
HOUSE BILL 1104

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63rd Legislature

2013 Regular Session

By Representatives Fitzgibbon, Upthegrove, Springer, Green, Ryu, Maxwell, Roberts, Jinkins, Morrell, Pollet, and Fey

Read first time 01/16/13. Referred to Committee on Local Government.

1 AN ACT Relating to incentivizing up-front environmental planning
2 and review; amending RCW 82.02.020; and adding a new section to chapter
3 43.21C RCW.

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

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

7 (1) A county, city, or town may recover its reasonable expenses of
8 preparation of a nonproject environmental impact statement prepared
9 under RCW 43.21C.229 and 43.21C.440:

10 (a) Through access to financial assistance under RCW 36.70A.490;

11 (b) With funding from private sources; and

12 (c) By the assessment of fees consistent with the requirements and
13 limitations of this section.

14 (2)(a) A county, city, or town is authorized to assess a fee upon
15 subsequent development that will make use of and benefit from: (i) The
16 analysis in an environmental impact statement prepared for the purpose
17 of compliance with RCW 43.21C.440 regarding planned actions; or (ii)
18 the reduction in environmental analysis requirements resulting from the

1 exercise of authority under RCW 43.21C.229 regarding infill
2 development.

3 (b) The amount of the fee must be reasonable and proportionate to
4 the total expenses incurred by the county, city, or town in the
5 preparation of the environmental impact statement.

6 (3) A county, city, or town assessing fees under subsection (2)(a)
7 of this section must provide for a mechanism by which project
8 proponents may either elect to utilize the environmental review
9 completed by the lead agency and pay the fees under subsection (1) of
10 this section or certify that they do not want the local jurisdiction to
11 utilize the environmental review completed as a part of a planned
12 action and therefore not be assessed any associated fees. Project
13 proponents who choose this option may not make use of or benefit from
14 the up-front environmental review prepared by the local jurisdiction.

15 (4) Prior to the collection of fees, the county, city, or town must
16 enact an ordinance that establishes the total amount of expenses to be
17 recovered through fees and provides objective standards for determining
18 the fee amount to be imposed upon each development proposal
19 proportionate to the impacts of each development and to the benefits
20 accruing to each development from the nonproject environmental review.
21 The ordinance must provide: (a) A procedure by which an applicant who
22 disagrees with whether the amount of the fee is correct, reasonable, or
23 proportionate may pay the fee with the written stipulation "paid under
24 protest"; and (b) if the county, city, or town provides for an
25 administrative appeal of its decision on the project for which the fees
26 are imposed, any dispute about the amount of the fees must be resolved
27 in the same administrative appeals process. Any disagreement about the
28 reasonableness, proportionality, or amount of the fees imposed upon a
29 development may not be the basis for delay in issuance of a project
30 permit for that development.

31 (5) The ordinance adopted under subsection (4) of this section must
32 make information available about the amount of the expenses designated
33 for recovery. When these expenses have been fully recovered, the
34 county, city, or town may no longer assess a fee under this section.

35 (6) Any fees collected under this section from subsequent
36 development may be used to reimburse funding received from private
37 sources to conduct the environmental review.

1 (7) The county, city, or town shall refund fees collected where a
2 court of competent jurisdiction determines that the environmental
3 review conducted under RCW 43.21C.440, regarding planned actions, or
4 under RCW 43.21C.229, regarding infill development, was not sufficient
5 to comply with the requirements of this chapter regarding the proposed
6 development activity for which the fees were collected. The applicant
7 and the county, city, or town may mutually agree to a partial refund or
8 to waive the refund in the interest of resolving any dispute regarding
9 compliance with this chapter.

10 **Sec. 2.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read
11 as follows:

12 Except only as expressly provided in chapters 67.28, 81.104, and
13 82.14 RCW, the state preempts the field of imposing retail sales and
14 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
15 67.16.060, conveyances, and cigarettes, and no county, town, or other
16 municipal subdivision shall have the right to impose taxes of that
17 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
18 82.02.090, no county, city, town, or other municipal corporation shall
19 impose any tax, fee, or charge, either direct or indirect, on the
20 construction or reconstruction of residential buildings, commercial
21 buildings, industrial buildings, or on any other building or building
22 space or appurtenance thereto, or on the development, subdivision,
23 classification, or reclassification of land. However, this section
24 does not preclude dedications of land or easements within the proposed
25 development or plat which the county, city, town, or other municipal
26 corporation can demonstrate are reasonably necessary as a direct result
27 of the proposed development or plat to which the dedication of land or
28 easement is to apply.

29 This section does not prohibit voluntary agreements with counties,
30 cities, towns, or other municipal corporations that allow a payment in
31 lieu of a dedication of land or to mitigate a direct impact that has
32 been identified as a consequence of a proposed development,
33 subdivision, or plat. A local government shall not use such voluntary
34 agreements for local off-site transportation improvements within the
35 geographic boundaries of the area or areas covered by an adopted
36 transportation program authorized by chapter 39.92 RCW. Any such
37 voluntary agreement is subject to the following provisions:

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

4 (2) The payment shall be expended in all cases within five years of
5 collection; and

6 (3) Any payment not so expended shall be refunded with interest to
7 be calculated from the original date the deposit was received by the
8 county and at the same rate applied to tax refunds pursuant to RCW
9 84.69.100; however, if the payment is not expended within five years
10 due to delay attributable to the developer, the payment shall be
11 refunded without interest.

12 No county, city, town, or other municipal corporation shall require
13 any payment as part of such a voluntary agreement which the county,
14 city, town, or other municipal corporation cannot establish is
15 reasonably necessary as a direct result of the proposed development or
16 plat.

17 Nothing in this section prohibits cities, towns, counties, or other
18 municipal corporations from collecting reasonable fees from an
19 applicant for a permit or other governmental approval to cover the cost
20 to the city, town, county, or other municipal corporation of processing
21 applications, inspecting and reviewing plans, or preparing detailed
22 statements required by chapter 43.21C RCW, including reasonable fees
23 that are consistent with RCW 43.21C.420(6) and section 1 of this act.

24 This section does not limit the existing authority of any county,
25 city, town, or other municipal corporation to impose special
26 assessments on property specifically benefited thereby in the manner
27 prescribed by law.

28 Nothing in this section prohibits counties, cities, or towns from
29 imposing or permits counties, cities, or towns to impose water, sewer,
30 natural gas, drainage utility, and drainage system charges. However,
31 no such charge shall exceed the proportionate share of such utility or
32 system's capital costs which the county, city, or town can demonstrate
33 are attributable to the property being charged. Furthermore, these
34 provisions may not be interpreted to expand or contract any existing
35 authority of counties, cities, or towns to impose such charges.

36 Nothing in this section prohibits a transportation benefit district
37 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits

1 the legislative authority of a county, city, or town from approving the
2 imposition of such fees within a transportation benefit district.

3 Nothing in this section prohibits counties, cities, or towns from
4 imposing transportation impact fees authorized pursuant to chapter
5 39.92 RCW.

6 Nothing in this section prohibits counties, cities, or towns from
7 requiring property owners to provide relocation assistance to tenants
8 under RCW 59.18.440 and 59.18.450.

9 Nothing in this section limits the authority of counties, cities,
10 or towns to implement programs consistent with RCW 36.70A.540, nor to
11 enforce agreements made pursuant to such programs.

12 This section does not apply to special purpose districts formed and
13 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority
14 conferred by these titles affected.

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