
SUBSTITUTE HOUSE BILL 2196

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Finance (originally sponsored by
Representatives Clibborn and Moeller)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to authorizing an expansion of the local option
2 real estate excise tax to fund capital projects in lieu of impact fees;
3 amending RCW 28A.505.140, 82.02.070, 82.02.080, 82.46.030, and
4 82.46.080; reenacting and amending RCW 82.46.060; adding new sections
5 to chapter 82.46 RCW; adding new sections to chapter 82.02 RCW; adding
6 new sections to chapter 43.21C RCW; and creating new sections.

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

8 NEW SECTION. **Sec. 1.** The legislature recognizes the need to
9 provide local governments with a new, stable, and broad source of
10 funding for capital infrastructure. The legislature recognizes also
11 the need to adequately fund growth in school districts and the need to
12 provide relief to the ongoing affordable housing crisis.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.46 RCW
14 to read as follows:

15 (1) In addition to any other taxes authorized under this chapter,
16 the legislative authority of any county or any city may impose an
17 excise tax on each sale of real property in the unincorporated areas of

1 the county for the county tax, and in the corporate limits of the city
2 for the city tax, at a rate not exceeding two-fifths of one percent of
3 the selling price.

4 (2) Proceeds from tax imposed under this section shall be used
5 solely for the financing of a capital project.

6 (3) No city or county that imposes an impact fee with respect to
7 system improvements for public facilities other than school facilities
8 may impose a tax under this section.

9 (4) The following are exempt from tax imposed under this section:

10 (a) A sale of low-income housing property;

11 (b) A sale of property that is assessed under a preferential
12 valuation provided by chapter 84.33 or 84.34 RCW; and

13 (c) The first sale after the effective date of the tax imposed
14 under this section of a property within a residential development for
15 which impact fees were required for system improvements before the
16 effective date of the tax and for which the system improvements are not
17 yet complete.

18 (5) For the purposes of this section, the following definitions
19 apply:

20 (a) "Capital project" means:

21 (i) An activity or project described in RCW 82.46.010(6), except
22 that it does not include any activity or project associated with
23 trails, libraries, administrative or judicial facilities, or river or
24 waterway flood control projects;

25 (ii) A project for which impact fees are imposed under RCW
26 82.02.050 through 82.02.090, except that "capital project" also means
27 system improvements relating to fire protection facilities in fire
28 protection districts; and

29 (iii) A low-income housing project.

30 (b) "Impact fee" means:

31 (i) A fee imposed pursuant to RCW 82.02.050 through 82.02.090 for
32 system improvements for public facilities; and

33 (ii) A fee imposed pursuant to RCW 43.21C.060 for a system
34 improvement for which a fee may otherwise be imposed pursuant to RCW
35 82.02.050 through 82.02.090.

36 (c) "Low-income housing" means housing constructed for the
37 principal purpose of making affordable housing available to households

1 for which the income is at or below fifty percent of the county median
2 household income.

3 (d) "System improvement" and "public facility" mean the same as in
4 RCW 82.02.090.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.46 RCW
6 to read as follows:

7 (1) The board of directors of a school district may impose an
8 excise tax on each sale of real property within the boundaries of the
9 district at a rate not to exceed one-quarter of one percent of the
10 selling price. Any taxes imposed under this section shall be paid to
11 and collected by the treasurer of the county within which the property
12 is located, as provided in RCW 82.46.060.

13 (2) Proceeds of the tax imposed under this section shall be used
14 solely for the purposes that impact fees may be imposed with respect to
15 system improvements for school facilities within the district.

16 (3) No school district may impose a tax under this section if the
17 city or county in which the district is located imposes an impact fee
18 with respect to system improvements for school facilities within the
19 district.

20 (4) The following are exempt from tax imposed under this section:

21 (a) A sale of low-income housing property;

22 (b) A sale of property that is assessed under a preferential
23 valuation provided by chapter 84.33 or 84.34 RCW;

24 (c) The first sale after the effective date of the tax imposed
25 under this section of a property within a residential development for
26 which impact fees were required for system improvements before the
27 effective date of the tax and for which the system improvements are not
28 yet complete; and

29 (d) A sale of property other than residential property.

30 (5) For the purposes of this section, the following definitions
31 apply:

32 (a) "Impact fee" means:

33 (i) A fee imposed pursuant to RCW 82.02.050 through 82.02.090 for
34 system improvements for public facilities; and

35 (ii) A fee imposed pursuant to RCW 43.21C.060 for a system
36 improvement for which a fee may otherwise be imposed pursuant to RCW
37 82.02.050 through 82.02.090.

1 (b) "Low-income housing" means housing constructed for the
2 principal purpose of making affordable housing available to households
3 for which the income is at or below fifty percent of the county median
4 household income.

5 (c) "System improvement" and "public facility" mean the same as in
6 RCW 82.02.090.

7 **Sec. 4.** RCW 28A.505.140 and 1990 c 33 s 422 are each amended to
8 read as follows:

9 (1)(a) Notwithstanding any other provision of law, the
10 superintendent of public instruction is hereby directed to (~~promulgate~~
11 ~~such~~) adopt rules (~~and regulations as~~) that will insure proper
12 budgetary procedures and practices, including monthly financial
13 statements consistent with the provisions of RCW 43.09.200, and this
14 chapter.

15 (b) The adopted rules shall require that districts separately
16 report revenues resulting from the imposition and collection of each of
17 the following:

18 (i) Impact fees under RCW 82.02.050 through 82.02.090;

19 (ii) Fees under RCW 43.21C.060; and

20 (iii) Taxes authorized under section 3 of this act.

21 (2) If the superintendent of public instruction determines upon a
22 review of the budget of any district that said budget does not comply
23 with the budget procedures established by this chapter or by rules
24 (~~and regulations promulgated~~) adopted by the superintendent of public
25 instruction, or the provisions of RCW 43.09.200, the superintendent
26 shall give written notice of this determination to the board of
27 directors of the local school district.

28 (3) The local school district, notwithstanding any other provision
29 of law, shall, within thirty days from the date the superintendent of
30 public instruction issues a notice pursuant to subsection (2) of this
31 section, submit a revised budget which meets the requirements of RCW
32 43.09.200, this chapter, and the rules (~~and regulations~~) of the
33 superintendent of public instruction: PROVIDED, That if the district
34 fails or refuses to submit a revised budget which in the determination
35 of the superintendent of public instruction meets the requirements of
36 RCW 43.09.200, this chapter, and the rules (~~and regulations~~) of the
37 superintendent of public instruction, the matter shall be submitted to

1 the state board of education, which board shall meet and adopt a
2 financial plan which shall be in effect until a budget can be adopted
3 and submitted by the district in compliance with this section.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.02 RCW
5 to read as follows:

6 No impact fee may be imposed by a city or county under RCW
7 82.02.050 through 82.02.090 for system improvements for:

8 (1) Public facilities other than school facilities, if the city or
9 county imposes a real estate excise tax under section 2 of this act;

10 (2) School facilities in a school district that imposes a real
11 estate excise tax under section 3 of this act.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.21C RCW
13 to read as follows:

14 No fee may be imposed by a city or county under RCW 43.21C.060 for
15 a system improvement for:

16 (1) Public facilities other than school facilities, if the city or
17 county imposes a real estate excise tax under section 2 of this act;

18 (2) School facilities in a school district that imposes a real
19 estate excise tax under section 3 of this act.

20 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.02 RCW
21 to read as follows:

22 (1) If a city or county imposes a real estate excise tax under
23 section 2 of this act, no impact fee may be imposed by that city or
24 county under RCW 82.02.050 through 82.02.090 for system improvements,
25 other than for school facilities, for at least eight years after the
26 effective date of the tax imposed under section 2 of this act.

27 (2) If a school district imposes a real estate excise tax under
28 section 3 of this act, no impact fee may be imposed by a city or county
29 under RCW 82.02.050 through 82.02.090 for school facilities in the
30 district for at least eight years after the effective date of the tax
31 imposed under section 3 of this act.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.21C RCW
33 to read as follows:

34 (1) If a city or county imposes a real estate excise tax under

1 section 2 of this act, no fee may be imposed by the city or county
2 under RCW 43.21C.060 for system improvements, other than for school
3 facilities, for at least eight years after the effective date of the
4 tax imposed under section 2 of this act.

5 (2) If a school district imposes a real estate excise tax under
6 section 3 of this act, no fee may be imposed by a city or county under
7 RCW 43.21C.060 for school facilities in the district for at least eight
8 years after the effective date of the tax imposed under section 3 of
9 this act.

10 **Sec. 9.** RCW 82.02.070 and 1990 1st ex.s. c 17 s 46 are each
11 amended to read as follows:

12 (1) Impact fee receipts shall be earmarked specifically and
13 retained in special interest-bearing accounts. Separate accounts shall
14 be established for each type of public facility for which impact fees
15 are collected. All interest shall be retained in the account and
16 expended for the purpose or purposes for which the impact fees were
17 imposed. Annually, each county, city, or town imposing impact fees
18 shall provide a report on each impact fee account showing the source
19 and amount of all moneys collected, earned, or received and system
20 improvements that were financed in whole or in part by impact fees.

21 (2) Impact fees for system improvements shall be expended only in
22 conformance with the capital facilities plan element of the
23 comprehensive plan.

24 (3)(a) Impact fees shall be expended or encumbered for a
25 permissible use within six years of receipt, unless there exists an
26 extraordinary and compelling reason for fees to be held longer than six
27 years. Such extraordinary or compelling reasons shall be identified in
28 written findings by the governing body of the county, city, or town.

29 (b) A city or county may retain unspent or unencumbered funds after
30 a tax is imposed under section 2 or 3 of this act under the following
31 conditions:

32 (i) The fees are expended or encumbered for a permissible use as
33 described under RCW 82.02.050 through 82.02.090 within six years of
34 when the required fees were due; and

35 (ii) An exemption is allowed from tax under section 2 or 3 of this
36 act with respect to the first sale after the effective date of the tax

1 of each property within a residential development for which the impact
2 fees are required.

3 (4) Impact fees may be paid under protest in order to obtain a
4 permit or other approval of development activity.

5 (5) The requirement to pay impact fees with respect to development
6 activity that occurs before a tax is imposed under section 2 or 3 of
7 this act is not extinguished by the imposition of the tax.

8 (6) Each county, city, or town that imposes impact fees shall
9 provide for an administrative appeals process for the appeal of an
10 impact fee; the process may follow the appeal process for the
11 underlying development approval or the county, city, or town may
12 establish a separate appeals process. The impact fee may be modified
13 upon a determination that it is proper to do so based on principles of
14 fairness. The county, city, or town may provide for the resolution of
15 disputes regarding impact fees by arbitration.

16 **Sec. 10.** RCW 82.02.080 and 1990 1st ex.s. c 17 s 47 are each
17 amended to read as follows:

18 (1) The current owner of property on which an impact fee has been
19 paid may receive a refund of such fees if the county, city, or town
20 fails to expend or encumber the impact fees within six years of when
21 the fees were paid or other such period of time established pursuant to
22 RCW 82.02.070(3) on public facilities intended to benefit the
23 development activity for which the impact fees were paid. In
24 determining whether impact fees have been encumbered, impact fees shall
25 be considered encumbered on a first in, first out basis. The county,
26 city, or town shall notify potential claimants by first class mail
27 deposited with the United States postal service at the last known
28 address of claimants.

29 The request for a refund must be submitted to the county, city, or
30 town governing body in writing within one year of the date the right to
31 claim the refund arises or the date that notice is given, whichever is
32 later. Any impact fees that are not expended within these time
33 limitations, and for which no application for a refund has been made
34 within this one-year period, shall be retained and expended on the
35 indicated capital facilities. Refunds of impact fees under this
36 subsection shall include interest earned on the impact fees.

1 (2) Except as provided in subsection (4) of this section, when a
2 county, city, or town seeks to terminate any or all impact fee
3 requirements, all unexpended or unencumbered funds, including interest
4 earned, shall be refunded pursuant to this section. Upon the finding
5 that any or all fee requirements are to be terminated, the county,
6 city, or town shall place notice of such termination and the
7 availability of refunds in a newspaper of general circulation at least
8 two times and shall notify all potential claimants by first class mail
9 to the last known address of claimants. All funds available for refund
10 shall be retained for a period of one year. At the end of one year,
11 any remaining funds shall be retained by the local government, but must
12 be expended for the indicated public facilities. This notice
13 requirement shall not apply if there are no unexpended or unencumbered
14 balances within an account or accounts being terminated.

15 (3) A developer may request and shall receive a refund, including
16 interest earned on the impact fees, when the developer does not proceed
17 with the development activity and no impact has resulted.

18 (4) Unexpended or unencumbered funds may be retained by a city or
19 county as provided in RCW 82.02.070(3)(b).

20 **Sec. 11.** RCW 82.46.030 and 2000 c 103 s 17 are each amended to
21 read as follows:

22 (1) The county treasurer shall place one percent of the proceeds of
23 the taxes imposed under this chapter in the county current expense fund
24 to defray costs of collection.

25 (2) The remaining proceeds from the county tax under RCW
26 82.46.010(2) shall be placed in a county capital improvements fund.
27 The remaining proceeds from city or town taxes under RCW 82.46.010(2)
28 shall be distributed to the respective cities and towns monthly and
29 placed by the city treasurer in a municipal capital improvements fund.
30 The remaining proceeds from school district taxes under section 3 of
31 this act shall be placed for each district imposing tax in a school
32 district capital improvement fund for the purposes provided in section
33 3(2) of this act, as applicable.

34 (3) This section does not limit the existing authority of any city,
35 town, or county to impose special assessments on property specially
36 benefited thereby in the manner prescribed by law.

1 **Sec. 12.** RCW 82.46.060 and 1990 1st ex.s. c 17 s 41 and 1990 1st
2 ex.s. c 5 s 5 are each reenacted and amended to read as follows:

3 Any taxes imposed under this chapter or RCW 82.46.070 shall be paid
4 to and collected by the treasurer of the county within which is located
5 the real property which was sold. The treasurer shall act as agent for
6 any city or school district within the county imposing the tax. The
7 county treasurer shall cause a stamp evidencing satisfaction of the
8 lien to be affixed to the instrument of sale or conveyance prior to its
9 recording or to the real estate excise tax affidavit in the case of
10 used mobile home sales. A receipt issued by the county treasurer for
11 the payment of the tax imposed under this chapter or RCW 82.46.070
12 shall be evidence of the satisfaction of the lien imposed in RCW
13 82.46.040 and may be recorded in the manner prescribed for recording
14 satisfactions of mortgages. No instrument of sale or conveyance
15 evidencing a sale subject to the tax may be accepted by the county
16 auditor for filing or recording until the tax is paid and the stamp
17 affixed thereto; in case the tax is not due on the transfer, the
18 instrument shall not be accepted until suitable notation of this fact
19 is made on the instrument by the treasurer.

20 **Sec. 13.** RCW 82.46.080 and 1998 c 106 s 10 are each amended to
21 read as follows:

22 A county, city, (~~(or)~~) town, or school district that imposes an
23 excise tax under this chapter must provide the county treasurer with a
24 copy of the ordinance or other action initially authorizing the tax or
25 altering the rate of the tax that is imposed at least sixty days before
26 change becomes effective.

27 NEW SECTION. **Sec. 14.** No tax may be imposed under this act before
28 January 1, 2006.

29 NEW SECTION. **Sec. 15.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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