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**SUBSTITUTE SENATE BILL 6587**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Land Use & Planning (originally sponsored by Senators Stevens and McCaslin)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to imposing fees to mitigate adverse environmental  
2 impacts; and adding new sections to chapter 43.21C RCW.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature intends:

5 (a) To ensure that mitigation fees are imposed through established  
6 standards by which counties, cities, and towns may require by ordinance  
7 that new growth and development pay a reasonable cost only to mitigate  
8 specific adverse environmental impacts that are identified in the  
9 environmental documents prepared under this chapter;

10 (b) To ensure that mitigation fees are imposed through established  
11 procedures and criteria so that specific developments do not pay  
12 arbitrary fees or duplicative fees for the same adverse environmental  
13 impact; and

14 (c) To add process to current statutory authority for mitigation  
15 and not allow for additional authority than currently provided in RCW  
16 43.21C.060.

17 (2) The legislature further intends that mitigation fees:

18 (a) Only be imposed to mitigate specific adverse environmental  
19 impacts that are directly related to the new development; and

1 (b) Not exceed the proportionate share of the costs reasonably  
2 related to the specific adverse environmental impacts caused by the new  
3 development.

4 (3) As used in this chapter, "development activity" means any  
5 construction or expansion of a building, structure, or use; any change  
6 in use of a building or structure; or any change in the use of land,  
7 that cause specific adverse environmental impacts that are identified  
8 in the environmental documents prepared under this chapter.

9 NEW SECTION. **Sec. 2.** (1) A local ordinance imposing a mitigation  
10 fee shall include a schedule of mitigation fees that is adopted for  
11 each type of development activity subject to a mitigation fee,  
12 specifying the amount of the mitigation fee to be imposed for each  
13 proposed action.

14 (2) In determining the reasonable mitigation fee for built  
15 environment as defined under WAC 197-11-444(2) as it existed on the  
16 effective date of this act, the formula or other method of calculating  
17 the mitigation fee shall incorporate the availability of other means of  
18 funding the mitigation of the identified specific adverse environmental  
19 impact.

20 (3) A local ordinance imposing a mitigation fee shall include a  
21 provision for calculating the amount of the fee to be imposed on a  
22 particular development that permits consideration of studies and data  
23 submitted by the developer to adjust the amount of the fee.

24 NEW SECTION. **Sec. 3.** (1) Mitigation fee receipts shall be  
25 earmarked specifically and retained in special interest-bearing  
26 accounts. Separate accounts shall be established for each type of  
27 public facility for which a mitigation fee is collected. All interest  
28 shall be retained in the account and expended for the purpose or  
29 purposes for which the mitigation fee was imposed. Annually, each  
30 county, city, or town imposing mitigation fees shall provide a report  
31 on each mitigation fee account showing the source and amount of all  
32 moneys collected, earned, or received and development activities that  
33 were financed in whole or in part by the mitigation fee.

34 (2) The county, city, or town shall provide an annual accounting of  
35 the mitigation fee expenditures, published on its internet site.

1 (3) A mitigation fee may be paid under protest in order to obtain  
2 a permit or other approval of development activity.

3 NEW SECTION. **Sec. 4.** (1)(a) The person paying the mitigation fee  
4 shall receive a refund if the county, city, or town fails to expend or  
5 encumber the mitigation fee within six years of when the fee is paid on  
6 mitigation of specific adverse environmental impacts that are  
7 identified in the environmental documents prepared under this chapter.  
8 The county, city, or town shall notify potential claimants by first  
9 class mail deposited with the United States postal service at the last  
10 known address of claimants.

11 The request for a refund must be submitted to the county, city, or  
12 town governing body in writing within one year of the date the right to  
13 claim the refund arises or the date that notice is given, whichever is  
14 later. Any mitigation fee that is not expended within these time  
15 limitations, and for which no timely application for a refund has been  
16 made, shall be retained and expended on the indicated development  
17 activity or any other development activity.

18 (b) The refund of a mitigation fee under (a) of this subsection  
19 shall include interest earned on the mitigation fee.

20 (2) When a county, city, or town seeks to terminate any or all  
21 mitigation fee requirements, all unexpended or unencumbered funds,  
22 including interest earned, shall be refunded under this section. Upon  
23 the finding that any or all fee requirements are to be terminated, the  
24 county, city, or town shall place notice of the termination and the  
25 availability of refunds in a newspaper of general circulation at least  
26 two times and shall notify all potential claimants by first class mail  
27 to the last known address of claimants. All funds available for refund  
28 shall be retained for a period of one year. At the end of one year,  
29 any remaining funds shall be retained by the local government, but must  
30 be expended for the indicated public facilities. This notice  
31 requirement does not apply if there are no unexpended or unencumbered  
32 balances within an account or accounts being terminated.

33 (3) A developer may request and shall receive a refund, including  
34 interest earned on the mitigation fee, when the developer does not  
35 proceed with the development activity and no adverse environmental  
36 impact has resulted.

1           NEW SECTION.   **Sec. 5.**   Sections 1 through 4 of this act are each  
2   added to chapter 43.21C RCW.

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