

SENATE BILL REPORT

ESHB 3067

As of February 22, 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, Lias, Upthegrove, Priest and Wallace).

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

Committee Activity: Financial Institutions, Housing & Insurance: 2/23/10.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: Counties that are required or have chosen to conduct their land-use planning under the Growth Management Act (GMA) may assess developers a fee that provides partial payment for public facilities needed to serve the new growth the proposed development represents. This fee is called an impact fee. It is a payment imposed upon development as a condition of development approval.

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 that qualify as those for which an impact fee may be assessed are public streets and roads; publicly-owned parks, open space, and recreation facilities; public school facilities; and fire protection facilities in jurisdictions that are not part of a fire protection district.

Impact fees are imposed by local ordinance and must be expended within six years of receipt. The exception to this general rule is if the governing body of the county, city, or town makes written findings of an extraordinary and compelling reason for fees to be held longer than six years. In that case, the fees may be held longer than six years. If the impact fees are held longer than six years, and when no exception has been made, the current owner of property on which the impact fee has been assessed may receive a refund.

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.

A developer may request and must be given a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted.

One of the 13 goals of the Growth Management Act is that local governments ensure that those public facilities and services necessary to support development are adequate to serve the development at the time the development is available for occupancy without decreasing current service below locally established minimum standards.

The GMA requires that transportation improvements or strategies need to be made concurrently with land development. The term, concurrent with the development, is defined to mean that any needed improvements or strategies 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. Local governments have flexibility regarding how to apply concurrency within their plans, regulations, and permit systems.

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 Bill: If counties with more than 1.5 million residents and counties adjoining these counties that have more than 650,000 but fewer than 800,000 residents impose impact fees, then these counties must provide a process for recording a covenant in lieu of paying impact fees. The process must provide for an applicant for a building permit for a residential development to record a covenant against title to the property in lieu of paying impact fees at the time of the application for the building permit.

The seller is strictly liable for the payment of impact fees and 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 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. In the event the lot or unit is leased or rented rather than sold, the impact fees must be paid in full upon the issuance of a certificate of occupancy.

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 which these fees must be paid at the time of closing.

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

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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