

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 684

Short Title: LRC Study Development Exactions. (Public)

Sponsors: Representatives Moffitt, Brody, Winslow, and Zenger (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: State Government, if favorable, Rules, Calendar, and Operations of the House

April 27, 2021

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

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

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

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

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

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

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



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

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

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