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HOUSE BILL 1682

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Fitzgibbon, Fey, Upthegrove, Roberts, Ryu, and Jenkins

Read first time 02/05/13. Referred to Committee on Local Government.

1            AN ACT Relating to incentivizing up-front environmental planning,  
2 review, and infrastructure construction actions of local governments;  
3 amending RCW 82.02.020; reenacting and amending RCW 35.91.020; and  
4 adding a new section to chapter 43.21C 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) A county, city, or town may recover its reasonable expenses of  
9 preparation of a nonproject environmental impact statement prepared  
10 under RCW 43.21C.229 and 43.21C.440:

- 11            (a) Through access to financial assistance under RCW 36.70A.490;
- 12            (b) With funding from private sources; and
- 13            (c) By the assessment of fees consistent with the requirements and  
14 limitations of this section.

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

1 the reduction in environmental analysis requirements resulting from the  
2 exercise of authority under RCW 43.21C.229 regarding infill  
3 development.

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

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

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

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

36 (6) Any fees collected under this section from subsequent  
37 development may be used to reimburse funding received from private  
38 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 35.91.020 and 2009 c 344 s 1 and 2009 c 230 s 1 are  
11 each reenacted and amended to read as follows:

12 (1)(a) (~~Except as provided under subsection (2) of this section,~~)  
13 The governing body of any city, town, county, water-sewer district, or  
14 drainage district, hereinafter referred to as a "municipality" (~~may~~)  
15 must contract with owners of real estate for the construction of storm,  
16 sanitary, or combination sewers, pumping stations, and disposal plants,  
17 water mains, hydrants, reservoirs, or appurtenances, hereinafter called  
18 "water or sewer facilities," within their boundaries or (except for  
19 counties) within ten miles from their corporate limits connecting with  
20 the public water or sewerage system to serve the area in which the real  
21 estate of such owners is located, and to provide for a period of (~~not~~  
22 ~~to exceed~~) twenty years for the reimbursement of such owners and their  
23 assigns by any owner of real estate who did not contribute to the  
24 original cost of such water or sewer facilities and who subsequently  
25 tap (~~onto~~) into or use the same of a fair pro rata share of the cost  
26 of the construction of (~~said~~) the water or sewer facilities,  
27 including not only those directly connected thereto, but also users  
28 connected to laterals or branches connecting thereto, subject to such  
29 reasonable rules and regulations as the governing body of such  
30 municipality may provide or contract, and notwithstanding the  
31 provisions of any other law.

32 (b) If authorized by ordinance or contract, a municipality may  
33 participate in financing the development of water or sewer facilities  
34 development projects authorized by, and in accordance with, (a) of this  
35 subsection. Unless otherwise provided by ordinance or contract:

36 (i) Municipalities that contribute to the financing of water or

1 sewer facilities projects under this section have the same rights to  
2 reimbursement as owners of real estate who make contributions as  
3 authorized under this section; and

4 (ii) If the projects are jointly financed by a combination of  
5 municipal funding and private funding by real estate owners, the amount  
6 of reimbursement received by each participant in the financing must be  
7 a pro rata share.

8 (c) Except as provided otherwise by this section, a municipality  
9 seeking reimbursement from an owner of real estate under this section  
10 is limited to the dollar amount authorized under this chapter ((and may  
11 not collect any additional reimbursement, assessment, charge, or fee  
12 for the infrastructure or facilities that were constructed under the  
13 applicable ordinance, contract, or agreement)). This does not prevent  
14 the collection of amounts for services or infrastructure that are  
15 additional expenditures not subject to such ordinance, contract, or  
16 agreement, nor does it prevent the collection of fees that are  
17 reasonable and proportionate to the total expenses incurred by the  
18 municipality in complying with this section.

19 (2)((a) ~~The contract may provide for an extension of the~~  
20 ~~twenty-year reimbursement period for a time not to exceed the duration~~  
21 ~~of any moratorium, phasing ordinance, concurrency designation, or other~~  
22 ~~governmental action that prevents making applications for, or the~~  
23 ~~approval of, any new development within the benefit area for a period~~  
24 ~~of six months or more.~~

25 (b) ~~Upon the extension of the reimbursement period pursuant to (a)~~  
26 ~~of this subsection, the contract must specify the duration of the~~  
27 ~~contract extension and must be filed and recorded with the county~~  
28 ~~auditor. Property owners who are subject to the reimbursement~~  
29 ~~obligations under subsection (1) of this section shall be notified by~~  
30 ~~the contracting municipality of the extension filed under this~~  
31 ~~subsection.~~

32 (3)) Each contract shall include a provision requiring that every  
33 two years from the date the contract is executed a property owner  
34 entitled to reimbursement under this section provide the contracting  
35 municipality with information regarding the current contract name,  
36 address, and telephone number of the person, company, or partnership  
37 that originally entered into the contract. If the property owner fails  
38 to comply with the notification requirements of this subsection within

1 sixty days of the specified time, then the contracting municipality may  
2 collect any reimbursement funds owed to the property owner under the  
3 contract. Such funds must be deposited in the capital fund of the  
4 municipality.

5 ~~((4))~~ (3) To the extent it may require in the performance of such  
6 contract, such municipality may install said water or sewer facilities  
7 in and along the county streets in the area to be served as hereinabove  
8 provided, subject to such reasonable requirements as to the manner of  
9 occupancy of such streets as the county may by resolution provide. The  
10 provisions of such contract shall not be effective as to any owner of  
11 real estate not a party thereto unless such contract has been recorded  
12 in the office of the county auditor of the county in which the real  
13 estate of such owner is located prior to the time such owner taps into  
14 or connects to said water or sewer facilities.

15 (4) Within ninety days of the completion of a water or sewer  
16 facility that was financed in accordance with the provisions of this  
17 section, the owners of real estate who tap into or use the facility  
18 must submit their complete cost data and associated information to the  
19 applicable municipality. These owners must also provide reasonable and  
20 timely responses for any resubmittal requests or additional  
21 information, when applicable.

22 **Sec. 3.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read  
23 as follows:

24 Except only as expressly provided in chapters 67.28, 81.104, and  
25 82.14 RCW, the state preempts the field of imposing retail sales and  
26 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW  
27 67.16.060, conveyances, and cigarettes, and no county, town, or other  
28 municipal subdivision shall have the right to impose taxes of that  
29 nature. Except as provided in RCW 64.34.440 and 82.02.050 through  
30 82.02.090, no county, city, town, or other municipal corporation shall  
31 impose any tax, fee, or charge, either direct or indirect, on the  
32 construction or reconstruction of residential buildings, commercial  
33 buildings, industrial buildings, or on any other building or building  
34 space or appurtenance thereto, or on the development, subdivision,  
35 classification, or reclassification of land. However, this section  
36 does not preclude dedications of land or easements within the proposed  
37 development or plat which the county, city, town, or other municipal

1 corporation can demonstrate are reasonably necessary as a direct result  
2 of the proposed development or plat to which the dedication of land or  
3 easement is to apply.

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

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

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

18 (3) Any payment not so expended shall be refunded with interest to  
19 be calculated from the original date the deposit was received by the  
20 county and at the same rate applied to tax refunds pursuant to RCW  
21 84.69.100; however, if the payment is not expended within five years  
22 due to delay attributable to the developer, the payment shall be  
23 refunded without interest.

24 No county, city, town, or other municipal corporation shall require  
25 any payment as part of such a voluntary agreement which the county,  
26 city, town, or other municipal corporation cannot establish is  
27 reasonably necessary as a direct result of the proposed development or  
28 plat.

29 Nothing in this section prohibits cities, towns, counties, or other  
30 municipal corporations from collecting reasonable fees from an  
31 applicant for a permit or other governmental approval to cover the cost  
32 to the city, town, county, or other municipal corporation of processing  
33 applications, inspecting and reviewing plans, or preparing detailed  
34 statements required by chapter 43.21C RCW, including reasonable fees  
35 that are consistent with RCW 43.21C.420(6), 35.91.020, and section 1 of  
36 this act.

37 This section does not limit the existing authority of any county,

1 city, town, or other municipal corporation to impose special  
2 assessments on property specifically benefited thereby in the manner  
3 prescribed by law.

4 Nothing in this section prohibits counties, cities, or towns from  
5 imposing or permits counties, cities, or towns to impose water, sewer,  
6 natural gas, drainage utility, and drainage system charges. However,  
7 no such charge shall exceed the proportionate share of such utility or  
8 system's capital costs which the county, city, or town can demonstrate  
9 are attributable to the property being charged. Furthermore, these  
10 provisions may not be interpreted to expand or contract any existing  
11 authority of counties, cities, or towns to impose such charges.

12 Nothing in this section prohibits a transportation benefit district  
13 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits  
14 the legislative authority of a county, city, or town from approving the  
15 imposition of such fees within a transportation benefit district.

16 Nothing in this section prohibits counties, cities, or towns from  
17 imposing transportation impact fees authorized pursuant to chapter  
18 39.92 RCW.

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

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

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

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