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HOUSE BILL 2063

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Dunshee and Lovick

Read first time 02/15/1999. Referred to Committee on Local Government.

1            AN ACT Relating to expanding the authorization for impact fees  
2 imposed under chapter 82.02 RCW to include criminal justice purposes;  
3 and amending RCW 82.02.050, 82.02.060, 82.02.070, 82.02.080, and  
4 82.02.090.

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

6            **Sec. 1.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read  
7 as follows:

8            (1) It is the intent of the legislature:

9            (a) To ensure that adequate facilities are available to serve new  
10 growth and development;

11            (b) To promote orderly growth and development by establishing  
12 standards by which counties, cities, and towns may require, by  
13 ordinance, that new growth and development pay a proportionate share of  
14 the cost of the administration of criminal justice and new facilities  
15 needed to serve new growth and development; and

16            (c) To ensure that impact fees are imposed through established  
17 procedures and criteria so that specific developments do not pay  
18 arbitrary fees or duplicative fees for the same impact.

1 (2) Counties, cities, and towns that are required or choose to plan  
2 under RCW 36.70A.040 are authorized to impose impact fees on  
3 development activity as part of the financing for public facilities and  
4 the administration of criminal justice, provided that the financing for  
5 system improvements to serve new development must provide for a balance  
6 between impact fees and other sources of public funds and cannot rely  
7 solely on impact fees.

8 (3) The impact fees:

9 (a) Shall only be imposed for system improvements that are  
10 reasonably related to the new development;

11 (b) Shall not exceed a proportionate share of the costs of system  
12 improvements that are reasonably related to the new development; and

13 (c) Shall be used for system improvements that will reasonably  
14 benefit the new development.

15 (4) Impact fees may be collected and spent only for the public  
16 facilities defined in RCW 82.02.090 which are addressed by a capital  
17 facilities plan element of a comprehensive land use plan adopted  
18 pursuant to the provisions of RCW 36.70A.070 or the provisions for  
19 comprehensive plan adoption contained in chapter 36.70, 35.63, or  
20 35A.63 RCW and for the administration of criminal justice. After the  
21 date a county, city, or town is required to adopt its development  
22 regulations under chapter 36.70A RCW, continued authorization to  
23 collect and expend impact fees shall be contingent on the county, city,  
24 or town adopting or revising a comprehensive plan in compliance with  
25 RCW 36.70A.070, and on the capital facilities plan identifying:

26 (a) Deficiencies in public facilities serving existing development  
27 and the means by which existing deficiencies will be eliminated within  
28 a reasonable period of time;

29 (b) Additional demands placed on existing public facilities by new  
30 development; and

31 (c) Additional public facility improvements required to serve new  
32 development.

33 If the capital facilities plan of the county, city, or town is  
34 complete other than for the inclusion of those elements which are the  
35 responsibility of a special district, the county, city, or town may  
36 impose impact fees to address those public facility needs for which the  
37 county, city, or town is responsible.

1       **Sec. 2.** RCW 82.02.060 and 1990 1st ex.s. c 17 s 44 are each  
2 amended to read as follows:

3       The local ordinance by which impact fees are imposed:

4       (1) Shall include a schedule of impact fees which shall be adopted  
5 for each type of development activity that is subject to impact fees,  
6 specifying the amount of the impact fee to be imposed for each type of  
7 system improvement. The schedule shall be based upon a formula or  
8 other method of calculating such impact fees. In determining  
9 proportionate share, the formula or other method of calculating impact  
10 fees shall incorporate, among other things, the following:

11       (a) The cost of public facilities and the administration of  
12 criminal justice necessitated by new development;

13       (b) An adjustment to the cost of the public facilities and the  
14 administration of criminal justice for past or future payments made or  
15 reasonably anticipated to be made by new development to pay for  
16 particular system improvements in the form of user fees, debt service  
17 payments, taxes, or other payments earmarked for or proratable to the  
18 particular system improvement;

19       (c) The availability of other means of funding the administration  
20 of criminal justice and public facility improvements;

21       (d) The cost of existing public facilities improvements and the  
22 administration of criminal justice; and

23       (e) The methods by which public facilities improvements and the  
24 administration of criminal justice were financed;

25       (2) May provide an exemption for low-income housing, and other  
26 development activities with broad public purposes, from these impact  
27 fees, provided that the impact fees for such development activity shall  
28 be paid from public funds other than impact fee accounts;

29       (3) Shall provide a credit for the value of any dedication of land  
30 for, improvement to, or new construction of any system improvements  
31 provided by the developer, to facilities that are identified in the  
32 capital facilities plan and that are required by the county, city, or  
33 town as a condition of approving the development activity;

34       (4) Shall allow the county, city, or town imposing the impact fees  
35 to adjust the standard impact fee at the time the fee is imposed to  
36 consider unusual circumstances in specific cases to ensure that impact  
37 fees are imposed fairly;

38       (5) Shall include a provision for calculating the amount of the fee  
39 to be imposed on a particular development that permits consideration of

1 studies and data submitted by the developer to adjust the amount of the  
2 fee;

3 (6) Shall establish one or more reasonable service areas within  
4 which it shall calculate and impose impact fees for various land use  
5 categories per unit of development;

6 (7) May provide for the imposition of an impact fee for system  
7 improvement costs previously incurred by a county, city, or town to the  
8 extent that new growth and development will be served by the previously  
9 constructed improvements provided such fee shall not be imposed to make  
10 up for any system improvement deficiencies.

11 **Sec. 3.** RCW 82.02.070 and 1990 1st ex.s. c 17 s 46 are each  
12 amended to read as follows:

13 (1) Impact fee receipts shall be earmarked specifically and  
14 retained in special interest-bearing accounts. Separate accounts shall  
15 be established for each type of public facility and for the  
16 administration of criminal justice for which impact fees are collected.  
17 All interest shall be retained in the account and expended for the  
18 purpose or purposes for which the impact fees were imposed. Annually,  
19 each county, city, or town imposing impact fees shall provide a report  
20 on each impact fee account showing the source and amount of all moneys  
21 collected, earned, or received and system improvements that were  
22 financed in whole or in part by impact fees.

23 (2) Impact fees for system improvements shall be expended only in  
24 conformance with the capital facilities plan element of the  
25 comprehensive plan.

26 (3) Impact fees shall be expended or encumbered for a permissible  
27 use within six years of receipt, unless there exists an extraordinary  
28 and compelling reason for fees to be held longer than six years. Such  
29 extraordinary or compelling reasons shall be identified in written  
30 findings by the governing body of the county, city, or town.

31 (4) Impact fees may be paid under protest in order to obtain a  
32 permit or other approval of development activity.

33 (5) Each county, city, or town that imposes impact fees shall  
34 provide for an administrative appeals process for the appeal of an  
35 impact fee; the process may follow the appeal process for the  
36 underlying development approval or the county, city, or town may  
37 establish a separate appeals process. The impact fee may be modified  
38 upon a determination that it is proper to do so based on principles of

1 fairness. The county, city, or town may provide for the resolution of  
2 disputes regarding impact fees by arbitration.

3 **Sec. 4.** RCW 82.02.080 and 1990 1st ex.s. c 17 s 47 are each  
4 amended to read as follows:

5 (1) The current owner of property on which an impact fee has been  
6 paid may receive a refund of such fees if the county, city, or town  
7 fails to expend or encumber the impact fees within six years of when  
8 the fees were paid or other such period of time established pursuant to  
9 RCW 82.02.070(3) on public facilities and the administration of  
10 criminal justice intended to benefit the development activity for which  
11 the impact fees were paid. In determining whether impact fees have  
12 been encumbered, impact fees shall be considered encumbered on a first  
13 in, first out basis. The county, city, or town shall notify potential  
14 claimants by first class mail deposited with the United States postal  
15 service at the last known address of claimants.

16 The request for a refund must be submitted to the county, city, or  
17 town governing body in writing within one year of the date the right to  
18 claim the refund arises or the date that notice is given, whichever is  
19 later. Any impact fees that are not expended within these time  
20 limitations, and for which no application for a refund has been made  
21 within this one-year period, shall be retained and expended on the  
22 indicated capital facilities and the administration of criminal  
23 justice. Refunds of impact fees under this subsection shall include  
24 interest earned on the impact fees.

25 (2) When a county, city, or town seeks to terminate any or all  
26 impact fee requirements, all unexpended or unencumbered funds,  
27 including interest earned, shall be refunded pursuant to this section.  
28 Upon the finding that any or all fee requirements are to be terminated,  
29 the county, city, or town shall place notice of such termination and  
30 the availability of refunds in a newspaper of general circulation at  
31 least two times and shall notify all potential claimants by first class  
32 mail to the last known address of claimants. All funds available for  
33 refund shall be retained for a period of one year. At the end of one  
34 year, any remaining funds shall be retained by the local government,  
35 but must be expended for the indicated public facilities and on the  
36 administration of criminal justice. This notice requirement shall not  
37 apply if there are no unexpended or unencumbered balances within an  
38 account or accounts being terminated.

1 (3) A developer may request and shall receive a refund, including  
2 interest earned on the impact fees, when the developer does not proceed  
3 with the development activity and no impact has resulted.

4 **Sec. 5.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each  
5 amended to read as follows:

6 Unless the context clearly requires otherwise, the following  
7 definitions shall apply in RCW 82.02.050 through 82.02.090:

8 (1) "The administration of criminal justice" means performance of  
9 any of the following activities: Detection, apprehension, detention,  
10 pretrial release, posttrial release, prosecution, adjudication,  
11 correctional supervision, or rehabilitation of accused persons or  
12 criminal offenders, both adult and juvenile. The term also includes  
13 criminal identification activities and the collection, storage,  
14 dissemination of criminal history record information, and the  
15 compensation of victims of crime.

16 (2) "Development activity" means any construction or expansion of  
17 a building, structure, or use, any change in use of a building or  
18 structure, or any changes in the use of land, that creates additional  
19 demand and need for public facilities.

20 ~~((+2))~~ (3) "Development approval" means any written authorization  
21 from a county, city, or town which authorizes the commencement of  
22 development activity.

23 ~~((+3))~~ (4) "Impact fee" means a payment of money imposed upon  
24 development as a condition of development approval to pay for public  
25 facilities and the administration of criminal justice needed to serve  
26 new growth and development, and that is reasonably related to the new  
27 development that creates additional demand and need for public  
28 facilities and the administration of criminal justice, that is a  
29 proportionate share of the cost of the public facilities and the  
30 administration of criminal justice, and that is used for facilities and  
31 the administration of criminal justice that reasonably benefit the new  
32 development. "Impact fee" does not include a reasonable permit or  
33 application fee.

34 ~~((+4))~~ (5) "Owner" means the owner of record of real property,  
35 although when real property is being purchased under a real estate  
36 contract, the purchaser shall be considered the owner of the real  
37 property if the contract is recorded.

1       (~~(5)~~) (6) "Proportionate share" means that portion of the cost of  
2 public facility improvements that are reasonably related to the service  
3 demands and needs of new development.

4       (~~(6)~~) (7) "Project improvements" mean site improvements and  
5 facilities that are planned and designed to provide service for a  
6 particular development project and that are necessary for the use and  
7 convenience of the occupants or users of the project, and are not  
8 system improvements. No improvement or facility included in a capital  
9 facilities plan approved by the governing body of the county, city, or  
10 town shall be considered a project improvement.

11       (~~(7)~~) (8) "Public facilities" means the following capital  
12 facilities owned or operated by government entities: (a) Public  
13 streets and roads; (b) publicly owned parks, open space, and recreation  
14 facilities; (c) school facilities; and (d) fire protection facilities  
15 in jurisdictions that are not part of a fire district.

16       (~~(8)~~) (9) "Service area" means a geographic area defined by a  
17 county, city, town, or intergovernmental agreement in which a defined  
18 set of public facilities provide service to development within the  
19 area. Service areas shall be designated on the basis of sound planning  
20 or engineering principles.

21       (~~(9)~~) (10) "System improvements" mean public facilities that are  
22 included in the capital facilities plan and are designed to provide  
23 service to service areas within the community at large, in contrast to  
24 project improvements.

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