
ENGROSSED SUBSTITUTE SENATE BILL 5164

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Haugen, Oke, Jacobsen, Swecker, Poulsen, Spanel and Shin)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to mitigation or mitigation fees imposed by the
2 department of transportation; amending RCW 82.02.100; reenacting and
3 amending RCW 43.79A.040; adding new sections to chapter 43.21C RCW; and
4 adding new sections to chapter 47.04 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.21C RCW
7 to read as follows:

8 (1) The department of transportation may impose mitigation fees, or
9 require mitigation, from development activity that creates additional
10 significant demand and need for transportation improvements to highways
11 of statewide significance or related facilities or state highways in
12 urban growth areas as defined in RCW 36.70A.030, as determined by the
13 department. This authority may be exercised only under this chapter.

14 (2) The mitigation or mitigation fee(s):

15 (a) Must be determined within the time frame and in conjunction
16 with the process established under this chapter;

17 (b) May be imposed only for state transportation improvements that
18 are reasonably related to the development activity;

1 (c) May not exceed a proportionate share of the costs of state
2 transportation improvements that are reasonably related to the
3 development activity;

4 (d) Must be used for state transportation improvements that will
5 reasonably benefit the development activity;

6 (e) Must be spent in all cases within six years of collection, or
7 the unspent funds must be refunded; and

8 (f) Must be transparent and the method and details of how the
9 mitigation or mitigation fee was derived must be included in the
10 assessment.

11 (3)(a) Subject to (b) of this subsection, the determination of the
12 mitigation, or the collection of mitigation fees, must be included in
13 the local entity's mitigation assessment.

14 (b) If there is no local mitigation assessment, or if the
15 department of transportation chooses to assess its mitigation
16 separately, then the department of transportation may submit the
17 mitigation or mitigation fee, or both, separately from the local
18 jurisdiction, consistent with the mitigation process established under
19 this chapter. However, the development activity may not be charged
20 twice for any particular mitigation required.

21 (c) Regardless of whether the mitigation or mitigation fee is
22 assessed under (a) or (b) of this subsection (3), local jurisdictions
23 may fund the department of transportation mitigation fee through
24 alternative revenue sources.

25 (4) The department shall adopt rules under chapter 34.05 RCW
26 regarding:

27 (a) The criteria applicable to a determination under subsection (1)
28 of this section as to whether development activity creates additional
29 significant demand and need for transportation improvements to highways
30 of statewide significance or related facilities or state highways in
31 urban growth areas as defined in RCW 36.70A.030;

32 (b) A formula or method for calculating the amount of mitigation or
33 mitigation fees, or both, to be imposed on the development activity,
34 considering (i) the type of development activity subject to the fees
35 and (ii) the proportionate share of the costs of state transportation
36 improvements that are reasonably related to the development activity;

37 (c) Provisions outlining the types of nonfee-based mitigation that

1 are allowed, establishing standards for such mitigation and outlining
2 oversight procedures for such mitigation;

3 (d) The administration and collection of the fees;

4 (e) The provision that a development activity may not be charged
5 twice for any particular mitigation required;

6 (f) The allowance of an adjustment to the standard mitigation fee
7 at the time the fee is imposed to consider unusual circumstances in
8 specific cases to ensure that mitigation fees are imposed fairly;

9 (g) An administrative appeals process for the appeal of a
10 mitigation fee that is in compliance with RCW 43.21C.075; and

11 (h) Procedures for refunding funds not spent within six years.

12 (5) The following development activities are exempt from this
13 section:

14 (a) Residential development meeting the criteria of "affordable
15 housing" as defined in RCW 43.63A.510; or

16 (b) Development that generates less than twenty-five "peak hour
17 trips" on a highway of statewide significance or on its related
18 facilities or state highways in urban growth areas as defined in RCW
19 36.70A.030. However, development activity subject to this exemption
20 may choose, at the developer's option, to subject the development
21 activity to the provisions of this section.

22 (6) Infrastructure improvement projects currently funded by
23 federal, state, or local revenue shall not be included as part of a
24 mitigation, or mitigation fee, assessed on development activity.

25 (7) Mitigation fees imposed under this section must be deposited
26 into the transportation mitigation fee account, hereby created in the
27 custody of the state treasurer. Expenditures from the account must be
28 used only for the purpose or purposes for which the mitigation fees
29 were imposed, and according to subsection (2) of this section. Only
30 the secretary of transportation or the secretary's designee may
31 authorize expenditures from the account. The account is subject to
32 allotment procedures under chapter 43.88 RCW, but an appropriation is
33 not required for expenditures.

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

36 (1) Within two working days of receipt of notification or
37 application for a development project that is either (a) subject to a

1 State Environmental Policy Act review under this chapter or (b) that is
2 adjacent to a highway of statewide significance or a state highway in
3 an urban growth area as defined in RCW 36.70A.030, the local
4 governmental entity receiving the application or notification shall
5 notify the department of transportation of the proposed project.
6 Before preparing the environmental impact statement or issuing a
7 threshold determination, the lead agency shall consult with the
8 department of transportation. Any significant adverse impacts
9 identified by the department of transportation must be included in the
10 environmental impact statement or the threshold determination. The
11 department of transportation must notify the lead agency of any such
12 impacts in a timely manner to allow the responsible official to comply
13 with RCW 43.21C.033.

14 **Sec. 3.** RCW 82.02.100 and 1992 c 219 s 2 are each amended to read
15 as follows:

16 A person required to pay a fee pursuant to RCW 43.21C.060 or
17 section 1 of this act for system improvements shall not be required to
18 pay an impact fee under RCW 82.02.050 through 82.02.090 for those same
19 system improvements.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.04 RCW
21 to read as follows:

22 The department of transportation may impose mitigation or
23 mitigation fees, or both, according to sections 1 and 2 of this act.

24 **Sec. 5.** RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are
25 each reenacted and amended to read as follows:

26 (1) Money in the treasurer's trust fund may be deposited, invested,
27 and reinvested by the state treasurer in accordance with RCW 43.84.080
28 in the same manner and to the same extent as if the money were in the
29 state treasury.

30 (2) All income received from investment of the treasurer's trust
31 fund shall be set aside in an account in the treasury trust fund to be
32 known as the investment income account.

33 (3) The investment income account may be utilized for the payment
34 of purchased banking services on behalf of treasurer's trust funds
35 including, but not limited to, depository, safekeeping, and

1 disbursement functions for the state treasurer or affected state
2 agencies. The investment income account is subject in all respects to
3 chapter 43.88 RCW, but no appropriation is required for payments to
4 financial institutions. Payments shall occur prior to distribution of
5 earnings set forth in subsection (4) of this section.

6 (4)(a) Monthly, the state treasurer shall distribute the earnings
7 credited to the investment income account to the state general fund
8 except under (b) and (c) of this subsection.

9 (b) The following accounts and funds shall receive their
10 proportionate share of earnings based upon each account's or fund's
11 average daily balance for the period: The Washington promise
12 scholarship account, the college savings program account, the
13 Washington advanced college tuition payment program account, the
14 agricultural local fund, the American Indian scholarship endowment
15 fund, the students with dependents grant account, the basic health plan
16 self-insurance reserve account, the contract harvesting revolving
17 account, the Washington state combined fund drive account, the
18 Washington international exchange scholarship endowment fund, the
19 developmental disabilities endowment trust fund, the energy account,
20 the fair fund, the fruit and vegetable inspection account, the future
21 teachers conditional scholarship account, the game farm alternative
22 account, the grain inspection revolving fund, the juvenile
23 accountability incentive account, the law enforcement officers' and
24 fire fighters' plan 2 expense fund, the local tourism promotion
25 account, the produce railcar pool account, the rural rehabilitation
26 account, the stadium and exhibition center account, the youth athletic
27 facility account, the self-insurance revolving fund, the sulfur dioxide
28 abatement account, the children's trust fund, the Washington horse
29 racing commission Washington bred owners' bonus fund account, the
30 Washington horse racing commission class C purse fund account, (~~and~~)
31 the Washington horse racing commission operating account (earnings from
32 the Washington horse racing commission operating account must be
33 credited to the Washington horse racing commission class C purse fund
34 account), and the transportation mitigation fee account. However, the
35 earnings to be distributed shall first be reduced by the allocation to
36 the state treasurer's service fund pursuant to RCW 43.08.190.

37 (c) The following accounts and funds shall receive eighty percent
38 of their proportionate share of earnings based upon each account's or

1 fund's average daily balance for the period: The advanced right of way
2 revolving fund, the advanced environmental mitigation revolving
3 account, the city and county advance right-of-way revolving fund, the
4 federal narcotics asset forfeitures account, the high occupancy vehicle
5 account, the local rail service assistance account, and the
6 miscellaneous transportation programs account.

7 (5) In conformance with Article II, section 37 of the state
8 Constitution, no trust accounts or funds shall be allocated earnings
9 without the specific affirmative directive of this section.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.04 RCW
11 to read as follows:

12 The department of transportation may impose and collect latecomer
13 fees on behalf of another entity for infrastructure improvement
14 projects initially funded partially or entirely by private sources.
15 However, there must be an agreement in place between the department of
16 transportation and the entity before the imposition and collection of
17 any such fees, that specifies (1) the collection process; (2) the
18 maximum amount that may be collected; and (3) the period of time during
19 which the collection may occur.

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