

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 684
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40416-MM-30C

Short Title: LRC Study Development Exactions.

(Public)

Sponsors: Representative Moffitt.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE LEGISLATIVE RESEARCH COMMISSION STUDY
3 DEVELOPMENT EXACTIONS, INCLUDING THEIR IMPACT ON AFFORDABLE
4 HOUSING AND WHETHER THEY ARE CONSTITUTIONAL AS CURRENTLY
5 IMPLEMENTED IN NORTH CAROLINA.

6 Whereas, it has become increasingly commonplace for local governments in North
7 Carolina to impose exactions which are defined by courts as conditions of development approval
8 that require public facilities or improvements to be provided at the expense of the landowner who
9 is seeking to develop the landowner's property; and

10 Whereas, exactions can be generally classified as either in-kind or monetary.
11 Construction of streets and utilities by the landowner which are then typically dedicated to the
12 local government are examples of in-kind exactions. Impact fees are an example of a monetary
13 exaction. However, to be legal in North Carolina, an exaction must be authorized by specific
14 legislative enabling authority; and

15 Whereas, in addition to being legally authorized, an exaction must also pass
16 constitutional muster. There must be an "essential nexus" between the purpose of the exaction
17 and some problem or need generated by the particular development. In addition, there must be
18 "rough proportionality" such that the amount or extent of the exaction represents the landowner's
19 fair share; and

20 Whereas, the National Association of Home Builders estimates that regulations
21 imposed by government at all levels account for 24.3% of the final price of a new single-family
22 home for sale. Three-fifths of the final house price (14.6%) is due to the higher price for a finished
23 lot resulting from regulations (typically exactions) imposed during the lot's development. The
24 other two-fifths (9.7%) of the house price is a result of regulatory costs incurred by the builder
25 thereafter; and

26 Whereas, increased regulatory costs disqualify thousands of our State's citizens from
27 qualifying for a mortgage and thereby depriving these citizens of the many benefits of
28 homeownership; Now, therefore,
29 The General Assembly of North Carolina enacts:

30 **SECTION 1.(a)** The Legislative Research Commission (LRC) shall study the
31 constitutionality of the conditions of development approval that require public facilities or
32 improvements to be provided at the expense of the landowner who is seeking to develop the
33 landowner's property. As part of its study, the LRC shall determine:

- 34 (1) Whether exactions currently imposed by local governments in North Carolina
35 are legislatively authorized either by statewide enabling legislation or local
36 act.



- 1 (2) Whether administrative fees currently imposed by many local governments
- 2 for various purposes related to the development approval process should
- 3 instead be paid from tax revenues.
- 4 (3) Whether statewide enabling legislation allowing exactions for certain
- 5 purposes should be modified or eliminated to reduce development costs.
- 6 (4) Whether exactions imposed by local governments exceed those which would
- 7 be constitutionally permissible if challenged.
- 8 (5) Whether local acts allowing for the imposition of impact fees should be
- 9 repealed.
- 10 (6) Whether the conditional zoning process should be reformed so that conditions
- 11 not authorized by law may not be included under the pretense of "voluntary
- 12 consent."
- 13 (7) Whether only local governments that have obtained specific authority may
- 14 impose tree protection requirements.
- 15 (8) Whether some jurisdictions impose fees without statutory authority.
- 16 (9) Whether annexation by water and sewer extensions is reasonable.
- 17 (10) Whether plan and review time lines are reasonable.
- 18 (11) Whether and to what extent costs of litigation impact the cost of affordable
- 19 housing.
- 20 (12) The extent to which all of the foregoing impacts the ability of citizens to
- 21 participate in homeownership.

22 **SECTION 1.(b)** The LRC shall report its findings, together with any proposed
23 legislation, to the 2022 Regular Session of the 2021 General Assembly upon its convening.

24 **SECTION 2.** This act is effective when it becomes law.