
SENATE BILL 5607

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By Senators Hobbs, Fain, Haugen, Harper, White, and Ericksen

Read first time 02/01/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to establishing a process for the payment of impact
2 fees through provisions stipulated in recorded covenants; and amending
3 RCW 82.02.050 and 36.70A.070.

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

5 **Sec. 1.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read
6 as follows:

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

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

10 (b) To promote orderly growth and development by establishing
11 standards by which counties, cities, and towns may require, by
12 ordinance, that new growth and development pay a proportionate share of
13 the cost of new facilities needed to serve new growth and development;
14 and

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

18 (2) Counties, cities, and towns that are required or choose to plan
19 under RCW 36.70A.040 are authorized to impose impact fees on

1 development activity as part of the financing for public facilities,
2 provided that the financing for system improvements to serve new
3 development must provide for a balance between impact fees and other
4 sources of public funds and cannot rely solely on impact fees.

5 (3)(a) Counties, cities, and towns collecting impact fees must make
6 available, in addition to other fee deferral ordinances that may have
7 been adopted, to applicants for building permits issued for a lot or
8 unit created by a subdivision, short subdivision, site development
9 permit, or condominium either:

10 (i)(A) A process by which the applicant may record a covenant,
11 which must also serve as a lien, against title to the lot or unit that
12 requires payment equal to one hundred percent of the impact fee
13 applicable to that lot or unit at the rates in effect at the time of
14 issuance of the building permit, less a credit for any deposits paid.

15 (B) Covenants recorded in accordance with this subsection (3)(a)(i)
16 must provide for payment through escrow of the impact fee at the time
17 of closing of sale of the unit that is the subject of the building
18 permit or within eighteen months after issuance of the building permit,
19 whichever is earlier. Payment of fees due at closing of a sale must be
20 made from seller's proceeds, unless an agreement to the contrary is
21 reached between buyer and seller. In the absence of such agreement to
22 the contrary, the seller bears strict liability for payment of such
23 fees; or

24 (ii) A process by which an applicant may apply for deferral of
25 impact fee payment until final inspection or certificate of occupancy,
26 or equivalent certification.

27 (b) A seller, and/or agents of a seller, of property subject to a
28 covenant authorized under this subsection (3) must provide written
29 disclosure of such covenant to a purchaser or prospective purchaser as
30 provided in chapter 64.06 RCW. Disclosure of such covenant must
31 include the amount of fees payable, and the government(s) or
32 district(s) to which fees are to be paid at closing.

33 (c) In the event the lot or unit is leased or rented rather than
34 sold, all impact fees applicable to such lot or unit must be paid in
35 full upon issuance of a certificate of occupancy or equivalent final
36 occupancy approval.

37 (d) This subsection (3) does not apply to dwellings built on land

1 owned or otherwise controlled by a party who contracts for the
2 construction of a dwelling.

3 (4) The impact fees:

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

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

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

11 (~~(4)~~) (5)(a) Impact fees may be collected and spent only for the
12 public facilities defined in RCW 82.02.090 which are addressed by a
13 capital facilities plan element of a comprehensive land use plan
14 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions
15 for comprehensive plan adoption contained in chapter 36.70, 35.63, or
16 35A.63 RCW. After the date a county, city, or town is required to
17 adopt its development regulations under chapter 36.70A RCW, continued
18 authorization to collect and expend impact fees (~~shall be~~) is
19 contingent on the county, city, or town adopting or revising a
20 comprehensive plan in compliance with RCW 36.70A.070, and on the
21 capital facilities plan identifying:

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

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

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

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

34 **Sec. 2.** RCW 36.70A.070 and 2010 1st sp.s. c 26 s 6 are each
35 amended to read as follows:

36 The comprehensive plan of a county or city that is required or
37 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,

1 and descriptive text covering objectives, principles, and standards
2 used to develop the comprehensive plan. The plan shall be an
3 internally consistent document and all elements shall be consistent
4 with the future land use map. A comprehensive plan shall be adopted
5 and amended with public participation as provided in RCW 36.70A.140.

6 Each comprehensive plan shall include a plan, scheme, or design for
7 each of the following:

8 (1) A land use element designating the proposed general
9 distribution and general location and extent of the uses of land, where
10 appropriate, for agriculture, timber production, housing, commerce,
11 industry, recreation, open spaces, general aviation airports, public
12 utilities, public facilities, and other land uses. The land use
13 element shall include population densities, building intensities, and
14 estimates of future population growth. The land use element shall
15 provide for protection of the quality and quantity of groundwater used
16 for public water supplies. Wherever possible, the land use element
17 should consider utilizing urban planning approaches that promote
18 physical activity. Where applicable, the land use element shall review
19 drainage, flooding, and storm water run-off in the area and nearby
20 jurisdictions and provide guidance for corrective actions to mitigate
21 or cleanse those discharges that pollute waters of the state, including
22 Puget Sound or waters entering Puget Sound.

23 (2) A housing element ensuring the vitality and character of
24 established residential neighborhoods that: (a) Includes an inventory
25 and analysis of existing and projected housing needs that identifies
26 the number of housing units necessary to manage projected growth; (b)
27 includes a statement of goals, policies, objectives, and mandatory
28 provisions for the preservation, improvement, and development of
29 housing, including single-family residences; (c) identifies sufficient
30 land for housing, including, but not limited to, government-assisted
31 housing, housing for low-income families, manufactured housing,
32 multifamily housing, and group homes and foster care facilities; and
33 (d) makes adequate provisions for existing and projected needs of all
34 economic segments of the community.

35 (3) A capital facilities plan element consisting of: (a) An
36 inventory of existing capital facilities owned by public entities,
37 showing the locations and capacities of the capital facilities; (b) a
38 forecast of the future needs for such capital facilities; (c) the

1 proposed locations and capacities of expanded or new capital
2 facilities; (d) at least a six-year plan that will finance such capital
3 facilities within projected funding capacities and clearly identifies
4 sources of public money for such purposes; and (e) a requirement to
5 reassess the land use element if probable funding falls short of
6 meeting existing needs and to ensure that the land use element, capital
7 facilities plan element, and financing plan within the capital
8 facilities plan element are coordinated and consistent. Park and
9 recreation facilities shall be included in the capital facilities plan
10 element.

11 (4) A utilities element consisting of the general location,
12 proposed location, and capacity of all existing and proposed utilities,
13 including, but not limited to, electrical lines, telecommunication
14 lines, and natural gas lines.

15 (5) Rural element. Counties shall include a rural element
16 including lands that are not designated for urban growth, agriculture,
17 forest, or mineral resources. The following provisions shall apply to
18 the rural element:

19 (a) Growth management act goals and local circumstances. Because
20 circumstances vary from county to county, in establishing patterns of
21 rural densities and uses, a county may consider local circumstances,
22 but shall develop a written record explaining how the rural element
23 harmonizes the planning goals in RCW 36.70A.020 and meets the
24 requirements of this chapter.

25 (b) Rural development. The rural element shall permit rural
26 development, forestry, and agriculture in rural areas. The rural
27 element shall provide for a variety of rural densities, uses, essential
28 public facilities, and rural governmental services needed to serve the
29 permitted densities and uses. To achieve a variety of rural densities
30 and uses, counties may provide for clustering, density transfer, design
31 guidelines, conservation easements, and other innovative techniques
32 that will accommodate appropriate rural densities and uses that are not
33 characterized by urban growth and that are consistent with rural
34 character.

35 (c) Measures governing rural development. The rural element shall
36 include measures that apply to rural development and protect the rural
37 character of the area, as established by the county, by:

38 (i) Containing or otherwise controlling rural development;

1 (ii) Assuring visual compatibility of rural development with the
2 surrounding rural area;

3 (iii) Reducing the inappropriate conversion of undeveloped land
4 into sprawling, low-density development in the rural area;

5 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
6 surface water and groundwater resources; and

7 (v) Protecting against conflicts with the use of agricultural,
8 forest, and mineral resource lands designated under RCW 36.70A.170.

9 (d) Limited areas of more intensive rural development. Subject to
10 the requirements of this subsection and except as otherwise
11 specifically provided in this subsection (5)(d), the rural element may
12 allow for limited areas of more intensive rural development, including
13 necessary public facilities and public services to serve the limited
14 area as follows:

15 (i) Rural development consisting of the infill, development, or
16 redevelopment of existing commercial, industrial, residential, or
17 mixed-use areas, whether characterized as shoreline development,
18 villages, hamlets, rural activity centers, or crossroads developments.

19 (A) A commercial, industrial, residential, shoreline, or mixed-use
20 area shall be subject to the requirements of (d)(iv) of this
21 subsection, but shall not be subject to the requirements of (c)(ii) and
22 (iii) of this subsection.

23 (B) Any development or redevelopment other than an industrial area
24 or an industrial use within a mixed-use area or an industrial area
25 under this subsection (5)(d)(i) must be principally designed to serve
26 the existing and projected rural population.

27 (C) Any development or redevelopment in terms of building size,
28 scale, use, or intensity shall be consistent with the character of the
29 existing areas. Development and redevelopment may include changes in
30 use from vacant land or a previously existing use so long as the new
31 use conforms to the requirements of this subsection (5);

32 (ii) The intensification of development on lots containing, or new
33 development of, small-scale recreational or tourist uses, including
34 commercial facilities to serve those recreational or tourist uses, that
35 rely on a rural location and setting, but that do not include new
36 residential development. A small-scale recreation or tourist use is
37 not required to be principally designed to serve the existing and
38 projected rural population. Public services and public facilities

1 shall be limited to those necessary to serve the recreation or tourist
2 use and shall be provided in a manner that does not permit low-density
3 sprawl;

4 (iii) The intensification of development on lots containing
5 isolated nonresidential uses or new development of isolated cottage
6 industries and isolated small-scale businesses that are not principally
7 designed to serve the existing and projected rural population and
8 nonresidential uses, but do provide job opportunities for rural
9 residents. Rural counties may allow the expansion of small-scale
10 businesses as long as those small-scale businesses conform with the
11 rural character of the area (~~as defined by the local government~~
12 ~~according to RCW 36.70A.030(15)~~). Rural counties may also allow new
13 small-scale businesses to utilize a site previously occupied by an
14 existing business as long as the new small-scale business conforms to
15 the rural character of the area (~~as defined by the local government~~
16 ~~according to RCW 36.70A.030(15)~~). Public services and public
17 facilities shall be limited to those necessary to serve the isolated
18 nonresidential use and shall be provided in a manner that does not
19 permit low-density sprawl. For the purposes of this subsection, "rural
20 character" has the same meaning as provided in RCW 36.70A.030;

21 (iv) A county shall adopt measures to minimize and contain the
22 existing areas or uses of more intensive rural development, as
23 appropriate, authorized under this subsection. Lands included in such
24 existing areas or uses shall not extend beyond the logical outer
25 boundary of the existing area or use, thereby allowing a new pattern of
26 low-density sprawl. Existing areas are those that are clearly
27 identifiable and contained and where there is a logical boundary
28 delineated predominately by the built environment, but that may also
29 include undeveloped lands if limited as provided in this subsection.
30 The county shall establish the logical outer boundary of an area of
31 more intensive rural development. In establishing the logical outer
32 boundary, the county shall address (A) the need to preserve the
33 character of existing natural neighborhoods and communities, (B)
34 physical boundaries, such as bodies of water, streets and highways, and
35 land forms and contours, (C) the prevention of abnormally irregular
36 boundaries, and (D) the ability to provide public facilities and public
37 services in a manner that does not permit low-density sprawl;

1 (v) For purposes of (d) of this subsection, an existing area or
2 existing use is one that was in existence:

3 (A) On July 1, 1990, in a county that was initially required to
4 plan under all of the provisions of this chapter;

5 (B) On the date the county adopted a resolution under RCW
6 36.70A.040(2), in a county that is planning under all of the provisions
7 of this chapter under RCW 36.70A.040(2); or

8 (C) On the date the office of financial management certifies the
9 county's population as provided in RCW 36.70A.040(5), in a county that
10 is planning under all of the provisions of this chapter pursuant to RCW
11 36.70A.040(5).

12 (e) Exception. This subsection shall not be interpreted to permit
13 in the rural area a major industrial development or a master planned
14 resort unless otherwise specifically permitted under RCW 36.70A.360 and
15 36.70A.365.

16 (6) A transportation element that implements, and is consistent
17 with, the land use element.

18 (a) The transportation element shall include the following
19 subelements:

20 (i) Land use assumptions used in estimating travel;

21 (ii) Estimated traffic impacts to state-owned transportation
22 facilities resulting from land use assumptions to assist the department
23 of transportation in monitoring the performance of state facilities, to
24 plan improvements for the facilities, and to assess the impact of land-
25 use decisions on state-owned transportation facilities;

26 (iii) Facilities and services needs, including:

27 (A) An inventory of air, water, and ground transportation
28 facilities and services, including transit alignments and general
29 aviation airport facilities, to define existing capital facilities and
30 travel levels as a basis for future planning. This inventory must
31 include state-owned transportation facilities within the city or
32 county's jurisdictional boundaries;

33 (B) Level of service standards for all locally owned arterials and
34 transit routes to serve as a gauge to judge performance of the system.
35 These standards should be regionally coordinated;

36 (C) For state-owned transportation facilities, level of service
37 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,
38 to gauge the performance of the system. The purposes of reflecting

1 level of service standards for state highways in the local
2 comprehensive plan are to monitor the performance of the system, to
3 evaluate improvement strategies, and to facilitate coordination between
4 the county's or city's six-year street, road, or transit program and
5 the office of financial management's ten-year investment program. The
6 concurrency requirements of (b) of this subsection do not apply to
7 transportation facilities and services of statewide significance except
8 for counties consisting of islands whose only connection to the
9 mainland are state highways or ferry routes. In these island counties,
10 state highways and ferry route capacity must be a factor in meeting the
11 concurrency requirements in (b) of this subsection;

12 (D) Specific actions and requirements for bringing into compliance
13 locally owned transportation facilities or services that are below an
14 established level of service standard;

15 (E) Forecasts of traffic for at least ten years based on the
16 adopted land use plan to provide information on the location, timing,
17 and capacity needs of future growth;

18 (F) Identification of state and local system needs to meet current
19 and future demands. Identified needs on state-owned transportation
20 facilities must be consistent with the statewide multimodal
21 transportation plan required under chapter 47.06 RCW;

22 (iv) Finance, including:

23 (A) An analysis of funding capability to judge needs against
24 probable funding resources;

25 (B) A multiyear financing plan based on the needs identified in the
26 comprehensive plan, the appropriate parts of which shall serve as the
27 basis for the six-year street, road, or transit program required by RCW
28 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795
29 for public transportation systems. The multiyear financing plan should
30 be coordinated with the ten-year investment program developed by the
31 office of financial management as required by RCW 47.05.030;

32 (C) If probable funding falls short of meeting identified needs, a
33 discussion of how additional funding will be raised, or how land use
34 assumptions will be reassessed to ensure that level of service
35 standards will be met;

36 (v) Intergovernmental coordination efforts, including an assessment
37 of the impacts of the transportation plan and land use assumptions on
38 the transportation systems of adjacent jurisdictions;

1 (vi) Demand-management strategies;

2 (vii) Pedestrian and bicycle component to include collaborative
3 efforts to identify and designate planned improvements for pedestrian
4 and bicycle facilities and corridors that address and encourage
5 enhanced community access and promote healthy lifestyles.

6 (b) After adoption of the comprehensive plan by jurisdictions
7 required to plan or who choose to plan under RCW 36.70A.040, local
8 jurisdictions must adopt and enforce ordinances which prohibit
9 development approval if the development causes the level of service on
10 a locally owned transportation facility to decline below the standards
11 adopted in the transportation element of the comprehensive plan, unless
12 transportation improvements or strategies to accommodate the impacts of
13 development are made concurrent with the development. These strategies
14 may include increased public transportation service, ride sharing
15 programs, demand management, and other transportation systems
16 management strategies. For the purposes of this subsection (6),
17 "concurrent with the development" means that improvements or strategies
18 are in place at the time of development, or that a financial commitment
19 is in place to complete the improvements or strategies within six
20 years. If the collection of impact fees is delayed under RCW
21 82.02.050(3), the six-year period required by this subsection (6)(b)
22 must begin after the county or city receives full payment of all impact
23 fees due.

24 (c) The transportation element described in this subsection (6),
25 the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121
26 for counties, and RCW 35.58.2795 for public transportation systems, and
27 the ten-year investment program required by RCW 47.05.030 for the
28 state, must be consistent.

29 (7) An economic development element establishing local goals,
30 policies, objectives, and provisions for economic growth and vitality
31 and a high quality of life. The element shall include: (a) A summary
32 of the local economy such as population, employment, payroll, sectors,
33 businesses, sales, and other information as appropriate; (b) a summary
34 of the strengths and weaknesses of the local economy defined as the
35 commercial and industrial sectors and supporting factors such as land
36 use, transportation, utilities, education, workforce, housing, and
37 natural/cultural resources; and (c) an identification of policies,
38 programs, and projects to foster economic growth and development and to

1 address future needs. A city that has chosen to be a residential
2 community is exempt from the economic development element requirement
3 of this subsection.

4 (8) A park and recreation element that implements, and is
5 consistent with, the capital facilities plan element as it relates to
6 park and recreation facilities. The element shall include: (a)
7 Estimates of park and recreation demand for at least a ten-year period;
8 (b) an evaluation of facilities and service needs; and (c) an
9 evaluation of intergovernmental coordination opportunities to provide
10 regional approaches for meeting park and recreational demand.

11 (9) It is the intent that new or amended elements required after
12 January 1, 2002, be adopted concurrent with the scheduled update
13 provided in RCW 36.70A.130. Requirements to incorporate any such new
14 or amended elements shall be null and void until funds sufficient to
15 cover applicable local government costs are appropriated and
16 distributed by the state at least two years before local government
17 must update comprehensive plans as required in RCW 36.70A.130.

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