
ENGROSSED SUBSTITUTE HOUSE BILL 1717

State of Washington

63rd Legislature

2013 Regular Session

By House Local Government (originally sponsored by Representatives Fitzgibbon, Jinkins, Liias, Maxwell, Roberts, Pollet, Upthegrove, Morrell, and Springer)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to incentivizing up-front environmental planning,
2 review, and infrastructure construction actions; amending RCW
3 82.02.020; reenacting and amending RCW 35.91.020; adding a new section
4 to chapter 43.21C RCW; adding a new section to chapter 35.91 RCW; and
5 providing an effective date.

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

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

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

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

13 (b) With funding from private sources; and

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

16 (2)(a) A county, city, or town is authorized to assess a fee upon
17 subsequent development that will make use of and benefit from: (i) The
18 analysis in an environmental impact statement prepared for the purpose
19 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 (c) Counties, cities, and towns are not authorized by this section
8 to assess fees for general comprehensive plan amendments or updates.

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

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

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

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

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

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.91 RCW
14 to read as follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Latecomer fee" means a charge collected by a municipality,
18 whether separately stated or as part of a connection fee for providing
19 access to a municipal system, against a real property owner who
20 connects to or uses a water or sewer facility subject to a contract
21 created under RCW 35.91.020.

22 (2) "Municipality" means the governing body of any county, city,
23 town, or drainage district.

24 (3) "Water or sewer facilities" means storm, sanitary, or
25 combination sewers, pumping stations, and disposal plants, water mains,
26 hydrants, reservoirs, or appurtenances.

27 **Sec. 3.** RCW 35.91.020 and 2009 c 344 s 1 and 2009 c 230 s 1 are
28 each reenacted and amended to read as follows:

29 (1)(a) (~~Except as provided under subsection (2) of this section,~~
30 ~~the governing body of any city, town, county, water sewer district, or~~
31 ~~drainage district, hereinafter referred to as a "municipality" may~~
32 ~~contract with owners of real estate for the construction of storm,~~
33 ~~sanitary, or combination sewers, pumping stations, and disposal plants,~~
34 ~~water mains, hydrants, reservoirs, or appurtenances, hereinafter called~~
35 ~~"water or sewer facilities," within their boundaries or (except for~~
36 ~~counties) within ten miles from their corporate limits connecting with~~

1 ~~the public water or sewerage system to serve the area in which the real~~
2 ~~estate of such owners is located, and to provide for a period of not to~~
3 ~~exceed twenty years for the reimbursement of such owners and their~~
4 ~~assigns by any owner of real estate who did not contribute to the~~
5 ~~original cost of such water or sewer facilities and who subsequently~~
6 ~~tap onto or use the same of a fair pro rata share of the cost of the~~
7 ~~construction of said water or sewer facilities, including not only~~
8 ~~those directly connected thereto, but also users connected to laterals~~
9 ~~or branches connecting thereto, subject to such reasonable rules and~~
10 ~~regulations as the governing body of such municipality may provide or~~
11 ~~contract, and notwithstanding the provisions of any other law.)~~ At the
12 owner's request, a municipality must contract with the owner of real
13 estate for the construction or improvement of water or sewer facilities
14 that the owner elects to install solely at the owner's expense. The
15 owner must submit a request for a contract to the municipality prior to
16 approval of the water or sewer facility by the municipality. The
17 owner's request may only require a contract under this subsection
18 (1)(a) in locations where a municipality's ordinances require the
19 facilities to be improved or constructed as a prerequisite to further
20 property development. Water or sewer facilities improved or
21 constructed in accordance with this subsection (1)(a) must be located
22 within the municipality's corporate limits or, except as provided
23 otherwise by this subsection (1)(a), within ten miles of the
24 municipality's corporate limits. Water or sewer facilities improved or
25 constructed in accordance with this subsection (1)(a) may not be
26 located outside of the county that is party to the contract. The
27 contract must be filed and recorded with the county auditor and must
28 contain conditions required by the municipality in accordance with its
29 adopted policies and standards. Unless the municipality provides
30 written notice to the owner of its intent to request a comprehensive
31 plan approval, the owner must request a comprehensive plan approval for
32 a water or sewer facility, if required, and connection of the water or
33 sewer facility to the municipal system must be conditioned upon:
34 (i) Construction of the water or sewer facility according to plans
35 and specifications approved by the municipality;
36 (ii) Inspection and approval of the water or sewer facility by the
37 municipality;

1 (iii) Transfer to the municipality of the water or sewer facility,
2 without cost to the municipality, upon acceptance by the municipality
3 of the water or sewer facility;

4 (iv) Full compliance with the owner's obligations under the
5 contract and with the municipality's rules and regulations;

6 (v) Provision of sufficient security to the municipality to ensure
7 completion of the water or sewer facility and other performance under
8 the contract;

9 (vi) Payment by the owner to the municipality of all of the
10 municipality's costs associated with the water or sewer facility
11 including, but not limited to, engineering, legal, and administrative
12 costs; and

13 (vii) Verification and approval of all contracts and costs related
14 to the water or sewer facility.

15 (b) If authorized by ordinance or contract, a municipality may
16 participate in financing ~~((the development of))~~ water or sewer
17 facilities development projects authorized ~~((by))~~ and improved or
18 constructed in accordance with ~~((τ))~~ (a) of this subsection. Unless
19 otherwise provided by ordinance or contract, municipalities that
20 participate in the financing of water or sewer facilities improved or
21 constructed in accordance with (a) of this subsection:

22 ~~((Municipalities that contribute to the financing of water or~~
23 ~~sewer facilities projects under this section))~~ Have the same rights to
24 reimbursement as owners of real estate who make contributions as
25 authorized under this section; and

26 ~~((If the projects are jointly financed by a combination of~~
27 ~~municipal funding and private funding by real estate owners, the amount~~
28 ~~of reimbursement received by each participant in the financing must be~~
29 ~~a pro-rata share))~~ Are entitled to a pro rata share of the
30 reimbursement based on the respective contribution of the owner and the
31 municipality.

32 (2) A contract entered into under this section must also provide,
33 in accordance with the requirements of this section, for the pro rata
34 reimbursement to the owner or the owner's assigns for twenty years, or
35 for a longer period if extended in accordance with subsection (4) of
36 this section. The reimbursements must be: (a) Within the period of
37 time that the contract is effective; (b) for a portion of the costs of
38 the water or sewer facilities improved or constructed in accordance

1 with the contract; and (c) from latecomer fees received by the
2 municipality from property owners who subsequently connect to or use
3 the water or sewer facilities, but who did not contribute to the
4 original cost of the facilities.

5 ~~((e))~~ (3) Except as provided otherwise by this section, a
6 municipality seeking reimbursement from an owner of real estate under
7 this section is limited to the dollar amount authorized ~~((under this~~
8 ~~chapter and may not collect any additional reimbursement, assessment,~~
9 ~~charge, or fee for the infrastructure or facilities that were~~
10 ~~constructed under the applicable ordinance, contract, or agreement))~~ in
11 accordance with subsection (7) of this section. This does not prevent
12 the ~~((collection of))~~ municipality from collecting amounts for services
13 or infrastructure that are additional expenditures not subject to
14 ~~((such))~~ the ordinance, contract, or agreement, nor does it prevent the
15 collection of fees that are reasonable and proportionate to the total
16 expenses incurred by the municipality in complying with this section.

17 ~~((2))~~ (4)(a) The contract may provide for an extension of the
18 twenty-year reimbursement period for a time not to exceed the duration
19 of any moratorium, phasing ordinance, concurrency designation, or other
20 governmental action that prevents making applications for, or the
21 approval of, any new development within the benefit area for a period
22 of six months or more.

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

30 ~~((3))~~ (5) The requirement for a municipality to contract with an
31 owner of real estate for the construction or improvement of water or
32 sewer facilities under this section is only applicable if the
33 facilities are consistent with all applicable comprehensive plans and
34 development regulations of the municipalities through which the
35 facilities will be constructed or will serve.

36 (6) Each contract ~~((shall))~~ must include a provision requiring that
37 every two years from the date the contract is executed a property owner
38 entitled to reimbursement under this section provide the

1 ((~~contracting~~)) municipality with information regarding the current
2 contract name, address, and telephone number of the person, company, or
3 partnership that originally entered into the contract. If the property
4 owner fails to comply with the notification requirements of this
5 subsection within sixty days of the specified time, then the
6 contracting municipality may collect any reimbursement funds owed to
7 the property owner under the contract. ((~~Such~~)) The funds collected
8 under this subsection must be deposited in the capital fund of the
9 municipality.

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

22 (8) Within one hundred twenty days of the completion of a water or
23 sewer facility, the owners of the real estate must submit the total
24 cost of the water or sewer facility to the applicable municipality.
25 This information must be used by the municipality as the basis for
26 determining reimbursements by future users who benefit from the water
27 or sewer facility, but who did not contribute to the original cost of
28 the water or sewer facility.

29 (9) Nothing in this section is intended to create a private right
30 of action for damages against a municipality for failing to comply with
31 the requirements of this section. A municipality, its officials,
32 employees, or agents may not be held liable for failure to collect a
33 latecomer fee unless the failure was willful or intentional. Failure
34 of a municipality to comply with the requirements of this section does
35 not relieve a municipality of any future requirement to comply with
36 this section.

1 **Sec. 4.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read
2 as follows:

3 Except only as expressly provided in chapters 67.28, 81.104, and
4 82.14 RCW, the state preempts the field of imposing retail sales and
5 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
6 67.16.060, conveyances, and cigarettes, and no county, town, or other
7 municipal subdivision shall have the right to impose taxes of that
8 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
9 82.02.090, no county, city, town, or other municipal corporation shall
10 impose any tax, fee, or charge, either direct or indirect, on the
11 construction or reconstruction of residential buildings, commercial
12 buildings, industrial buildings, or on any other building or building
13 space or appurtenance thereto, or on the development, subdivision,
14 classification, or reclassification of land. However, this section
15 does not preclude dedications of land or easements within the proposed
16 development or plat which the county, city, town, or other municipal
17 corporation can demonstrate are reasonably necessary as a direct result
18 of the proposed development or plat to which the dedication of land or
19 easement is to apply.

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

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

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

34 (3) Any payment not so expended shall be refunded with interest to
35 be calculated from the original date the deposit was received by the
36 county and at the same rate applied to tax refunds pursuant to RCW
37 84.69.100; however, if the payment is not expended within five years

1 due to delay attributable to the developer, the payment shall be
2 refunded without interest.

3 No county, city, town, or other municipal corporation shall require
4 any payment as part of such a voluntary agreement which the county,
5 city, town, or other municipal corporation cannot establish is
6 reasonably necessary as a direct result of the proposed development or
7 plat.

8 Nothing in this section prohibits cities, towns, counties, or other
9 municipal corporations from collecting reasonable fees from an
10 applicant for a permit or other governmental approval to cover the cost
11 to the city, town, county, or other municipal corporation of processing
12 applications, inspecting and reviewing plans, or preparing detailed
13 statements required by chapter 43.21C RCW, including reasonable fees
14 that are consistent with RCW 43.21C.420(6), section 1 of this act, and
15 beginning July 1, 2014, RCW 35.91.020.

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

20 Nothing in this section prohibits counties, cities, or towns from
21 imposing or permits counties, cities, or towns to impose water, sewer,
22 natural gas, drainage utility, and drainage system charges. However,
23 no such charge shall exceed the proportionate share of such utility or
24 system's capital costs which the county, city, or town can demonstrate
25 are attributable to the property being charged. Furthermore, these
26 provisions may not be interpreted to expand or contract any existing
27 authority of counties, cities, or towns to impose such charges.

28 Nothing in this section prohibits a transportation benefit district
29 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
30 the legislative authority of a county, city, or town from approving the
31 imposition of such fees within a transportation benefit district.

32 Nothing in this section prohibits counties, cities, or towns from
33 imposing transportation impact fees authorized pursuant to chapter
34 39.92 RCW.

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

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

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

7 NEW SECTION. **Sec. 5.** Sections 2 and 3 of this act take effect
8 July 1, 2014.

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