
SUBSTITUTE HOUSE BILL 1717

State of Washington

63rd Legislature

2013 Regular Session

By House Local Government (originally sponsored by Representatives Fitzgibbon, Jinkins, Lias, 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; and adding a new section to chapter 35.91 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 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.91 RCW
11 to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Municipality" means the governing body of any county, city,
15 town, or drainage district.

16 (2) "Water or sewer facilities" means storm, sanitary, or
17 combination sewers, pumping stations, and disposal plants, water mains,
18 hydrants, reservoirs, or appurtenances.

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

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

1 ~~or branches connecting thereto, subject to such reasonable rules and~~
2 ~~regulations as the governing body of such municipality may provide or~~
3 ~~contract, and notwithstanding the provisions of any other law.)~~ At the
4 owner's request, a municipality must contract with the owner of real
5 estate for the construction or improvement of water or sewer facilities
6 that the owner elects to install solely at the owner's expense. The
7 owner's request may only require a contract under this subsection
8 (1)(a) in locations where a municipality's ordinances require the
9 facilities to be improved or constructed as a prerequisite to further
10 property development. Water or sewer facilities improved or
11 constructed in accordance with this subsection (1)(a) must be located
12 within the municipality's corporate limits or, except as provided
13 otherwise by this subsection (1)(a), within ten miles of the
14 municipality's corporate limits. Water or sewer facilities improved or
15 constructed in accordance with this subsection (1)(a) may not be
16 located outside of the county that is party to the contract. The
17 contract must be filed and recorded with the county auditor and must
18 contain conditions required by the municipality in accordance with its
19 adopted policies and standards. The municipality must request
20 comprehensive plan approval for an extension, if required, and
21 connection of the extension to the municipal system must be conditioned
22 upon:

23 (i) Construction of the extension according to plans and
24 specifications approved by the municipality;

25 (ii) Inspection and approval of the extension by the municipality;

26 (iii) Transfer to the municipality of the extension, without cost
27 to the municipality, upon acceptance by the municipality of the
28 extension;

29 (iv) Payment of all required connection charges to the
30 municipality;

31 (v) Full compliance with the owner's obligations under the contract
32 and with the municipality's rules and regulations;

33 (vi) Provision of sufficient security to the municipality to ensure
34 completion of the extension and other performance under the contract;

35 (vii) Payment by the owner to the municipality of all of the
36 municipality's costs associated with the extension including, but not
37 limited to, engineering, legal, and administrative costs; and

1 (viii) Verification and approval of all contracts and costs related
2 to the extension.

3 (b) If authorized by ordinance or contract, a municipality may
4 participate in financing ~~((the development of))~~ water or sewer
5 facilities development projects authorized ~~((by))~~ and improved or
6 constructed in accordance with ~~((7))~~ (a) of this subsection. Unless
7 otherwise provided by ordinance or contract, municipalities that
8 participate in the financing of water or sewer facilities improved or
9 constructed in accordance with (a) of this subsection:

10 (i) ~~((Municipalities that contribute to the financing of water or~~
11 ~~sewer facilities projects under this section))~~ Have the same rights to
12 reimbursement as owners of real estate who make contributions as
13 authorized under this section; and

14 (ii) ~~((If the projects are jointly financed by a combination of~~
15 ~~municipal funding and private funding by real estate owners, the amount~~
16 ~~of reimbursement received by each participant in the financing must be~~
17 ~~a pro rata share))~~ Are entitled to a pro rata share of the
18 reimbursement based on the respective contribution of the owner and the
19 municipality.

20 (2) A contract entered into under this section must also provide,
21 in accordance with the requirements of this section, for the
22 reimbursement to the owner or the owner's assigns for twenty years, or
23 for a longer period if extended in accordance with subsection (4) of
24 this section. The reimbursements must be: (a) Within the period of
25 time that the contract is effective; (b) for a portion of the costs of
26 the water or sewer facilities improved or constructed in accordance
27 with the contract; and (c) from connection charges received by the
28 municipality from property owners who subsequently connect to or use
29 the water or sewer facilities, but who did not contribute to the
30 original cost of the facilities.

31 ~~((e))~~ (3) Except as provided otherwise by this section, a
32 municipality seeking reimbursement from an owner of real estate under
33 this section is limited to the dollar amount authorized under this
34 chapter ~~((and may not collect any additional reimbursement, assessment,~~
35 ~~charge, or fee for the infrastructure or facilities that were~~
36 ~~constructed under the applicable ordinance, contract, or agreement)).~~
37 This does not prevent the collection of amounts for services or
38 infrastructure that are additional expenditures not subject to ~~((such))~~

1 the ordinance, contract, or agreement, nor does it prevent the
2 collection of fees that are reasonable and proportionate to the total
3 expenses incurred by the municipality in complying with this section.

4 ((+2)) (4)(a) The contract may provide for an extension of the
5 twenty-year reimbursement period for a time not to exceed the duration
6 of any moratorium, phasing ordinance, concurrency designation, or other
7 governmental action that prevents making applications for, or the
8 approval of, any new development within the benefit area for a period
9 of six months or more.

10 (b) Upon the extension of the reimbursement period pursuant to (a)
11 of this subsection, the contract must specify the duration of the
12 contract extension and must be filed and recorded with the county
13 auditor. Property owners who are subject to the reimbursement
14 obligations under subsection (1) of this section shall be notified by
15 the contracting municipality of the extension filed under this
16 subsection.

17 ((+3)) (5) The requirement for a municipality to contract with an
18 owner of real estate for the construction or improvement of water or
19 sewer facilities under this section is only applicable if the
20 facilities are consistent with all applicable comprehensive plans and
21 development regulations of the municipalities through which the
22 facilities will be constructed or will serve.

23 (6) Each contract (~~shall~~) must include a provision requiring that
24 every two years from the date the contract is executed a property owner
25 entitled to reimbursement under this section provide the contracting
26 municipality with information regarding the current contract name,
27 address, and telephone number of the person, company, or partnership
28 that originally entered into the contract. If the property owner fails
29 to comply with the notification requirements of this subsection within
30 sixty days of the specified time, then the contracting municipality may
31 collect any reimbursement funds owed to the property owner under the
32 contract. (~~Such~~) The funds collected under this subsection must be
33 deposited in the capital fund of the municipality.

34 ((+4)) (7) To the extent it may require in the performance of
35 (~~such~~) the contract, (~~such~~) the municipality may install (~~said~~)
36 the water or sewer facilities in and along the county streets in the
37 area to be served as hereinabove provided, subject to (~~such~~)
38 reasonable requirements as to the manner of occupancy of (~~such~~) the

1 streets as the county may by resolution provide. The provisions of
2 ((such)) the contract ((shall)) may not be effective as to any owner of
3 real estate not a party thereto unless ((such)) the contract has been
4 recorded in the office of the county auditor of the county in which the
5 real estate of ((such)) the owner is located prior to the time ((such))
6 the owner taps into or connects to ((said)) the water or sewer
7 facilities.

8 (8) Within ninety days of the completion of a water or sewer
9 facility, the owners of the real estate must submit the total cost of
10 the water or sewer facility to the applicable municipality. This
11 information must be used by the municipality as the basis for
12 determining reimbursements by future users who benefit from the water
13 or sewer facility, but who did not contribute to the original cost of
14 the water or sewer facility.

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

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

34 This section does not prohibit voluntary agreements with counties,
35 cities, towns, or other municipal corporations that allow a payment in
36 lieu of a dedication of land or to mitigate a direct impact that has
37 been identified as a consequence of a proposed development,

1 subdivision, or plat. A local government shall not use such voluntary
2 agreements for local off-site transportation improvements within the
3 geographic boundaries of the area or areas covered by an adopted
4 transportation program authorized by chapter 39.92 RCW. Any such
5 voluntary agreement is subject to the following provisions:

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

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

11 (3) Any payment not so expended shall be refunded with interest to
12 be calculated from the original date the deposit was received by the
13 county and at the same rate applied to tax refunds pursuant to RCW
14 84.69.100; however, if the payment is not expended within five years
15 due to delay attributable to the developer, the payment shall be
16 refunded without interest.

17 No county, city, town, or other municipal corporation shall require
18 any payment as part of such a voluntary agreement which the county,
19 city, town, or other municipal corporation cannot establish is
20 reasonably necessary as a direct result of the proposed development or
21 plat.

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

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

34 Nothing in this section prohibits counties, cities, or towns from
35 imposing or permits counties, cities, or towns to impose water, sewer,
36 natural gas, drainage utility, and drainage system charges. However,
37 no such charge shall exceed the proportionate share of such utility or
38 system's capital costs which the county, city, or town can demonstrate

1 are attributable to the property being charged. Furthermore, these
2 provisions may not be interpreted to expand or contract any existing
3 authority of counties, cities, or towns to impose such charges.

4 Nothing in this section prohibits a transportation benefit district
5 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
6 the legislative authority of a county, city, or town from approving the
7 imposition of such fees within a transportation benefit district.

8 Nothing in this section prohibits counties, cities, or towns from
9 imposing transportation impact fees authorized pursuant to chapter
10 39.92 RCW.

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

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

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

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