

HOUSE BILL REPORT

EHB 1398

As Amended by the Senate

Title: An act relating to exempting low-income housing from impact fees.

Brief Description: Creating an exemption from impact fees for low-income housing.

Sponsors: Representatives Fitzgibbon, Seaquist, Orwall, Springer, Upthegrove and Kenney.

Brief History:

Committee Activity:

Community & Economic Development & Housing: 1/26/11, 2/3/11 [DPA].

Floor Activity:

Passed House: 2/22/11, 86-8.

Floor Activity:

Passed House: 1/27/12, 53-42.

Senate Amended.

Passed Senate: 3/1/12, 32-16.

House Refused to Concur.

Senate Amended.

Passed Senate: 3/8/12, 32-17.

Brief Summary of Engrossed Bill

- Removes the requirement that local governments pay impact fees from qualifying public funds upon exempting low-income housing from impact fee requirements.
- Specifies that impact fee exemptions for low-income housing require the developer to record a covenant prohibiting conversion of the property unless applicable impact fees are paid.
- Prohibits local governments from collecting mitigation fees under the State Environmental Policy Act for low-income housing in place of exempted impact fees.
- Prohibits local governments granting impact fee exemptions for low-income housing from increasing the costs of impact fees unrelated to the exemptions.

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.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & HOUSING

Majority Report: Do pass as amended. Signed by 8 members: Representatives Kenney, Chair; Finn, Vice Chair; Smith, Ranking Minority Member; Ahern, Maxwell, Ryu, Santos and Walsh.

Staff: Jennifer Thornton (786-7147).

Background:

Growth Management Act.

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.

Impact Fees.

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.

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.

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.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify possible environmental impacts that may result from governmental decisions, including the issuance of permits or the adoption of or amendment to land use plans and regulations. Any governmental action may be conditioned or denied pursuant to the SEPA, provided the conditions or denials are based upon policies identified by the appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

Summary of Engrossed Bill:

Local governments granting impact fee exemptions for low-income housing are not obligated to pay the exempted fees from qualifying public funds.

For a local government to grant an impact fee exemption for low-income housing, a developer must record a covenant with the county auditor prohibiting the use of the property for any purpose other than for low-income housing. If the property is later converted to another use, the property owner must pay the applicable impact fees at the time of conversion.

Local governments granting an impact fee exemption for low-income housing may not impose a fee under the SEPA for the system improvements for which the exemption applies.

Local governments also may not collect the revenue lost due to granting impact fee exemptions for low-income housing by increasing fees unrelated to the exemptions.

EFFECT OF SENATE AMENDMENT(S):

Under the Senate Amendment, a local government is allowed to either: (1) provide a partial exemption of up to 80 percent of impact fees for low-income housing with no explicit requirement to pay the exempted fees from public funds other than impact fee accounts; or (2) provide a full waiver of impact fees, in which the remaining percentage of the exempted fees must be paid from public funds other than impact fee accounts.

(However, a provision still remains elsewhere in the law requiring a local government that provides an impact fee exemption for low-income housing to pay for the impact fees for such development activity from public funds other than impact fee accounts.)

School districts that receive impact fees must approve any exemption provided for low-income housing.

The provision requiring local governments granting an impact fee exemption for low-income housing to also exempt fees otherwise due under the State Environmental Policy Act is removed.

The developer's recorded covenant must include price restrictions and household income limits for the low-income housing.

Low-income housing is defined to mean housing with a monthly housing expense of no more than 30 percent of 80 percent of the county's median family income.

Appropriation: None.

Fiscal Note: Available.

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 legislation provides cities with an optional tool to help increase affordable housing within their jurisdictions. A number of areas are interested and this will enable them to waive impact fees for affordable housing and not repay the costs out of their general fund, which they cannot afford to pay. Impact fees raise cost of housing significantly. More affordable housing is needed, especially in more expensive jurisdictions. Certain projects cannot come to fruition due to costs in certain communities; instead, the developments are taking place in areas with lower land-use costs, but then transportation costs are increased. This will enable growth in areas where there are jobs. Typically impact fees are imposed in growing suburban areas that are dealing with substantial growth that do not have established infrastructure. Impact fees are imposed by 70 of 281 cities, and are part of a long set of costs that make it difficult to provide low-income housing. This option should be provided for affordable housing at all levels, including market rate, as every increment prices someone out of the market.

(Opposed) None.

Persons Testifying: Representative Fitzgibbon, prime sponsor; Bob Sternoff, City of Kirkland; Rob Karlinsey, City of Gig Harbor; Harry Hoffman, Housing Development Consortium of Seattle-King County; Dave Williams, Association of Washington Cities; Richard Phillips, Gig Harbor Chapter Habitat for Humanity; Scott Hildebrand, Master Builders Association; and Arthur Sullivan, A Regional Coalition for Housing.

Persons Signed In To Testify But Not Testifying: None.