

SENATE BILL REPORT

SB 5607

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 16, 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: Senators Hobbs, Fain, Haugen, Harper, White and Ericksen.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/08/11, 2/16/11 [DPS].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5607 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen, Keiser and Litzow.

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:

- 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

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- 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 Substitute): Counties, cities, and towns collecting impact fees are to make available to applicants of building permits issued for lot or unit development a process by which the applicant may either (1) record a covenant against each lot which is to be paid at the closing of the sale of the lot or unit or within 18 months of the issuance of the building permit, whichever is sooner, or (2) apply for the deferral of impact fee payment until final inspection or certificate of occupancy. These options are not available to a party who contracts for the construction of dwellings on land owned or otherwise controlled by the party. However, any portion of an impact fee necessary for school facilities must be paid at the time any impact fee without a deferral would ordinarily be due.

A seller of property subject to the covenant is to provide a written disclosure of the covenant to a purchaser or prospective purchaser, including the amount of the covenant and the government(s) or district(s) to be paid at closing.

If a lot is leased or rented, all impact fees applicable to the lot must be paid in full at the time of the issuance of a certificate of occupancy.

If there is a delay in the collection of impact fees under these provisions, the six-year period required under the transportation element of the GMA begins after the county or city receives full payment of all impact fees due.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): Even if there is a deferral of impact fees, any portion of an impact fee necessary for school facilities must be paid at the time any impact fee without a deferral would ordinarily be due.

Appropriation: None.

Fiscal Note: Not requested.

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 Original Bill: PRO: A similar bill was introduced last session. With the current credit crunch, it's hard to get funding for development. It's possible to get funding for hard costs but not for soft costs, and impact fees are considered soft costs. We should do whatever we can do to kick start this important industry. Schools will say they need the money, but many have high balances; they will still get the funding, just on the back end.

CON: There are 78 cities who charge impact fees and it's the cities who've accepted growth. Cities are starting to work locally on delayed fees but the preference is to leave this as a local choice. Some cities have a deferral process but collect the school money up front. When the GMA was adopted, locals were given decision-making authority, including the issue of impact fees. School collect up front so they can plan appropriately. This legislation doesn't need to pass to give locals the authority to delay the collection time.

Persons Testifying: PRO: Scott Hildebrand, Master Builders Association of King, Snohomish County; Bob Mitchell, Washington Realtors.

CON: Doug Levy, Cities of Redmond and Everett; Dave Williams, Association of Washington Cities; April Putney, Futurewise.