amount of
24 transportation impact fee obligation, the developer is entitled to
25 reimbursement from transportation impact fees attributable to the
26 dedicated improvements and paid by subsequent developers within the
27 plan area.

28 Payment of the transportation impact fee entitles the developer and
29 its successors and assigns to credit against any other fee, local
30 improvement district assessment, or other monetary imposition made
31 specifically for the designated off-site transportation improvements
32 intended to be covered by the transportation impact fee imposed
33 pursuant to this program. The program shall also define the criteria
34 for establishing periodic fee increases attributable to construction
35 and related cost increases for the improvements designated in the
36 program.

37 A person who is required to pay a transportation impact fee under
38 this section for system improvements, as defined in RCW 82.02.090 (as
39 recodified by this act), shall not be required to pay impact fees for

1 those same system improvements under RCW 36.73.120, chapter 43.21C RCW,
2 or chapter 36.-- RCW (RCW 82.02.020 and 82.02.050 through 82.02.100 as
3 recodified by this act).

4 **Sec. 5.** RCW 58.17.110 and 1995 c 32 s 3 are each amended to read
5 as follows:

6 (1) The city, town, or county legislative body shall inquire into
7 the public use and interest proposed to be served by the establishment
8 of the subdivision and dedication. It shall determine: (a) If
9 appropriate provisions are made for, but not limited to, the public
10 health, safety, and general welfare, for open spaces, drainage ways,
11 streets or roads, alleys, other public ways, transit stops, potable
12 water supplies, sanitary wastes, parks and recreation, playgrounds,
13 schools and schoolgrounds, and shall consider all other relevant facts,
14 including sidewalks and other planning features that assure safe
15 walking conditions for students who only walk to and from school; and
16 (b) whether the public interest will be served by the subdivision and
17 dedication.

18 (2) A proposed subdivision and dedication shall not be approved
19 unless the city, town, or county legislative body makes written
20 findings that: (a) Appropriate provisions are made for the public
21 health, safety, and general welfare and for such open spaces, drainage
22 ways, streets or roads, alleys, other public ways, transit stops,
23 potable water supplies, sanitary wastes, parks and recreation,
24 playgrounds, schools and schoolgrounds and all other relevant facts,
25 including sidewalks and other planning features that assure safe
26 walking conditions for students who only walk to and from school; and
27 (b) the public use and interest will be served by the platting of such
28 subdivision and dedication. If it finds that the proposed subdivision
29 and dedication make such appropriate provisions and that the public use
30 and interest will be served, then the legislative body shall approve
31 the proposed subdivision and dedication. Dedication of land to any
32 public body, provision of public improvements to serve the subdivision,
33 and/or impact fees imposed under RCW 82.02.050 through 82.02.090 (as
34 recodified by this act) may be required as a condition of subdivision
35 approval. A person who is required to pay an impact fee under this
36 section for system improvements, as defined in RCW 82.02.090 (as
37 recodified by this act), shall not be required to pay impact fees for
38 those same system improvements under RCW 36.73.120, RCW 39.92.040, or

1 chapter 43.21C RCW. Dedications shall be clearly shown on the final
2 plat. No dedication, provision of public improvements, or impact fees
3 imposed under RCW 82.02.050 through 82.02.090 (as recodified by this
4 act) shall be allowed that constitutes an unconstitutional taking of
5 private property. The legislative body shall not as a condition to the
6 approval of any subdivision require a release from damages to be
7 procured from other property owners.

8 (3) If the preliminary plat includes a dedication of a public park
9 with an area of less than two acres and the donor has designated that
10 the park be named in honor of a deceased individual of good character,
11 the city, town, or county legislative body must adopt the designated
12 name.

13 **Sec. 6.** RCW 82.02.060 and 1990 1st ex.s. c 17 s 44 are each
14 amended to read as follows:

15 The local ordinance by which impact fees are imposed:

16 (1) Shall include a schedule of impact fees which shall be adopted
17 for each type of development activity that is subject to impact fees,
18 specifying the amount of the impact fee to be imposed for each type of
19 system improvement. The schedule shall be based upon a formula or
20 other method of calculating such impact fees. In determining
21 proportionate share, the formula or other method of calculating impact
22 fees shall incorporate, among other things, the following:

23 (a) The cost of public facilities necessitated by new development;

24 (b) An adjustment to the cost of the public facilities for past or
25 future payments made or reasonably anticipated to be made by new
26 development to pay for particular system improvements in the form of
27 user fees, debt service payments, taxes, or other payments earmarked
28 for or proratable to the particular system improvement;

29 (c) The availability of other means of funding public facility
30 improvements;

31 (d) The cost of existing public facilities improvements; and

32 (e) The methods by which public facilities improvements were
33 financed;

34 (2) May provide an exemption for low-income housing, and other
35 development activities with broad public purposes, from these impact
36 fees, provided that the impact fees for such development activity shall
37 be paid from public funds other than impact fee accounts;

1 (3) Shall provide a credit for the value of any dedication of land
2 for, improvement to, or new construction of any system improvements
3 provided by the developer, to facilities that are identified in the
4 capital facilities plan and that are required by the county, city, or
5 town as a condition of approving the development activity;

6 (4) Shall provide that impact fees for single-family residential
7 construction be collected at the initial sale of the residence, the
8 issuance of a certificate of occupancy for the residence, or one year
9 after the issuance of the building permit, whichever occurs first;

10 (5) Shall allow the county, city, or town imposing the impact fees
11 to adjust the standard impact fee at the time the fee is imposed to
12 consider unusual circumstances in specific cases to ensure that impact
13 fees are imposed fairly;

14 (~~(5)~~) (6) Shall include a provision for calculating the amount of
15 the fee to be imposed on a particular development that permits
16 consideration of studies and data submitted by the developer to adjust
17 the amount of the fee;

18 (~~(6)~~) (7) Shall establish one or more reasonable service areas
19 within which it shall calculate and impose impact fees for various land
20 use categories per unit of development;

21 (~~(7)~~) (8) May provide for the imposition of an impact fee for
22 system improvement costs previously incurred by a county, city, or town
23 to the extent that new growth and development will be served by the
24 previously constructed improvements provided such fee shall not be
25 imposed to make up for any system improvement deficiencies.

26 NEW SECTION. Sec. 7. A new section is added to chapter 82.02 RCW
27 to read as follows:

28 Except only as expressly provided in RCW 67.28.180 and 67.28.190
29 and in chapter 82.14 RCW, the state preempts the field of imposing
30 taxes upon retail sales of tangible personal property, the use of
31 tangible personal property, parimutuel wagering authorized pursuant to
32 RCW 67.16.060, conveyances, and cigarettes, and no county, town, or
33 other municipal subdivision has the right to impose taxes of that
34 nature.

35 **Sec. 8.** RCW 82.02.020 and 1990 1st ex.s. c 17 s 42 are each
36 amended to read as follows:

1 (~~Except only as expressly provided in RCW 67.28.180 and 67.28.190~~
2 ~~and the provisions of chapter 82.14 RCW, the state preempts the field~~
3 ~~of imposing taxes upon retail sales of tangible personal property, the~~
4 ~~use of tangible personal property, parimutuel wagering authorized~~
5 ~~pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,~~
6 ~~town, or other municipal subdivision shall have the right to impose~~
7 ~~taxes of that nature.)) (1) Except as provided in ((RCW 82.02.050~~
8 ~~through 82.02.090)) this chapter, ((no)) a county, city, town, or other
9 municipal corporation shall not impose any tax, fee, or charge, either
10 direct or indirect, on the construction or reconstruction of
11 residential buildings, commercial buildings, industrial buildings, or
12 on any other building or building space or appurtenance thereto, or on
13 the development, subdivision, classification, or reclassification of
14 land. However, this section does not preclude dedications of land or
15 easements within the proposed development or plat which the county,
16 city, town, or other municipal corporation can demonstrate are
17 reasonably necessary as a direct result of the proposed development or
18 plat to which the dedication of land or easement is to apply.~~

19 (2) This section does not prohibit voluntary agreements with
20 ((counties, cities, towns)) a county, city, town, or other municipal
21 ((corporations)) corporation that allows a payment in lieu of a
22 dedication of land or to mitigate a direct impact that has been
23 identified as a consequence of a proposed development, subdivision, or
24 plat. A local government shall not use such voluntary agreements for
25 local off-site transportation improvements within the geographic
26 boundaries of the area or areas covered by an adopted transportation
27 program authorized by chapter 39.92 RCW. Any such voluntary agreement
28 is subject to the following provisions:

29 ((+1)) (a) The payment shall be held in a reserve account and may
30 only be expended to fund a capital improvement agreed upon by the
31 parties to mitigate the identified, direct impact;

32 ((+2)) (b) The payment shall be expended in all cases within five
33 years of collection; and

34 ((+3)) (c) Any payment not so expended shall be refunded with
35 interest at the rate applied to judgments to the property owners of
36 record at the time of the refund; however, if the payment is not
37 expended within five years due to delay attributable to the developer,
38 the payment shall be refunded without interest.

1 (~~Ne~~) A county, city, town, or other municipal corporation shall
2 not require any payment as part of such a voluntary agreement which the
3 county, city, town, or other municipal corporation cannot establish is
4 reasonably necessary as a direct result of the proposed development or
5 plat.

6 (3) Nothing in this section prohibits cities, towns, counties, or
7 other municipal corporations from collecting reasonable fees from an
8 applicant for a permit or other governmental approval to cover the cost
9 to the city, town, county, or other municipal corporation of processing
10 applications, inspecting and reviewing plans, or preparing detailed
11 statements required by chapter 43.21C RCW.

12 (4) This section does not limit the existing authority of any
13 county, city, town, or other municipal corporation to impose special
14 assessments on property specifically benefitted thereby in the manner
15 prescribed by law.

16 (5) Nothing in this section prohibits counties, cities, or towns
17 from imposing or permits counties, cities, or towns to impose water,
18 sewer, natural gas, drainage utility, and drainage system charges(~~(+
19 PROVIDED, That~~)). No such charge (~~(shall)~~) may exceed the
20 proportionate share of such utility or system's capital costs which the
21 county, city, or town can demonstrate are attributable to the property
22 being charged(~~(+ PROVIDED FURTHER, That)~~). These provisions shall not
23 be interpreted to expand or contract any existing authority of
24 counties, cities, or towns to impose such charges.

25 (6) Nothing in this section prohibits a transportation benefit
26 district from imposing fees or charges authorized in RCW 36.73.120 nor
27 prohibits the legislative authority of a county, city, or town from
28 approving the imposition of such fees within a transportation benefit
29 district.

30 (7) Nothing in this section prohibits counties, cities, or towns
31 from imposing transportation impact fees authorized pursuant to chapter
32 39.92 RCW.

33 (8) Nothing in this section prohibits counties, cities, or towns
34 from requiring property owners to provide relocation assistance to
35 tenants under RCW 59.18.440 and 59.18.450.

36 (9) This section does not apply to special purpose districts formed
37 and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the
38 authority conferred by these titles affected.

1 NEW SECTION. **Sec. 9.** RCW 82.02.020, 82.02.050, 82.02.060,
2 82.02.070, 82.02.080, 82.02.090, and 82.02.100 are each recodified as
3 sections within a new chapter created in Title 36 RCW.

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