

SENATE BILL REPORT

EHB 1702

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, March 22, 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: Passed House: 3/04/11, 83-14.

Committee Activity: Financial Institutions, Housing & Insurance: 3/15/11, 3/22/11 [DPA, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass as amended.

Signed by Senators Hobbs, Chair; Fain, Haugen, Keiser and Litzow.

Minority Report: That it be referred without recommendation.

Signed by Senator Benton, Ranking Minority Member.

Staff: Alison Mendiola (786-7483)

Background: Growth Management Act (GMA). The 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. Additionally, impact fees:

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- 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 in jurisdictions that are not part of a fire district.

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.

Summary of Bill (Recommended Amendments): 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.

Impact fees for school facilities may not be deferred and existing deferral programs are grandfathered in. A deferral for impact fees does not impact other requirements.

The Department of Commerce (Commerce) is to report to the Legislature by December 1, 2014, regarding the deferrals and their outcomes.

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, 2015.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Amendments): Impact fees for school facilities may not be deferred. Existing deferral programs are grandfathered in. A deferral for impact fees does not impact other requirements. Commerce is to report to the Legislature by December 1, 2014, regarding the deferrals and their outcomes. The provisions of the act expire on July 1, 2015.

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 House Bill: PRO: Although the bill is not without controversy, the benefit of the bill to our economy is not without merit. Currently, without a deferral, impact fees must be paid upfront; although, the impact doesn't happen until the residence is occupied. Coming up with the funding for soft costs like impact fees can make or break a project. Deferring the impact fee payment a few more months would be an enormous benefit; the cities would still get their money and the builders could build. Rebuilding the residential building sector is the key to our economic recovery.

CON: The cities can appreciate the difficult situation builders have found themselves in and offered several ways to improve the bill such as limiting the deferral to single-family residences, providing an expiration date and report to the Legislature, and exempting cities with low-impact fees. Also, school facility impact fees should not be subject to deferral – it takes a long time to plan for an increase in students, whether a new portable needs to be purchased or a new building needs to be built.

OTHER: School facility impact fees should not be deferred.

Persons Testifying: PRO: Marco Lias, prime sponsor; Bill Stauffacher, Building Industry Association of Washington; Scott Hildebrand, Master Builders of King and Snohomish County.

CON: Dave Williams, Association of Washington Cities; Allan Giffen, City of Everett; Doug Levy, Cities of Redmond and Puyallup; Mitch Denning, Alliance of Education Associations; Mike Brown, Washington Fire Chiefs; April Putney, Futurewise; Marcia Fromhold, Evergreen School District, Vancouver.

OTHER: Martin Turney, Issaquah School District; Lori Cloud, Tahoma School District; Josh Weiss, Washington State Association of Counties.