SENATE BILL REPORT
ESHB 3067

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 24, 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: Passed House: 2/15/10, 60-37.
Committee Activity: Financial Institutions, Housing & Insurance: 2/23/10, 2/24/10 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass as amended.
Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin and McDermott.

Minority Report: Do not pass.
Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.
Signed by Senator Parlette.

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

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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.

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 (Recommended Amendments): 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.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Amendments): The amendments require the impact fees to be paid at the earlier of 12 months after permit issuance or at closing, whichever comes first. The amendments change the word covenant to the word lien; remove the requirement that the lien include the amount of fees payable and the governmental entity to which they are to be paid; and clarify that the escrow officer has no duty regarding the impact fees other than to execute the instructions given by the parties.

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 on Engrossed Substitute House Bill: PRO: The average time from permit to occupancy for public housing is two years. This bill will benefit affordable housing since impact fees can run into the hundreds of thousands of dollars which would also require public funding sources. In Pierce County's prior experiment with delay of payment of impact fees half of the Pierce County cases were not filed by the county. Even though the builders were not bound to comply, compliance was still 80 percent. The 12-month amendment won't help us because we will still have to retain the money to pay the impact fee. The bill will increase housing, the flow of income and taxes and increase the amount of impact fees collected. Concurrency gives the cities six years. The bill does not fundamentally change that construct. Small and medium-sized home builders do not have available cash and can't borrow for soft costs. We have laid off so many employees. Help us try to get our people back to work. This bill will have no impact on bankers. This bill is not unconstitutional. It just changes the time the impact fees are due. We may suggest grandfathering existing programs, but other than that, this bill should have statewide application. This bill will have a significant impact in getting projects started that otherwise could not be done.

CON: The 35 cities impacted by this bill are half the cities in the state that impose impact fees. They impose impact fees because they can't keep up with services and infrastructure needed for the growth they experience. Sammamish is experimenting with a similar program right now. Clearly, doing so is already within the authority local governments have. This

bill is outright preemption. Jurisdictions' needs differ. This jeopardizes school availability when the kids move into new development. If the bill goes forward, at least recognize the school districts as unique. Federal Way is also piloting deferral of payment of impact fees, but does not want this bill to pass because it is a mandate for all cities. Pierce County tried this a few years ago and the program was a significant failure. The time between permitting and occupancy for retail home-building is about three months. The time the money sits with the jurisdiction is not one to two years. New growth should pay for itself. The Pierce County prosecutor thought the liens were unconstitutional lending of the county's credit. This bill guts concurrency laws. Local governments will have costs from tracking whether the liens are paid. Fred Jarrett told the proponents that they have good points and he will convene a conversation with all parties.

Persons Testifying: PRO: Kim Herman, Housing Finance Commission; David Main, Main Street Homes; Lynn Eshleman, Pacific Ridge Homes; Paul Bogel, Bogel Consulting Group; Scott Hildebrand, Master Builders Association; Joseph Irons, Irons Brothers Construction, Inc.; Grey Lundberg, Grey Lundberg, Inc.; Tim Harris, Building Industry Association of Washington.

CON: Dave Williams, Association of Washington Cities; Doug Levy, Everett, Kent, Federal Way, Renton, Puyallup, Redmond; April Putney, Futurewise; Genesee Adkins, King County; Bruce Wishart, People for Puget Sound; Charlie Brown, Puget Sound School Coalition.