

HOUSE BILL REPORT

HB 1709

As Reported by House Committee On: Local Government

Title: An act relating to establishing a process for the payment of impact fees through provisions stipulated in recorded covenants.

Brief Description: Establishing a process for the payment of impact fees through provisions stipulated in recorded covenants.

Sponsors: Representatives Springer, Kretz, Takko, Pike, Wilcox and Fitzgibbon.

Brief History:

Committee Activity:

Local Government: 2/10/15, 2/19/15 [DPS].

Brief Summary of Substitute Bill

- Obligates counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification.
- Authorizes counties, cities, and towns to adopt alternative impact fee collection deferral systems if certain requirements are met.
- Exempts counties, cities, and towns that have pre-existing impact fee delay processes that meet certain requirements from the obligation to establish an impact fee deferral system.
- Delays the starting of the six-year time frame for satisfying concurrency provisions of the Growth Management Act until after the county or city receives full payment of all deferred impact fees.
- Makes all provisions effective September 1, 2016.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Takko, Chair; Gregerson, Vice Chair; Fitzgibbon, McBride, Peterson and Pike.

Minority Report: Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; McCaslin.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act and Concurrency.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA.

The GMA directs counties and cities that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, including land use and transportation, each of which is a subset of a comprehensive plan. The implementation of comprehensive plans occurs through locally adopted development regulations mandated by the GMA.

The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs. A provision of the sub-element for facilities and services needs requires planning jurisdictions to adopt level of service (LOS) standards for all locally owned arterials and transit routes.

Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the proposed development will cause the LOS on a locally owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this "concurrency" prohibition may be made if improvements or strategies to accommodate development impacts are made concurrent with the development. These strategies may include:

- increased public transportation service;
- ridesharing programs;
- demand management; and
- other transportation systems management strategies.

"Concurrent with the development" means improvements or strategies that are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

Transportation elements may also include, in addition to improvements or strategies to accommodate the impacts of development authorized under the GMA, multimodal transportation improvements or strategies that are made concurrent with the development.

Impact Fees.

Planning jurisdictions may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. This financing must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees. Additionally, impact fees:

- may only be imposed for system improvements, a term defined in statute, that are reasonably related to the new development;
- may not exceed a proportionate share of the costs of system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

Impact fees may be collected and spent only for qualifying public facilities that are included within a capital facilities plan element of a comprehensive plan. "Public facilities," within the context of impact fee statutes, are the following capital facilities that are owned or operated by government entities:

- public streets and roads;
- publicly owned parks, open space, and recreation facilities;
- school facilities; and
- fire protection facilities.

County and city ordinances by which impact fees are imposed must conform with specific requirements. Among other obligations, these ordinances:

- must include a schedule of impact fees for each type of development activity for which a fee is imposed;
- may provide an exemption for low-income housing and other development activities with broad public purposes; and
- must allow the imposing jurisdiction to adjust the standard impact fee for unusual circumstances in specific cases to ensure that fees are imposed fairly.

Covenants.

Covenants are formal agreements or promises between individuals. Covenants may be used to ensure the execution or prevention of an action. A covenant for title is a covenant that binds the person conveying the property to ensure the completeness, security, and continuance of the title transferred.

Gubernatorial Veto of Engrossed Substitute House Bill 1652 (2013).

Legislation adopted in 2013 (*i.e.*, ESHB 1652) obligated counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification. The legislation was vetoed in its entirety by the Governor on May 21, 2013.

Summary of Substitute Bill:

Impact Fee Payment Deferral Processes.

Counties, cities, and towns that collect impact fees must adopt a system for the collection of impact fees from applicants for residential building permits issued for single-family detached or attached residential construction that includes:

- a process by which an applicant for any development permit that requires payment of an impact fee must record a covenant against title to the lot or unit subject to the impact fee obligation. Covenants recorded through this process must satisfy delineated requirements, including requiring payment of all impact fees applicable to the lot or unit at the rates in effect at the time of final payment of the impact fee, less a credit for paid deposits. The covenants must provide for the payment of the impact fees at the time of closing or 18 or more months after the issuance of a building permit, whichever is earlier; or
- a process by which an applicant may apply for a deferral of the impact fee payment until final inspection or certificate of occupancy, or equivalent certification. Cities utilizing this deferral process may withhold certification of the final inspection, certificate of occupancy, or equivalent certification until the impact fee payment has been made in full.

As an alternative to these impact fee deferral processes, counties, cities, and towns may adopt local deferral systems that differ from the covenant and final inspection or certificate of occupancy processes if the payment timing provisions are consistent with those processes.

Additionally, a county, city, or town with an impact fee deferral process on or before July 1, 2016, is exempted from the obligation to establish an impact fee deferral system if the locally adopted deferral process delays all fees and remains in effect after July 1, 2016.

Lastly, in each calendar year, the applicant may receive a deferral for the first 20 single-family residential construction building permits per school district. A county, city, or town, however, may elect to defer more than 20 of the building permits for an applicant if:

- the county, city, or town collects impact fees on behalf of the jurisdiction or jurisdictions for which the collection of impact fees would be delayed; and
- the county, city, or town and the jurisdiction or jurisdictions for which the collection of impact fees would be delayed agree to the additional deferrals.

Growth Management Act: Delayed Start of Concurrency Time Frame.

If the collection of impact fees is delayed through a covenant-based deferral process, a final inspection or certificate of occupancy deferral process, or an authorized alternative local government deferral system, the six-year time frame for completing improvements or strategies for complying with concurrency provisions of the GMA may not begin until after the county or city receives full payment of all impact fees due.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- specifies that the impact fee deferral process required in the underlying bill is to apply to residential building permits issued for single-family detached or attached

- residential construction, rather than for residential permits issued for a lot or unit created by a subdivision, short subdivision, site development permit, binding site plan, or condominium;
- specifies that if the covenant-based deferral option is used, the covenant must require payment equal to 100 percent of the applicable impact fee at the rates in effect at the time of final payment of the impact fee, rather than at the rates in effect at the time the building permit was issued;
 - specifies that cities using a process by which an applicant may apply for a deferral of the impact fee payment until final inspection or certificate of occupancy, or equivalent certification, are authorized to withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fee payment has been made in full;
 - removes a provision governing amendment requirements for impact fee deferral processes of counties, cities, and towns that are in effect on or before July 1, 2016;
 - modifies deferral provisions to specify that an applicant may receive a deferral for the first 20 single-family residential construction permits per school district, rather than for no fewer than 20 single-family residential construction permits per jurisdiction; and
 - delays the effective date of the bill from July 1, 2016, to September 1, 2016.
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Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on September 1, 2016.

Staff Summary of Public Testimony:

(In support) This bill may seem familiar, as its deferral concept has been worked on during the last few years. The genesis of this bill is to give relief to a building industry that has been hit hard by the recession. The bill delays the moment that impact fees for single family homes are due. If the fees are due up-front, the cost of the project increases. Ultimately, the jurisdictions that are benefiting from the impact fees will receive their money, but it may arrive a few months later than under current circumstances. Many jurisdictions are successfully implementing impact fee deferral programs.

Residential new home construction is a key component of the state finances. This construction is critical for the state and for local governments, as new construction is outside of the 1 percent property tax cap. Local governments want and need this revenue. New housing is lagging and construction rates are those of the 1980s, even though the population since then has doubled. The Governor's veto message for a previous bill indicated concern about deferrals and associated impacts to schools. This bill doesn't allow unlimited deferrals, but rather it limits the deferral to 20 per builder. This will help small builders. The bill takes effect July 1, 2016, so this will help to capture the construction season and to minimize the impacts to local governments and school districts. School districts have 10 years to use impact fee moneys.

The enforcement mechanism of the bill will work. The covenant provisions, which should be left alone, will work. Covenant provisions will be properly discovered, and governments will be paid. A deferral process that requires payment to be made at the time of drywall is very different to enforce than a payment due at the time of closing.

(With concerns) The bill does not include a provision requiring payment in the event of a recession. Liens can be an effective way to ensure payment. The bill should be modified to specify that cities and counties can enforce covenants.

(Neutral) In some small counties, new development is the only economic activity. Counties recognize that the bill is different from previous versions, and would prefer administrative flexibility for its provisions.

The language in the current form of the bill will work. If this bill is amended, the changes might result in harm to the deferral mechanism.

(Opposed) The preemption of local control is problematic for cities. This bill would institute a policy of deferral for all cities, but many cities have already worked out specific deferrals for their jurisdictions. A second concern is the certainty of fee collections. Cities may end up in an enforcement mode if payment does not occur as required. Amendment discussions are underway, and cities appreciate attempts to narrow the language, but this bill should be held.

This bill would be costly for cities to administer. For example, each lien would require the city to absorb a cost of \$150. The bill also has loopholes, as a builder could establish many limited liability corporations and have each one qualify for 20 deferrals. This bill will prevent needed infrastructure from being ready when it is necessary.

Some cities appreciate that the proponents have made changes, but these cities believe that more changes should be made. Cities don't believe the bill was intended to apply to condominiums and large multi-family units, but they believe it could. Some cities also believe the covenant provisions should be strengthened to ensure that payment is made. The local option provisions in the bill may prohibit the continuance of local deferrals, including payments required at the time of drywall. This is a 'state knows best' approach without much flexibility.

School districts have received impact fees since the early 1990s. The revenue from those fees is critical, and some school districts are experiencing significant growth. It takes nine months to site a portable building. If builders do not pay impact fees up front, schools must front the money to pay for the needed capital facilities. This bill could lead to overcrowding in schools. The bill should be amended to make sure that all fees are paid at closing. School districts operate on a different calendar year than other entities. This bill is not necessary, has impacts related to fulfilling requirements obligated by the Washington Supreme Court's decision in the *McCleary* case, and will be harmful to schools as they seek to meet educational responsibilities.

Pasco School District opposes this bill. Pasco School District has received significant amounts of impact fees, as the district's enrollment has doubled from previous years. The district relies on impact fees to respond to its exponential growth. An impact fee deferral would create more problems in the district. The committee should consider exempting school district impact fees, as school districts cannot turn away students or ask them to go to a neighboring district.

This bill, like previous versions, is an inappropriate extension of state control into local governments. Some cities already delay impact fees, but they do it according to their local needs and relationships with builders. The current system of local control should be left alone.

Persons Testifying: (In support) Representative Springer, prime sponsor; Bill Stauffacher, Building Industry Association of Washington; and Dwight Bickel, Washington Land Title Association.

(With concerns) Craig Ritchie, City of Sequim.

(Neutral) Laura Merrill, Washington State Association of Counties; and Stu Halsan, Washington Land Title Association.

(Opposed) Carl Schroeder, Association of Washington Cities; John Williams, City of Battle Ground; Doug Levy, cities of Everett, Issaquah, Kent, Puyallup, Lake Stevens, Redmond, and Renton; Bill Adamo, Puget Sound School Coalition; Marie Sullivan, Pasco School District; and Mark Brown, cities of Vancouver, Lacey, Longview, and Ridgefield.

Persons Signed In To Testify But Not Testifying: None.