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ENGROSSED SUBSTITUTE HOUSE BILL 1652

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State of Washington

63rd Legislature

2013 Regular Session

By House Local Government (originally sponsored by Representatives Liiias, Dahlquist, Takko, Kretz, Clibborn, Condotta, Upthegrove, Springer, Buys, and Ryu)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to establishing a process for the payment of impact  
2 fees through provisions stipulated in recorded covenants; amending RCW  
3 82.02.050 and 36.70A.070; and providing an effective date.

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

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

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

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

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

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

18 (2) Counties, cities, and towns that are required or choose to plan  
19 under RCW 36.70A.040 are authorized to impose impact fees on

1 development activity as part of the financing for public facilities,  
2 provided that the financing for system improvements to serve new  
3 development must provide for a balance between impact fees and other  
4 sources of public funds and cannot rely solely on impact fees.

5 (3)(a) Counties, cities, and towns collecting impact fees must  
6 adopt a permanent system for the collection of impact fees from  
7 applicants for residential building permits issued for a lot or unit  
8 created by a subdivision, short subdivision, site development permit,  
9 binding site plan, or condominium that includes one or more of the  
10 following:

11 (i)(A) A process by which an applicant for any development permit  
12 that requires payment of an impact fee must record a covenant against  
13 title to the lot or unit subject to the impact fee obligation. A  
14 covenant under this subsection (3)(a)(i) must also serve as a lien  
15 binding on all successors in title after the recordation. The covenant  
16 must require payment equal to one hundred percent of the impact fee  
17 applicable to the lot or unit at the rates in effect at the time the  
18 building permit was issued, less a credit for any deposits paid.

19 (B) Covenants recorded in accordance with this subsection (3)(a)(i)  
20 must provide for payment of the impact fee at the earlier of the  
21 following: The time of closing of sale of the applicable lot or unit;  
22 or in accordance with the applicable county, city, or town ordinance,  
23 eighteen or more months after the building permit is issued. Payment  
24 of impact fees due at closing of a sale must, unless an agreement to  
25 the contrary is reached between buyer and seller, be made from the  
26 seller's proceeds. In the absence of an agreement to the contrary, the  
27 seller bears strict liability for the payment of the impact fees.

28 (C) The seller must provide written disclosure of the covenant  
29 authorized under this subsection (3)(a)(i) as required by chapter 64.06  
30 RCW.

31 (D) Upon receiving payment of impact fees due, the applicable  
32 county, city, or town must remove the covenant recorded in accordance  
33 with this subsection (3)(a)(i); or

34 (ii) A process by which an applicant may apply for a deferral of  
35 the impact fee payment until final inspection or certificate of  
36 occupancy, or equivalent certification.

37 (b) Counties, cities, and towns may adopt local systems for the

1 collection of impact fees that differ from the requirements of this  
2 subsection (3) if the payment timing provisions are consistent with  
3 those of this subsection.

4 (c) Any county, city, or town with a prior existing process to  
5 delay all impact fees in place prior to the effective date of this  
6 section is exempt from the provisions of this section as long as the  
7 prior existing impact fee deferral process remains in effect. Prior  
8 existing impact fee deferral processes may be amended in a manner  
9 consistent with this section.

10 (4) The impact fees:

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

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

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

17 ~~((4))~~ (5)(a) Impact fees may be collected and spent only for the  
18 public facilities defined in RCW 82.02.090 which are addressed by a  
19 capital facilities plan element of a comprehensive land use plan  
20 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions  
21 for comprehensive plan adoption contained in chapter 36.70, 35.63, or  
22 35A.63 RCW. After the date a county, city, or town is required to  
23 adopt its development regulations under chapter 36.70A RCW, continued  
24 authorization to collect and expend impact fees ~~((shall be))~~ is  
25 contingent on the county, city, or town adopting or revising a  
26 comprehensive plan in compliance with RCW 36.70A.070, and on the  
27 capital facilities plan identifying:

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

31 ~~((b))~~ (ii) Additional demands placed on existing public  
32 facilities by new development; and

33 ~~((c))~~ (iii) Additional public facility improvements required to  
34 serve new development.

35 (b) If the capital facilities plan of the county, city, or town is  
36 complete other than for the inclusion of those elements which are the  
37 responsibility of a special district, the county, city, or town may

1 impose impact fees to address those public facility needs for which the  
2 county, city, or town is responsible.

3 **Sec. 2.** RCW 36.70A.070 and 2010 1st sp.s. c 26 s 6 are each  
4 amended to read as follows:

5 The comprehensive plan of a county or city that is required or  
6 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
7 and descriptive text covering objectives, principles, and standards  
8 used to develop the comprehensive plan. The plan shall be an  
9 internally consistent document and all elements shall be consistent  
10 with the future land use map. A comprehensive plan shall be adopted  
11 and amended with public participation as provided in RCW 36.70A.140.  
12 Each comprehensive plan shall include a plan, scheme, or design for  
13 each of the following:

14 (1) A land use element designating the proposed general  
15 distribution and general location and extent of the uses of land, where  
16 appropriate, for agriculture, timber production, housing, commerce,  
17 industry, recreation, open spaces, general aviation airports, public  
18 utilities, public facilities, and other land uses. The land use  
19 element shall include population densities, building intensities, and  
20 estimates of future population growth. The land use element shall  
21 provide for protection of the quality and quantity of groundwater used  
22 for public water supplies. Wherever possible, the land use element  
23 should consider utilizing urban planning approaches that promote  
24 physical activity. Where applicable, the land use element shall review  
25 drainage, flooding, and storm water run-off in the area and nearby  
26 jurisdictions and provide guidance for corrective actions to mitigate  
27 or cleanse those discharges that pollute waters of the state, including  
28 Puget Sound or waters entering Puget Sound.

29 (2) A housing element ensuring the vitality and character of  
30 established residential neighborhoods that: (a) Includes an inventory  
31 and analysis of existing and projected housing needs that identifies  
32 the number of housing units necessary to manage projected growth; (b)  
33 includes a statement of goals, policies, objectives, and mandatory  
34 provisions for the preservation, improvement, and development of  
35 housing, including single-family residences; (c) identifies sufficient  
36 land for housing, including, but not limited to, government-assisted  
37 housing, housing for low-income families, manufactured housing,

1 multifamily housing, and group homes and foster care facilities; and  
2 (d) makes adequate provisions for existing and projected needs of all  
3 economic segments of the community.

4 (3) A capital facilities plan element consisting of: (a) An  
5 inventory of existing capital facilities owned by public entities,  
6 showing the locations and capacities of the capital facilities; (b) a  
7 forecast of the future needs for such capital facilities; (c) the  
8 proposed locations and capacities of expanded or new capital  
9 facilities; (d) at least a six-year plan that will finance such capital  
10 facilities within projected funding capacities and clearly identifies  
11 sources of public money for such purposes; and (e) a requirement to  
12 reassess the land use element if probable funding falls short of  
13 meeting existing needs and to ensure that the land use element, capital  
14 facilities plan element, and financing plan within the capital  
15 facilities plan element are coordinated and consistent. Park and  
16 recreation facilities shall be included in the capital facilities plan  
17 element.

18 (4) A utilities element consisting of the general location,  
19 proposed location, and capacity of all existing and proposed utilities,  
20 including, but not limited to, electrical lines, telecommunication  
21 lines, and natural gas lines.

22 (5) Rural element. Counties shall include a rural element  
23 including lands that are not designated for urban growth, agriculture,  
24 forest, or mineral resources. The following provisions shall apply to  
25 the rural element:

26 (a) Growth management act goals and local circumstances. Because  
27 circumstances vary from county to county, in establishing patterns of  
28 rural densities and uses, a county may consider local circumstances,  
29 but shall develop a written record explaining how the rural element  
30 harmonizes the planning goals in RCW 36.70A.020 and meets the  
31 requirements of this chapter.

32 (b) Rural development. The rural element shall permit rural  
33 development, forestry, and agriculture in rural areas. The rural  
34 element shall provide for a variety of rural densities, uses, essential  
35 public facilities, and rural governmental services needed to serve the  
36 permitted densities and uses. To achieve a variety of rural densities  
37 and uses, counties may provide for clustering, density transfer, design  
38 guidelines, conservation easements, and other innovative techniques

1 that will accommodate appropriate rural densities and uses that are not  
2 characterized by urban growth and that are consistent with rural  
3 character.

4 (c) Measures governing rural development. The rural element shall  
5 include measures that apply to rural development and protect the rural  
6 character of the area, as established by the county, by:

7 (i) Containing or otherwise controlling rural development;

8 (ii) Assuring visual compatibility of rural development with the  
9 surrounding rural area;

10 (iii) Reducing the inappropriate conversion of undeveloped land  
11 into sprawling, low-density development in the rural area;

12 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and  
13 surface water and groundwater resources; and

14 (v) Protecting against conflicts with the use of agricultural,  
15 forest, and mineral resource lands designated under RCW 36.70A.170.

16 (d) Limited areas of more intensive rural development. Subject to  
17 the requirements of this subsection and except as otherwise  
18 specifically provided in this subsection (5)(d), the rural element may  
19 allow for limited areas of more intensive rural development, including  
20 necessary public facilities and public services to serve the limited  
21 area as follows:

22 (i) Rural development consisting of the infill, development, or  
23 redevelopment of existing commercial, industrial, residential, or  
24 mixed-use areas, whether characterized as shoreline development,  
25 villages, hamlets, rural activity centers, or crossroads developments.

26 (A) A commercial, industrial, residential, shoreline, or mixed-use  
27 area (~~(shall be)~~) are subject to the requirements of (d)(iv) of this  
28 subsection, but (~~(shall)~~) are not (~~(be)~~) subject to the requirements of  
29 (c)(ii) and (iii) of this subsection.

30 (B) Any development or redevelopment other than an industrial area  
31 or an industrial use within a mixed-use area or an industrial area  
32 under this subsection (5)(d)(i) must be principally designed to serve  
33 the existing and projected rural population.

34 (C) Any development or redevelopment in terms of building size,  
35 scale, use, or intensity shall be consistent with the character of the  
36 existing areas. Development and redevelopment may include changes in  
37 use from vacant land or a previously existing use so long as the new  
38 use conforms to the requirements of this subsection (5);

1 (ii) The intensification of development on lots containing, or new  
2 development of, small-scale recreational or tourist uses, including  
3 commercial facilities to serve those recreational or tourist uses, that  
4 rely on a rural location and setting, but that do not include new  
5 residential development. A small-scale recreation or tourist use is  
6 not required to be principally designed to serve the existing and  
7 projected rural population. Public services and public facilities  
8 shall be limited to those necessary to serve the recreation or tourist  
9 use and shall be provided in a manner that does not permit low-density  
10 sprawl;

11 (iii) The intensification of development on lots containing  
12 isolated nonresidential uses or new development of isolated cottage  
13 industries and isolated small-scale businesses that are not principally  
14 designed to serve the existing and projected rural population and  
15 nonresidential uses, but do provide job opportunities for rural  
16 residents. Rural counties may allow the expansion of small-scale  
17 businesses as long as those small-scale businesses conform with the  
18 rural character of the area (~~as defined by the local government~~  
19 ~~according to RCW 36.70A.030(15)~~). Rural counties may also allow new  
20 small-scale businesses to utilize a site previously occupied by an  
21 existing business as long as the new small-scale business conforms to  
22 the rural character of the area (~~as defined by the local government~~  
23 ~~according to RCW 36.70A.030(15)~~). Public services and public  
24 facilities shall be limited to those necessary to serve the isolated  
25 nonresidential use and shall be provided in a manner that does not  
26 permit low-density sprawl. For the purposes of this subsection, "rural  
27 character" has the same meaning as provided in RCW 36.70A.030;

28 (iv) A county shall adopt measures to minimize and contain the  
29 existing areas or uses of more intensive rural development, as  
30 appropriate, authorized under this subsection. Lands included in such  
31 existing areas or uses shall not extend beyond the logical outer  
32 boundary of the existing area or use, thereby allowing a new pattern of  
33 low-density sprawl. Existing areas are those that are clearly  
34 identifiable and contained and where there is a logical boundary  
35 delineated predominately by the built environment, but that may also  
36 include undeveloped lands if limited as provided in this subsection.  
37 The county shall establish the logical outer boundary of an area of  
38 more intensive rural development. In establishing the logical outer

1 boundary, the county shall address (A) the need to preserve the  
2 character of existing natural neighborhoods and communities, (B)  
3 physical boundaries, such as bodies of water, streets and highways, and  
4 land forms and contours, (C) the prevention of abnormally irregular  
5 boundaries, and (D) the ability to provide public facilities and public  
6 services in a manner that does not permit low-density sprawl;

7 (v) For purposes of (d) of this subsection, an existing area or  
8 existing use is one that was in existence:

9 (A) On July 1, 1990, in a county that was initially required to  
10 plan under all of the provisions of this chapter;

11 (B) On the date the county adopted a resolution under RCW  
12 36.70A.040(2), in a county that is planning under all of the provisions  
13 of this chapter under RCW 36.70A.040(2); or

14 (C) On the date the office of financial management certifies the  
15 county's population as provided in RCW 36.70A.040(5), in a county that  
16 is planning under all of the provisions of this chapter pursuant to RCW  
17 36.70A.040(5).

18 (e) Exception. This subsection shall not be interpreted to permit  
19 in the rural area a major industrial development or a master planned  
20 resort unless otherwise specifically permitted under RCW 36.70A.360 and  
21 36.70A.365.

22 (6) A transportation element that implements, and is consistent  
23 with, the land use element.

24 (a) The transportation element shall include the following  
25 subelements:

26 (i) Land use assumptions used in estimating travel;

27 (ii) Estimated traffic impacts to state-owned transportation  
28 facilities resulting from land use assumptions to assist the department  
29 of transportation in monitoring the performance of state facilities, to  
30 plan improvements for the facilities, and to assess the impact of land-  
31 use decisions on state-owned transportation facilities;

32 (iii) Facilities and services needs, including:

33 (A) An inventory of air, water, and ground transportation  
34 facilities and services, including transit alignments and general  
35 aviation airport facilities, to define existing capital facilities and  
36 travel levels as a basis for future planning. This inventory must  
37 include state-owned transportation facilities within the city or  
38 county's jurisdictional boundaries;



1 (B) Level of service standards for all locally owned arterials and  
2 transit routes to serve as a gauge to judge performance of the system.  
3 These standards should be regionally coordinated;

4 (C) For state-owned transportation facilities, level of service  
5 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,  
6 to gauge the performance of the system. The purposes of reflecting  
7 level of service standards for state highways in the local  
8 comprehensive plan are to monitor the performance of the system, to  
9 evaluate improvement strategies, and to facilitate coordination between  
10 the county's or city's six-year street, road, or transit program and  
11 the office of financial management's ten-year investment program. The  
12 concurrency requirements of (b) of this subsection do not apply to  
13 transportation facilities and services of statewide significance except  
14 for counties consisting of islands whose only connection to the  
15 mainland are state highways or ferry routes. In these island counties,  
16 state highways and ferry route capacity must be a factor in meeting the  
17 concurrency requirements in (b) of this subsection;

18 (D) Specific actions and requirements for bringing into compliance  
19 locally owned transportation facilities or services that are below an  
20 established level of service standard;

21 (E) Forecasts of traffic for at least ten years based on the  
22 adopted land use plan to provide information on the location, timing,  
23 and capacity needs of future growth;

24 (F) Identification of state and local system needs to meet current  
25 and future demands. Identified needs on state-owned transportation  
26 facilities must be consistent with the statewide multimodal  
27 transportation plan required under chapter 47.06 RCW;

28 (iv) Finance, including:

29 (A) An analysis of funding capability to judge needs against  
30 probable funding resources;

31 (B) A multiyear financing plan based on the needs identified in the  
32 comprehensive plan, the appropriate parts of which shall serve as the  
33 basis for the six-year street, road, or transit program required by RCW  
34 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795  
35 for public transportation systems. The multiyear financing plan should  
36 be coordinated with the ten-year investment program developed by the  
37 office of financial management as required by RCW 47.05.030;

1 (C) If probable funding falls short of meeting identified needs, a  
2 discussion of how additional funding will be raised, or how land use  
3 assumptions will be reassessed to ensure that level of service  
4 standards will be met;

5 (v) Intergovernmental coordination efforts, including an assessment  
6 of the impacts of the transportation plan and land use assumptions on  
7 the transportation systems of adjacent jurisdictions;

8 (vi) Demand-management strategies;

9 (vii) Pedestrian and bicycle component to include collaborative  
10 efforts to identify and designate planned improvements for pedestrian  
11 and bicycle facilities and corridors that address and encourage  
12 enhanced community access and promote healthy lifestyles.

13 (b) After adoption of the comprehensive plan by jurisdictions  
14 required to plan or who choose to plan under RCW 36.70A.040, local  
15 jurisdictions must adopt and enforce ordinances which prohibit  
16 development approval if the development causes the level of service on  
17 a locally owned transportation facility to decline below the standards  
18 adopted in the transportation element of the comprehensive plan, unless  
19 transportation improvements or strategies to accommodate the impacts of  
20 development are made concurrent with the development. These strategies  
21 may include increased public transportation service, ride sharing  
22 programs, demand management, and other transportation systems  
23 management strategies. For the purposes of this subsection (6),  
24 "concurrent with the development" means that improvements or strategies  
25 are in place at the time of development, or that a financial commitment  
26 is in place to complete the improvements or strategies within six  
27 years. If the collection of impact fees is delayed under RCW  
28 82.02.050(3), the six-year period required by this subsection (6)(b)  
29 must begin after the county or city receives full payment of all impact  
30 fees due.

31 (c) The transportation element described in this subsection (6),  
32 the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121  
33 for counties, and RCW 35.58.2795 for public transportation systems, and  
34 the ten-year investment program required by RCW 47.05.030 for the  
35 state, must be consistent.

36 (7) An economic development element establishing local goals,  
37 policies, objectives, and provisions for economic growth and vitality  
38 and a high quality of life. The element shall include: (a) A summary

1 of the local economy such as population, employment, payroll, sectors,  
2 businesses, sales, and other information as appropriate; (b) a summary  
3 of the strengths and weaknesses of the local economy defined as the  
4 commercial and industrial sectors and supporting factors such as land  
5 use, transportation, utilities, education, workforce, housing, and  
6 natural/cultural resources; and (c) an identification of policies,  
7 programs, and projects to foster economic growth and development and to  
8 address future needs. A city that has chosen to be a residential  
9 community is exempt from the economic development element requirement  
10 of this subsection.

11 (8) A park and recreation element that implements, and is  
12 consistent with, the capital facilities plan element as it relates to  
13 park and recreation facilities. The element shall include: (a)  
14 Estimates of park and recreation demand for at least a ten-year period;  
15 (b) an evaluation of facilities and service needs; and (c) an  
16 evaluation of intergovernmental coordination opportunities to provide  
17 regional approaches for meeting park and recreational demand.

18 (9) It is the intent that new or amended elements required after  
19 January 1, 2002, be adopted concurrent with the scheduled update  
20 provided in RCW 36.70A.130. Requirements to incorporate any such new  
21 or amended elements shall be null and void until funds sufficient to  
22 cover applicable local government costs are appropriated and  
23 distributed by the state at least two years before local government  
24 must update comprehensive plans as required in RCW 36.70A.130.

25 NEW SECTION. **Sec. 3.** This act takes effect December 1, 2013.

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