

HOUSE BILL REPORT

EHB 1702

As Passed House:
March 4, 2011

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: Representatives Liias, Rodne, Angel, Springer, Eddy, Smith, Anderson, Clibborn, Stanford and Takko.

Brief History:

Committee Activity:

Local Government: 2/9/11, 2/15/11 [DP].

Floor Activity:

Passed House: 3/4/11, 83-14.

Brief Summary of Engrossed Bill

- Obligates counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification.
- Authorizes counties, cities, and towns to adopt alternative impact fee collection deferral systems if certain requirements are met.
- Delays the starting of the six-year timeframe for satisfying concurrency provisions of the Growth Management Act until after the county or city receives full payment of all deferred impact fees.
- Expires the impact fee deferral requirements and associated concurrency provisions on July 1, 2016.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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: Do pass. Signed by 8 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Rodne, Smith, Springer and Upthegrove.

Minority Report: Without recommendation. Signed by 1 member: Representative Fitzgibbon.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act and Concurrency.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated to satisfy all planning requirements of the GMA.

The GMA directs counties and cities that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, including land use and transportation, each of which is a subset of a comprehensive plan. Comprehensive plans must be coordinated and consistent with those of other counties and cities with which the county or city has common borders or related regional issues. The implementation of comprehensive plans occurs through locally-adopted development regulations mandated by the GMA.

The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs. A provision of the sub-element for facilities and services needs requires planning jurisdictions to adopt level of service (LOS) standards for all locally-owned arterials and transit routes.

Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the proposed development will cause the LOS on a locally-owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this "concurrency" prohibition may be made if improvements or strategies to accommodate development impacts are made concurrent with the development. These strategies may include:

- increased public transportation service;
- ride sharing programs;
- demand management; and
- other transportation systems management strategies.

"Concurrent with the development" means improvements or strategies that 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.

Transportation elements may also include, in addition to improvements or strategies to accommodate the impacts of development authorized under the GMA, multimodal transportation improvements or strategies that are made concurrent with the development.

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. 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.

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; 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.

Land Divisions.

The process by which land divisions may occur is governed by state and local requirements. Local governments, the entities charged with receiving and determining land division proposals, must adopt associated ordinances and procedures in conformity with state requirements.

Numerous statutorily defined terms are applicable in land use division actions. Examples include the following:

- "Subdivision" generally means the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.
- "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision.
- "Short subdivision" generally means the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. The legislative authority of any planning jurisdiction may, with some limitations, increase the number of lots, tracts, or parcels to be regulated as short subdivisions to nine.
- "Short plat" is the map or representation of a short subdivision.
- "Final plat" is the final drawing of the subdivision and dedication prepared for a filing for record with the county auditor. A final plat must contain elements and requirements mandated by statute and applicable local government regulations.

Summary of Engrossed Bill:

Impact Fee Payment Deferral Processes.

Counties, cities, and towns that collect impact fees must adopt a system for the collection of impact fees from applicants for residential building permits issued for a lot or unit created by a subdivision, short subdivision, site development permit, binding site plan, or condominium that includes one or more of the following:

- a process by which an applicant for any development permit that requires payment of an impact fee may record a covenant against title to the lot or unit subject to the impact fee obligation. Covenants recorded through this process must satisfy delineated requirements, including, requiring payment of all impact fees applicable to the lot or unit at the rates in effect at the time the building permit was issued, less a credit for paid deposits. The covenants, which must serve as liens, must be removed by the local government upon receiving payment, and must provide for the payment of the impact fees through escrow at the time of closing or 18 or more months after the issuance of a building permit, whichever is earlier. Disclosure requirements pertaining to property that is subject to an impact fee deferral covenant are also specified; or
- a process by which an applicant may apply for a deferral of the impact fee payment until final inspection or certificate of occupancy, or equivalent certification.

As an alternative to these impact fee deferral processes, counties, cities, and towns may adopt local deferral systems that differ from the covenant and final inspection or certificate of occupancy processes if the payment timing provisions are consistent with those processes.

Growth Management Act – Delayed Start of Concurrency Timeframe.

If the collection of impact fees is delayed through a deferral covenant process, a final inspection or certificate of occupancy deferral process, or an authorized alternative local government deferral system, the six-year timeframe for completing improvements or strategies for complying with concurrency provisions of the GMA may not begin until after the county or city receives full payment of all impact fees due.

Expiration Date.

The impact fee deferral requirements and associated concurrency timeline provisions expire July 1, 2016.

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) King and Snohomish Counties are already using impact fee deferral practices and this bill will build upon existing efforts. Small builders have to bear significant costs in their efforts to provide quality products.

We are in a recession and unemployment among home builders is very high. Home builders typically lead the state out of recessions; allowing a deferral of impact fees will be beneficial for the state's economy. Impact fees are a significant cost to builders and more costs mean fewer homes and fewer jobs. This bill has bipartisan sponsorship and numerous parties have endorsed the bill and its concepts. The intention is to have legislation that will require impact fees to be paid within a maximum deferral period of 18 months. Cities and counties have the administrative skill necessary to administer the bill and cities and school districts are already allowed six to 10 years to expend collected fees.

(In support with concerns) Pierce County supports the concept of deferred impact fee collections, despite the problems the county had with the deferral program it employed in 1997. In 2008 the county council revisited the deferral issue and chose to begin a new impact fee deferral plan in 2010. There is concern about losing local discretion and the ability to tailor a program to local needs. The bill lacks a distinction in deferrals and excludes large-lot subdivisions and binding site plans. An amendment to include these land use actions should be considered.

(Opposed) Cities are supportive of builders and local jurisdictions in their efforts to establish local impact fee deferral provisions. Cities that have delayed the collection of impact fees have only done so for the facilities they own and operate. Cities have not delayed the collection of school impact fees, but this bill will require deferrals for all impact fees. Cities would like to retain the authority to make deferral decisions at the local level. If the state does decide to preempt city authority, cities suggest expiring the deferral requirements after a predetermined length of time and requiring a report to analyze the effect of the deferrals. If the Legislature wants to help builders, other options should be explored. Cities, such as the City of Redmond, have been receptive to builders who have requested impact fee deferral options. Impact fee deferral decisions belong at the local level, but this bill represents a "one-size-fits-all" approach to deferrals.

Persons Testifying: (In support) Representative Liias, prime sponsor; Scott Hildebrand, Master Builders Association of King and Snohomish Counties; and Bill Stauffacher, Building Industry Association of Washington.

(In support with concerns) Brynn Brady, Pierce County.

(Opposed) Dave Williams, Association of Washington Cities; Doug Levy, Cities of Redmond, Everett, Kent and Puyallup; and April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.