

HOUSE BILL REPORT

ESHB 3067

As Passed House:
February 15, 2010

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: House Committee on Local Government & Housing (originally sponsored by Representatives Williams, Rodne, Springer, Clibborn, Liias, Upthegrove, Priest and Wallace).

Brief History:

Committee Activity:

Local Government & Housing: 1/28/10, 2/1/10 [DPS].

Floor Activity:

Passed House: 2/15/10, 60-37.

Brief Summary of Engrossed Substitute Bill

- Requires specified jurisdictions that impose impact fees to provide a process by which an applicant for a building permit for a residential development project may record a covenant against title to the property in lieu of paying impact fees at the time of application.
- Makes the seller of a property subject to an impact fee covenant strictly liable for the payment of applicable impact fees in the absence of an agreement to the contrary with the buyer.
- Limits the application of the act to only those counties with more than 1.5 million residents and the cities and towns within, and counties adjoining these counties that have more than 650,000 but fewer than 800,000 residents, and the cities and towns within.
- Requires that a seller of property subject to an impact fee covenant make specified disclosures to a prospective purchaser regarding such covenant.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

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 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Fagan and Short.

Staff: Thamas Osborn (786-7129) and Ethan Moreno (786-7386).

Background:

Impact Fees.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA (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.

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 in jurisdictions that are not part of a fire district.

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. The impact fees for this development activity, however, must be paid from public funds other than impact fee accounts; 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.

Summary of Engrossed Substitute Bill:

General Provisions: Covenants Against Title In Lieu of Impact Fee Payment.

Specified jurisdictions that impose impact fees must provide a process by which an applicant for a building permit for a residential development project may record a covenant against title to the property in lieu of paying impact fees at the time of application. The impact fee covenant must:

- be equal to 100 percent of the impact fee rate in effect at the time of the issuance of the building permit, less a credit for any deposits paid;
- provide for payment of the impact fee through the escrow process at the time of the closing of the sale of the property; and
- be disclosed in writing by the buyer to the seller in accordance with the real property seller's disclosure requirements under chapter 64.06 RCW.

The seller's written disclosure of the impact fee covenant must include the dollar amount of the applicable impact fees and the governmental entities to whom such fees must be paid at the time of closing.

The impact fee covenant process authorized under the act is limited to the collection of impact fees for residential development projects.

The provisions of the act apply only to counties with more than 1.5 million residents and the cities and towns within, and counties adjoining these counties that have more than 650,000 but fewer than 800,000 residents, and the cities and towns within.

The act's impact fee covenant provisions are not applicable to dwellings subject to the Condominium Act under chapter 64.34 RCW.

Payment Requirements for Impact Fees Imposed by Covenant.

The payment of impact fees must be made from the seller's proceeds from the sale of the property, unless the buyer and seller enter into an agreement to the contrary.

The seller is strictly liable for the payment of impact fees absent an agreement to the contrary between the buyer and seller.

Generally, impact fees must be paid through the escrow process at the time of the closing of the sale of the lot or unit that is the subject of the building permit. However, in the event the lot or unit is leased or rented rather than sold, the applicable impact fees must be paid in full upon the issuance of a certificate of occupancy or equivalent final occupancy approval.

Lease or Rental of Property Subject to Impact Fee Covenant.

Impact fees that are the subject of a covenant against title must be paid in full before a lessee or renter may occupy or otherwise take legal possession of the property.

Growth Management Act Concurrency Requirements.

If the collection of impact fees is delayed as the result of the provisions of the act, then the six-year concurrency requirement imposed on counties and cities by the GMA begins to run only after the county or city receives full payment of all impact fees.

Appropriation: None.

Fiscal Note: Requested on January 27, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill would provide a much needed delay in the collection of impact fees. The up-front payment of such fees at the time of permit application is a major financial burden on all builders, but especially small contractors who do not have much capital. The covenant process created by the bill is an elegant remedy to this problem, insofar as it ensures that the fees will be paid while at the same time relieving builders of the burden of paying large sums of money long before construction is complete. Currently, the housing market is in bad shape and the process by which impact fees are collected contributes to the financial woes being suffered by builders. If passed, the bill would enable more new homes to be put on the market and give much needed help to the construction industry. The covenant approach created under the bill has been used successfully in certain jurisdictions in this state and elsewhere.

(Opposed) This bill is poorly conceived and will not succeed in either bringing more homes onto the market or reducing housing costs. Approaches like this have been tried before and failed. Furthermore, the legislation is likely to create major problems with respect to the home-buying process and will create administrative headaches for municipalities and mortgage lenders. As written, the bill would place the full burden of impact fees on the buyer at the time of closing. In addition, it is certain that many home buyers will not be aware of the covenant until the time of closing, which means that the impact fee amount will not be included in the mortgage loan. Buyers should be entitled to ample notice of the impact fee covenant well-before closing. In addition, the provisions of the bill would enable a developer to "lock-in" the impact fee amount many years before the property is actually developed and sold. Accordingly, counties and cities would often be limited to outdated impact fee amounts that do not begin to offset the costs of the services and infrastructure needed to serve the development. Also, the late payment of impact fees allowed by this bill will make it very difficult for municipalities to comply with the GMA concurrency requirements. This bill hurts both consumers and municipalities.

Persons Testifying: (In support) Representative Williams, prime sponsor; Scott Hildebrand, Master Builders Association in King and Snohomish County; Dave Main, Main Street Builders; and Timothy Harris, Building Industry Association of Washington.

(Opposed) Dave Williams, Association of Washington Cities; Randy Young, City of Kent; Craig Ritchie, City of Sequim; and April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.