

January 22, 1988
4077B/MMcF/hdm

Introduced by: NICKELS & LAING

Proposed No.: 88-98

MOTION NO. 7065

A MOTION endorsing the concept of specific state enabling legislation to authorize local government to create transportation impact mitigation fee programs.

WHEREAS, the Seattle-King County Economic Development Council has developed a legislative proposal entitled the "Local Transportation Act of 1988", and

WHEREAS, the proposal developed by SKCEDC has been reviewed by the King County council in some detail, and

WHEREAS, the proposal acknowledges that the traffic impacts associated with development must be mitigated, and that payments made into a mitigation payment program is one appropriate tool for achieving mitigation, and

WHEREAS, there may be some doubt as to whether local government can create mitigation payment programs, and the proposal seeks to specifically authorize local governments to create such programs, and

WHEREAS, King County is persuing creation of a mitigation payment program for transportation impacts under other services of county powers, but appreciates the value of specific enabling legislation;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. The King County council endorses the concept of specific enabling legislation for transportation impact fee mitigation programs as expressed in the proposed Local Transportation Act of 1988 (version labelled (Marked-Up Copy 1-14-88)).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

B. The council believes that certain amendments to the bill as drafted are necessary; these amendments are annotated to a copy of the bill in Attachment A;

C. The council's lobbyist is to monitor and support the legislation, with particular regard to the issues identified in the amendments and in the transportation and public utility committee review of the proposal, and to keep the council informed as to the progress of the bill on a regular basis.

PASSED this 25th day of January, 1988.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Gary Grant
Chairman

ATTEST:

Gerald A. Poter
Deputy Clerk of the Council

LOCAL TRANSPORTATION ACT OF 1988

KING COUNTY COUNCIL
CHANGES

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT relating to public and private funding of local transportation improvements; adding a new chapter to Title 39 RCW; amending RCW 82.02.020; and amending Section 12, Chapter 327, Laws of 1987.

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

NEW SECTION. Sec. 1. Purpose. The legislature finds that there is an increasing gap between the need for local and regional transportation improvements and the public revenue available to pay for such improvements. This deficit in public infrastructure is the result of both existing demands and the foreseeable future demands from economic growth and development within the state, including residential, commercial and industrial development.

Local governments have devised various methods of collecting impact fees from new development for a share of the cost of necessary transportation improvements through conditions and agreements imposed in the land use permitting process. These methods do not always appear to result in an equitable and effective system of financing transportation improvements needed for local economic development.

The legislature intends with this chapter to enable local governments to develop and adopt programs for the purpose of jointly funding, from public and private sources, local

The prosecutor's office advises us that the first two paragraphs of Section 1 should be completely redone; as drafted the language will run afoul of the Supreme Court's determination that a money charge is a tax if its basic purpose is to generate income, but is a fee if it is primarily regulatory. Fee mitigation payment systems are and should be recognized as regulating the impact of development.

1 transportation improvements necessitated in whole or in part by
 2 economic development and growth within their respective
 3 jurisdictions. Such programs should provide a fair and
 4 predictable method for allocating the cost of necessary
 5 transportation improvements between the public and private
 6 sector. Such programs should include consideration of public
 7 transportation as a method of reducing off-site transportation
 8 impacts from development. The legislature finds that the
 9 private funds authorized to be collected pursuant to this Act
 10 are for the purpose of mitigating the impacts of development
 11 and are not taxes. The State shall encourage and give priority
 12 to ^{allocating state funds for} ~~the funding of~~ local and regional transportation
 13 improvements which are funded in part by ^{local} public and private
 14 funds paid pursuant to programs developed in accordance with
 15 this chapter.

Housekeeping*

16 NEW SECTION. Sec. 2. Local Programs Authorized. Local
 17 governments are authorized to develop and adopt programs for
 18 the purpose of jointly funding, from public and private
 19 sources, local transportation improvements necessitated in
 20 whole or in part by economic development and growth within
 21 their respective jurisdictions. Such programs shall be adopted
 22 by ordinance after notice and public hearing. Each program
 23 shall contain the elements described in this section.

Housekeeping

1 (a) The program shall identify the geographic boundaries
 * 2 of the ~~(entire) area~~ ^{or areas} ~~generally benefited by the proposed off-site~~
 3 ~~transportation improvements and~~ within which transportation
 4 impact fees will be imposed pursuant to this chapter.

Housekeeping

* 5 (b) The program shall ~~(contain)~~ ^{be based on} a comprehensive long-term
 6 transportation plan identifying the proposed off-site
 7 transportation improvements reasonable and necessary to meet

Housekeeping

* 8 the future growth needs of the designated plan area ~~(and~~
 9 intended to be covered by this joint funding program, including
 10 acquisition of right-of-way, construction and reconstruction of
 11 all major and minor arterials and intersection improvements, ~~and identifying)~~

Housekeeping

* 12 ~~(and identifying)~~ design standards, levels of service, capacities
 13 ~~and costs~~ [^] applicable to the program shall also be identified.
 14 ~~The program shall also indicate how the~~
 15 transportation plan is coordinated with applicable
 16 transportation plans for the region and for adjacent
 17 jurisdiction. The program shall also indicate how public
 18 transportation and ridesharing improvements and services will
 19 be utilized to reduce off-site transportation impacts from
development.

20 (c) The program shall include at least a six-year capital
 21 funding program, updated annually, identifying the specific
 22 public sources and amounts of ~~revenue necessary to pay for that~~ ^{((revenue-for-the-development}
 23 ~~(of all off-site transportation improvements contained in the))~~
 24 ~~(transportation plan and a proposed schedule for expenditures.))~~
 25 portion of the cost of all off-site transportation improvements
contained in the transportation plan which will not foreseeably

1 be funded by transportation impact fees. The program shall
 2 include a proposed schedule for construction and expenditures
 3 of funds. The funding plan shall consider the additional local
 4 tax revenue estimated to be generated by new development within
 5 the plan area, where all or a portion of such additional
 6 revenue is proposed to be earmarked as future appropriations
 7 for such off-site transportation improvements.

((shatt))

8 (d) The program may authorize transportation impact fees
 9 to be imposed on new development within the plan area for the
 10 purpose of providing a portion of the funding for reasonable
 11 and necessary off-site transportation improvements to solve the
 12 cumulative impacts of planned growth and development in the
 13 plan area. Such fees shall not exceed the amount which the
 14 local government can demonstrate is reasonably necessary as a
 15 direct result of the proposed development.

New sub (e):
 Fee payments shall
 be measured as a
 pro-rata share of
 the capacity of the
 off-site transportation
 improvements funded
 under the program.
 Renumber accordingly.

16 (e) The program shall provide that the funds collected as
 17 a result of a particular new development shall be used in
 18 substantial part to pay for improvements mitigating the impacts
 19 of such development or be refunded to the property owners of
 20 record. *The funds shall be expended in all cases within six
 21 years of collection by the local government or the unexpended
 22 funds refunded.

* Insert:
 Fees paid
 towards several
 transportation
 improvements
 may be pooled and
 expended on any one
 or more of said
 improvements

1 (f) The program shall also describe the formula, timing,
 2 security, credits and other terms and conditions affecting the
 3 amount and method of payment of the transportation impact fees
 4 as further provided for in Section 3 below. In calculating the
 5 amount of the fee, local government shall consider and give
 6 credit for the developer's participation in public
 7 transportation and ridesharing improvements and services.

8 (g) The administrative element of the program shall
 9 include: an opportunity for administrative appeal and hearing
 10 of the amount of the transportation impact fee imposed;
 11 establishment of a designated account for the public and
 12 private monies appropriated or collected for the transportation
 13 improvements identified in the plan; methods to enforce
 14 collection of the public and private funds identified in the
 15 program; designation of the administrative departments or other
 16 entities responsible for administering the program, including
 17 determination of fee amounts, transportation planning and
 18 construction; and provisions for future amendment of the
 19 program: *Provided, That the program shall not be amended in a
 20 manner to relieve local government of any contractual
 21 obligations made to prior developers.

22 (h) The program will provide that private transportation
 23 impact fees shall not be collected for any off-site
 24 transportation improvement which is incapable of being
 25

Further explanation
 needed for this
 proviso.

1 reasonably carried out because of lack of public funds or other
2 foreseeable impediment.

3 (i) ~~No transportation impact fee may be imposed on a~~
4 ~~development by local government pursuant to this program when~~
5 ~~direct mitigation of off-site transportation impacts for such~~
6 ~~development has been or will be required by any government~~
7 ~~agency pursuant to any other local, state or federal law.~~
8 ^{for an off-site impact}
9 ^{the same}

8 NEW SECTION. Sec. 3. Terms and Conditions. The program
9 shall describe the formula or method for calculating the amount
10 of the transportation impact fees to be imposed on new
11 development within the plan area. The program may provide that
12 developers pay a transportation impact fee for off-site
13 transportation improvements not yet constructed and for those
14 jointly-funded improvements constructed since the commencement
15 of the program. The program shall define the event in the
16 development approval process which triggers a determination of
17 the amount of the transportation impact fees and the event
18 which triggers the obligation to make actual payment of the
19 fees: Provided, That the payment obligation shall not commence
20 before the date the developer has obtained a building permit
21 for the new development.* The developer shall be given the
22 option to pay the transportation impact fee in a lump sum,
23 without interest, or by installment with reasonable interest
24 over a period of five years or more as specified by the local
25

*Insert:
or in the case of
plats, at the
time of final plat
approval.

MARKED-UP COPY 1/14/88

1 government. The local government shall require security for
2 the obligation to pay the transportation impact fee, in the
3 form of a recorded agreement, deed of trust, letter of credit
4 or other instrument determined satisfactory by the local
5 government. The developer shall also be given credit, against
6 its obligations for the transportation impact fee, for the fair
7 market value of off-site land or improved transportation
8 facilities dedicated to the local government: Provided, That
9 where the value of such dedication exceeds the amount of
10 transportation impact fee obligation, the developer shall be
11 entitled to reimbursement from transportation impact fees
12 attributable to such dedicated facilities and paid by
13 subsequent developers within the plan area. Payment of the
14 transportation impact fee shall entitle the developer and its
15 successors and assigns credit against any other fee, local
16 improvement district assessment or other monetary imposition
17 made specifically for the designated off-site transportation
18 improvements intended to be covered by the transportation
19 impact fee imposed pursuant to this program. The program shall
20 also define the criteria for establishing periodic fee
21 increases attributable to construction cost increases for the
22 improvements designated in the program.

23
24
25

7602K

7

1 NEW SECTION. Sec. 4. Interlocal Cooperation, Consistency
2 and Assistance. Local governments are authorized and
3 encouraged ^{((when-requested-by-other-local-governments-within}
4 ^{((or-adjacent-to-their-boundaries))} to enter into interlocal agreements to jointly
5 develop and adopt with other local governments the
6 transportation programs authorized by this chapter for the
7 purpose of accomplishing regional transportation planning and
8 development. Local governments shall also seek, to the
9 greatest degree practicable, consistency among jurisdictions in
10 the terms and conditions of their programs for the purpose of
11 increasing fairness and predictability on a regional basis.
12 Local governments shall seek comment, in the development of
13 their programs, from other affected local governments, state
14 agencies and governments authorized to perform public
15 transportation functions. Local governments are also
16 encouraged to enter into interlocal agreements to provide
17 technical assistance to each other, in return for reasonable
18 reimbursement, for the purpose of developing and implementing
19 such transportation programs.

20 NEW SECTION. Sec. 5. Definitions. The following
21 definitions shall apply for purposes of this chapter:

22 (a) "Developer" shall mean an individual, group of
23 individuals, partnership, corporation, association, municipal
24 corporation, state agency or other person undertaking
25 development and their successors and assigns.

1 (b) "Development" shall mean the subdivision or short
 2 platting of land or the construction or reconstruction of
 3 residential, commercial, industrial, public or any other
 4 building, building space or land.

5 (c) "Direct result of the proposed development" shall mean
 6 those quantifiable transportation impacts which are caused by
 7 vehicles or pedestrians whose trip origin or destination is the
 8 proposed development(^{*}~~and such impacts shall be measured as a~~
 9 ~~pre-rate share of the capacity of the off-site transportation~~
 10 ~~improvements being funded.)~~)

* Delete addition
 shown - not
 definitional.
 Language is moved
 to program elements
 p.4

11 (d) "Local government" shall mean all counties, cities and
 12 towns in the State of Washington and transportation benefit
 13 districts created pursuant to Chapter 327, Laws of 1987.

14 (e) "Off-site transportation improvements" shall mean
 15 those transportation capital improvements and programs
 16 designated in the local plan adopted pursuant to this chapter
 17 and which serve the transportation needs of more than one
 18 development. Transportation improvements within the boundaries
 19 of a single development site qualify as "off-site
 20 transportation improvements" where they will have substantial
 21 use by persons or vehicles whose trip origin and destination is
 22 not the development site.

23 Sec. 6. Section 82.02.020, Chapter 15, Laws of 1961, and
 24 RCW 82.02.020 are each amended to read as follows:
 25

1 Except only as expressly provided in RCW 67.28.180 and
 2 67.28.190 and the provisions of Chapter 82.14 RCW, the state
 3 preempts the field of imposing taxes upon retail sales of
 4 tangible personal property, the use of tangible personal
 5 property, parimutuel wagering authorized pursuant to RCW
 6 67.16.060, conveyances, and cigarettes, and no county, town, or
 7 other municipal subdivision shall have the right to impose
 8 taxes of that nature. No county, city, town, or other
 9 municipal corporation shall impose any tax, fee, or charge,
 10 either direct or indirect, on the construction or
 11 reconstruction of residential buildings, commercial buildings,
 12 industrial buildings, or on any other building or building
 13 space or appurtenance thereto, or on the development,
 14 subdivision, classification, or reclassification of land.
 15 However, this section does not preclude dedications of land or
 16 easements pursuant to RCW 58.17.110 within the proposed
 17 development or plat which the county, city, town, or other
 18 municipal corporation can demonstrate are reasonably necessary
 19 as a direct result of the proposed development or plat to which
 20 the dedication of land or easement is to apply.

21 This section does not prohibit voluntary agreements with
 22 counties, cities, towns, or other municipal corporations that
 23 allow a payment in lieu of a dedication of land or to mitigate
 24 a direct impact that has been identified as a consequence of a
 25

MARKED-UP COPY 1/14/88

*Insert:
funded under a
program established
pursuant to the
Local Government
Transportation Act
of 1988

1 proposed development, subdivision, or plat: PROVIDED, That
 2 such voluntary agreements shall not be utilized for local
 3 off-site transportation improvements^{*}~~/(after a date two years~~
 4 ~~from the effective date of the Local Transportation Act of 1988)~~
 5 by any local government which adopts a transportation program
 6 authorized by the^{((Public-and-Private))}Local Transportation Act of 1988; and
 7 PROVIDED, Further, that any such voluntary agreement shall be
 8 subject to the following provisions:
 9 (1) The payment shall be held in a reserve account and may
 10 only be expended to fund a capital improvement agreed upon by
 11 the parties to mitigate the identified, direct impact:
 12 (2) The payment shall be expended in all cases within five
 13 years of collection; and
 14 (3) Any payment not so expended shall be refunded with
 15 interest at the rate applied to judgments to the property
 16 owners of record at the time of the refund; however, if the
 17 payment is not expended within five years due to delay
 18 attributable to the developer, the payment shall be refunded
 19 without interest.
 20 No county, city, town, or other municipal corporation shall
 21 require any payment as part of such a voluntary agreement which
 22 the county, city, town, or other municipal corporation cannot
 23 establish is reasonably necessary as a direct result of the
 24 proposed development or plat.

2-

7602K

11

1 Nothing in this section prohibits cities, towns, counties,
 2 or other municipal corporations from collecting reasonable fees
 3 from an applicant for a permit or other governmental approval
 4 to cover the cost to the city, town, county, or other municipal
 5 corporation of processing applications, inspecting and
 6 reviewing plans, or preparing detailed statements required by
 7 Chapter 43.21C RCW.

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

12 Nothing in this section prohibits counties, cities, or
 13 towns from imposing or permits counties, cities, or towns to
 14 impose water, sewer, natural gas, drainage utility, and
 15 drainage system charges: Provided, That no such charge shall
 16 exceed the proportionate share of such utility or system's
 17 capital costs which the county, city, or town can demonstrate
 18 are attributable to the property being charged: Provided,
 19 Further, That these provisions shall not be interpreted to
 20 expand or contract any existing authority of counties, cities,
 21 or towns to impose such charges.

22 Nothing in this section prohibits a transportation benefit
 23 district from imposing fees or charges authorized in Section 12
 24 of this Act, as amended, nor prohibits the legislative
 25

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

4 Nothing in this section prohibits counties, cities, or
5 towns from imposing transportation impact fees authorized
6 pursuant to ~~(Section 2 of the Public and Private)~~ the Local Transportation Act of 1988.

7 This section does not apply to special purpose districts
8 formed and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor
9 is the authority conferred by these titles affected.

10 Sec. 7. Section 12, Chapter 327, Laws of 1987 and RCW
11 _____ are each amended to read as follows:

12 (1) A transportation benefit district may impose a fee or
13 charge (~~(taxes/fees/charges)~~) on the construction or
14 reconstruction of residential buildings, commercial buildings,
15 industrial buildings, or on any other building or building
16 space or appurtenance thereto, or on the development,
17 subdivision, (~~classification, or reclassification of land~~ only
18 if done in accordance with the provisions of the Local
19 Transportation Act of 1988, and on the classification or
20 reclassification of land. (~~(Sections 1-5 of the Public and Private)~~)

21 (2) Any fee or charge imposed under this section shall be
22 used exclusively for transportation improvements constructed by
23 a transportation benefit district. (~~(The fees/charges)~~)

*Clarification:
*Local Trans.
Act does not deal
with classification
and reclass. of
land.

1 imposed/must/be/reasonably/necessary/as/a/result/of/the
 2 impact/of/collective/development/construction/of
 3 classification/of/reclassification/of/land/on/identified
 4 transportation/needs/))

5 (3) When fees or charges are imposed by a district within
 6 which there is more than one city or both incorporated and
 7 unincorporated areas, the legislative authority for each city
 8 in the district and the county legislative authority for the
 9 unincorporated area must approve the imposition of such fees or
 10 charges before they take effect.

11 NEW SECTION. Sec. 8. Severability. If any provision of
 12 this act or its application to any person or circumstance is
 13 held invalid, the remainder of the act or the application of
 14 the provision to other persons or circumstances is not affected.

15 NEW SECTION. Sec. 9. New Chapter. Sections 1 through 5
 16 of this act shall constitute a new chapter in Title 39 RCW.

17
 18
 19
 20
 21
 22
 23
 24
 25