

SENATE BILL REPORT

SB 5683

As of February 21, 2007

Title: An act relating to transportation concurrency and impact fees under the growth management act.

Brief Description: Addressing transportation concurrency and impact fees under the growth management act.

Sponsors: Senators Roach, Swecker, Hargrove, Sheldon and Rasmussen.

Brief History:

Committee Activity: Government Operations & Elections: 2/20/07.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Staff: Sharon Swanson (786-7447)

Background: Growth Management Act: The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions. The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, including capital facilities plan and transportation elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that implement and conform with the comprehensive plan.

Transportation Element/Concurrency: 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. This sub-element also must include specific actions and requirements for bringing into compliance locally-owned transportation facilities or services failing to meet an established LOS. Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the development causes the LOS on a locally-owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this prohibition may be made if improvements or strategies to

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accommodate development impacts are made concurrent with the development. These strategies may include:

- Increased public transportation service;
- Ride sharing 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. The transportation element of a comprehensive plan may 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 that are needed to serve new growth and development. This financing, however, must provide for 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.

Reasonable permit or application fees are not considered impact fees. Impact fees may be collected and spent only for qualifying public facilities. "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 in jurisdictions that are not part of a fire district.

Public facilities for which impact fees may be spent must be included in a capital facilities plan element of a comprehensive plan adopted under the GMA.

Summary of Bill: A new concurrency provision in the GMA is specified. If a jurisdiction requires payment of transportation impact fees, that jurisdiction may not prohibit development approvals based on failure to achieve applicable LOS standards adopted in the transportation elements of the comprehensive plan.

New requirements for jurisdictions that impose impact fees are specified. Local government programs imposing impact fees must be designed so that each new development that is subject to the program is assessed for that development's direct impacts on certain specific system improvements, attaining proportionality between a new development's impacts to specific system improvements and the impact fees imposed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is designed to accomplish two things. First, to achieve the promise of the growth management act by providing that if a local jurisdiction collects transportation impact fees to pay for system improvements, that jurisdiction cannot prohibit development based on concurrency requirements. If the growth management act is working as it should and people are paying their fair share there should not be a prohibition against building. If municipalities are collecting their money, they ought to be able to move forward with development. The second goal of this legislation is to restore the nexus and proportionality to the imposition of impact fees. This would legislatively overrule the Drebeck decision. The growth management act is just that, growth management and not growth prevention. Real estate excise tax and impact fees create the appropriate balance to provide for new jobs and new housing within new developments.

CON: The impact fee statute has been challenged all the way to the Washington Supreme Court and the United States Supreme Court and has been found to be constitutional. This legislation is a solution in search of a problem. This legislation would undue a fundamental part of the growth management act. Impact fees spread the cost pro rata among developers. This bill would send us back to a case by case State Environmental Protection Act/transportation analysis for every development. A case by case analysis would cost a great deal of money and take much more time than the current analysis. Impact fees are an important part of how we fund infrastructure. The fees are calculated in advance and are transparent. This legislation would reverse the court's ruling in the Drebeck decision.

Persons Testifying: PRO: Chris McCabe, Sandy Mackie, Association of Washington Builders; Catherine Rudolph, Tacoma - Pierce County Realtors.

CON: Kaleen Cottingham, Futurewise; Ashley Probart, Association of Washington Cities; Bob Sterbank, City Attorney of Olympia.