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HOUSE BILL 3088

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Orcutt, McCune, and Haler

Read first time 01/22/10. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to establishing a moratorium on the imposition of  
2 impact fees; amending RCW 82.02.050 and 39.92.030; adding a new section  
3 to chapter 82.02 RCW; creating a new section; and providing expiration  
4 dates.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that Washington's  
7 building and construction trades along with their linked suppliers of  
8 goods and services including but not limited to various sectors in  
9 manufacturing; wholesale and retail trade; professional, scientific,  
10 and technical services; agriculture and forestry; and information  
11 services have been disproportionately affected during the current  
12 economic downturn. The construction industry alone has suffered nearly  
13 sixty thousand job losses, which is nearly thirty percent of its  
14 workforce, in the last two years with the most severe losses focused in  
15 the residential sector.

16 (2) Building new homes and reinvigorating the housing market will  
17 create a positive ripple of economic activity throughout the entire  
18 state. The construction industry has the potential to generate  
19 billions of dollars in our state, tens of thousands of jobs, and much

1 needed taxable revenue for the state, counties, and local governments.  
2 The industry employs a wide spectrum of workers ranging from entry  
3 level to professionals and is a broad-based source of family wage jobs.  
4 The construction industry plays an integral role in the green economy,  
5 representing over forty percent of the green jobs in 2008.

6 (3) The legislature finds that impact fees and their associated  
7 carrying costs can easily add tens of thousands of dollars to the cost  
8 of a new home. These fees are in addition to the many permitting fees,  
9 utility fees, property taxes, and real estate excise taxes paid by the  
10 property owners. Impact fees artificially inflate the cost of a new  
11 home beyond the actual value of the home.

12 (4) The legislature recognizes the great degree to which the state  
13 of Washington and its local governments depend on the revenues and jobs  
14 generated from the construction and sale of new homes and intends to  
15 help jumpstart the state economy. By suspending these fees, builders  
16 will be more likely to obtain financing in these tight financial  
17 markets to cover the actual cost to build enabling them to reemploy  
18 thousands of laid-off workers and break even in the current real estate  
19 market.

20 **Sec. 2.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read  
21 as follows:

22 (1) It is the intent of the legislature:

23 (a) To ensure that adequate facilities are available to serve new  
24 growth and development;

25 (b) To promote orderly growth and development by establishing  
26 standards by which counties, cities, and towns may require, by  
27 ordinance, that new growth and development pay a proportionate share of  
28 the cost of new facilities needed to serve new growth and development;  
29 and

30 (c) To ensure that impact fees are imposed through established  
31 procedures and criteria so that specific developments do not pay  
32 arbitrary fees or duplicative fees for the same impact.

33 (2) Except as provided in section 4 of this act, counties, cities,  
34 and towns that are required or choose to plan under RCW 36.70A.040 are  
35 authorized to impose impact fees on development activity as part of the  
36 financing for public facilities, provided that the financing for system

1 improvements to serve new development must provide for a balance  
2 between impact fees and other sources of public funds and cannot rely  
3 solely on impact fees.

4 (3) The impact fees:

5 (a) (~~Shall~~) Must only be imposed for system improvements that are  
6 reasonably related to the new development;

7 (b) (~~Shall~~) May not exceed a proportionate share of the costs of  
8 system improvements that are reasonably related to the new development;  
9 and

10 (c) (~~Shall~~) Must be used for system improvements that will  
11 reasonably benefit the new development.

12 (4)(a) Impact fees may be collected and spent only for the public  
13 facilities defined in RCW 82.02.090 which are addressed by a capital  
14 facilities plan element of a comprehensive land use plan adopted  
15 pursuant to the provisions of RCW 36.70A.070 or the provisions for  
16 comprehensive plan adoption contained in chapter 36.70, 35.63, or  
17 35A.63 RCW. After the date a county, city, or town is required to  
18 adopt its development regulations under chapter 36.70A RCW, continued  
19 authorization to collect and expend impact fees (~~shall be~~) is  
20 contingent on the county, city, or town adopting or revising a  
21 comprehensive plan in compliance with RCW 36.70A.070, and on the  
22 capital facilities plan identifying:

23 (~~(a)~~) (i) Deficiencies in public facilities serving existing  
24 development and the means by which existing deficiencies will be  
25 eliminated within a reasonable period of time;

26 (~~(b)~~) (ii) Additional demands placed on existing public  
27 facilities by new development; and

28 (~~(c)~~) (iii) Additional public facility improvements required to  
29 serve new development.

30 (b) If the capital facilities plan of the county, city, or town is  
31 complete other than for the inclusion of those elements which are the  
32 responsibility of a special district, the county, city, or town may  
33 impose impact fees to address those public facility needs for which the  
34 county, city, or town is responsible.

35 **Sec. 3.** RCW 39.92.030 and 1988 c 179 s 3 are each amended to read  
36 as follows:

37 Local governments may develop and adopt programs for the purpose of

1 jointly funding, from public and private sources, transportation  
2 improvements necessitated in whole or in part by economic development  
3 and growth within their respective jurisdictions. Local governments  
4 (~~shall~~) must adopt the programs by ordinance after notice and public  
5 hearing. Each program (~~shall~~) must contain the elements described in  
6 this section.

7 (1) The program (~~shall~~) must identify the geographic boundaries  
8 of the entire area or areas generally benefited by the proposed off-  
9 site transportation improvements and within which transportation impact  
10 fees will be imposed under this chapter.

11 (2) The program (~~shall~~) must be based on an adopted  
12 comprehensive, long-term transportation plan identifying the proposed  
13 off-site transportation improvements reasonable and necessary to meet  
14 the future growth needs of the designated plan area and intended to be  
15 covered by this joint funding program, including acquisition of right-  
16 of-way, construction and reconstruction of all major and minor  
17 arterials and intersection improvements, and identifying design  
18 standards, levels of service, capacities, and costs applicable to the  
19 program. The program (~~shall~~) must also indicate how the  
20 transportation plan is coordinated with applicable transportation plans  
21 for the region and for adjacent jurisdictions. The program (~~shall~~)  
22 must also indicate how public transportation and ride-sharing  
23 improvements and services will be used to reduce off-site  
24 transportation impacts from development.

25 (3) The program (~~shall~~) must include at least a six-year capital  
26 funding program, updated annually, identifying the specific public  
27 sources and amounts of revenue necessary to pay for that portion of the  
28 cost of all off-site transportation improvements contained in the  
29 transportation plan that will not foreseeably be funded by  
30 transportation impact fees. The program (~~shall~~) must include a  
31 proposed schedule for construction and expenditures of funds. The  
32 funding plan (~~shall~~) must consider the additional local tax revenue  
33 estimated to be generated by new development within the plan area if  
34 all or a portion of the additional revenue is proposed to be earmarked  
35 as future appropriations for such off-site transportation improvements.

36 (4) Except as provided in section 4 of this act, the program  
37 (~~shall~~) must authorize transportation impact fees to be imposed on  
38 new development within the plan area for the purpose of providing a

1 portion of the funding for reasonable and necessary off-site  
2 transportation improvements to solve the cumulative impacts of planned  
3 growth and development in the plan area. Off-site transportation  
4 impacts (~~shall~~) must be measured as a pro rata share of the capacity  
5 of the off-site transportation improvements being funded under the  
6 program. The fees (~~shall~~) must not exceed the amount that the local  
7 government can demonstrate is reasonably necessary as a direct result  
8 of the proposed development.

9 (5) The program (~~shall~~) must provide that the funds collected as  
10 a result of a particular new development (~~shall~~) must be used in  
11 substantial part to pay for improvements mitigating the impacts of the  
12 development or be refunded to the property owners of record. Fees paid  
13 toward more than one transportation improvement may be pooled and  
14 expended on any one of the improvements mitigating the impact of the  
15 development. The funds (~~shall~~) must be expended in all cases within  
16 six years of collection by the local government or the unexpended funds  
17 (~~shall~~) must be refunded.

18 (6) The program (~~shall~~) must also describe the formula, timing,  
19 security, credits, and other terms and conditions affecting the amount  
20 and method of payment of the transportation impact fees as further  
21 provided for in RCW 39.92.040. In calculating the amount of the fee,  
22 local government (~~shall~~) must consider and give credit for the  
23 developer's participation in public transportation and ride-sharing  
24 improvements and services.

25 (7) The administrative element of the program (~~shall~~) must  
26 include: An opportunity for administrative appeal by the developer and  
27 hearing before an independent examiner of the amount of the  
28 transportation impact fee imposed; establishment of a designated  
29 account for the public and private funds appropriated or collected for  
30 the transportation improvements identified in the plan; methods to  
31 enforce collection of the public and private funds identified in the  
32 program; designation of the administrative departments or other  
33 entities responsible for administering the program, including  
34 determination of fee amounts, transportation planning, and  
35 construction; and provisions for future amendment of the program  
36 including the addition of other off-site transportation improvements.  
37 The program (~~shall~~) may not be amended in a manner to relieve local  
38 government of any contractual obligations made to prior developers.

1 (8) The program (~~shall~~) must provide that private transportation  
2 impact fees shall not be collected for any off-site transportation  
3 improvement that is incapable of being reasonably carried out because  
4 of lack of public funds or other foreseeable impediment.

5 (9) The program (~~shall~~) must provide that no transportation  
6 impact fee may be imposed on a development by local government pursuant  
7 to this program when mitigation of the same off-site transportation  
8 impacts for the development is being required by any government agency  
9 pursuant to any other local, state, or federal law.

10 NEW SECTION. Sec. 4. A new section is added to chapter 82.02 RCW  
11 to read as follows:

12 (1) As of July 1, 2010, counties, cities, and transportation  
13 benefit districts created under chapter 36.73 RCW may not impose impact  
14 fees under RCW 82.02.050(2) or 39.92.030.

15 (2) This section does not limit the authority of a county, city, or  
16 transportation benefit district to impose impact fees upon development  
17 activities that were approved by the applicable county or city prior to  
18 July 1, 2010.

19 (3) This section expires June 30, 2012.

20 NEW SECTION. Sec. 5. Sections 1 through 3 of this act expire June  
21 30, 2012.

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