HOUSE BILL REPORT
ESHB 1652

As Passed Legislature

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: House Committee on Local Government (originally sponsored by Representatives Liias, Dahlquist, Takko, Kretz, Clibborn, Condotta, Upthegrove, Springer, Buys and Ryu).

Brief History:
Committee Activity:
Local Government: 2/14/13, 2/22/13 [DPS].
Floor Activity:
Passed House: 3/6/13, 73-24.
Senate Amended.
Passed Senate: 4/15/13, 34-14.
House Concurred.
Passed House: 4/18/13, 83-11.
Passed Legislature.

Brief Summary of Engrossed Substitute 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.
- Exempts counties, cities, and towns that have pre-existing impact fee delay processes that meet certain requirements from the obligation to establish an impact fee deferral system.
- Delays the starting of the six-year time frame for satisfying concurrency provisions of the Growth Management Act until after the county or city receives full payment of all deferred impact fees.

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 LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Kochmar, Assistant Ranking Minority Member; Buys, Liias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Ranking Minority Member.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a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. 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 Substitute 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 must record a covenant against title to the lot or unit subject to the impact fee obligation. Covenants recorded though 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 that are binding upon all successors in title, must be removed by the local government upon receiving payment, and must provide for the payment of the impact fees 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. Additionally, a county, city, or town with an impact fee deferral process on or before December 1, 2013, is exempted from the obligation to establish an impact fee deferral system if the locally-adopted deferral process, which may be amended in accordance with specified requirements, delays all fees and remains in effect after December 1, 2013.

Growth Management Act – Delayed Start of Concurrency Time Frame.

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 time frame 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on December 1, 2013.

Staff Summary of Public Testimony:

(In support) Small development companies often feel as though government agencies are working against them. One way in which this is evidenced is through the collection of impact fees. Small builders must finance impact fees up front; this is a burden for them. This bill is an attempt to make the collection process more flexible through additional collection options. Snohomish County and jurisdictions in King County are successfully delaying the collection of impact fees. This bill will help create jobs, and the delayed collection has not created the problems that opponents have spoken about. This bill is also about fairness, as we want to ensure that jurisdictions have needed facilities. This bill is intended to help deliver good projects at a lower cost.

This bill is a critical proposal that has significant impacts for jobs and state and local revenues. No sector of the economy has been hit harder than the building industry, with its family-wage jobs. Construction accounts for about 25 percent of the state's sales tax revenue. Traditional lenders will not finance impact fees. This bill provides a deferral process and shifts the impact fee costs to the end of the development process. Local governments and school districts have the ability to bank impact fees for 10 years: this gives them flexibility. Developers are asking for additional flexibility through this bill. New construction benefits local governments, and this bill will help create jobs and uniformity, and will get Washington working. A slightly different version of the bill previously passed out of the House with 80 votes, and this bill is supported by chambers of commerce and low-income housing groups. The opponents of this bill should be asked how important impact fees are to them. Impact fees are a small percentage of their capital budgets, but a huge expense for builders. The bill's disclosure provisions need to be modified to be consistent with current disclosure requirements for sellers. Financing for development today is not from local banks, but from banks outside the area.

(With concerns) Some counties that offer impact fee deferrals have expressed concerns about the language of the bill not aligning with their current practices, as well as the mandatory nature of the bill.

(Opposed) School districts are trying to keep up with actual and expected enrollment growth. In recent years, impact fee revenues have been spent by schools for critically needed portables and used to creating matching funds for state moneys. Impact fee revenues are spent quickly, and without them, schools will have no ability to respond to facility capacity

needs. Schools cannot front-load their needs, and they need impact fee revenues in hand at the beginning of the school year to respond to capacity needs. If the bill moves forward, school districts should be exempted. It is easier for some district to do front funding for capacity needs, but their ability to do so is declining. In districts that cannot front-fund, capacity needs will be delayed for months or years. This bill is contrary to the Growth Management Act and will effect education. Jurisdictions that have adopted deferrals have exempted school districts, and many of those deferrals are temporary. Previous studies examining impact fee deferrals on school districts were flawed and examined districts that historically had high bond approval rates. Impact fees are absolutely critical for school district planning and permitting costs.

This bill is a mandate and a preemption of local authority. This bill was not before the Legislature in 2012 because builders and cities have been working together on nonlegislative options. The implicit message of this bill is that the only way to work with builders is to delay impact fees. In reality, jurisdictions can exercise other options, such as lowering fees. This bill is not the right thing to do and it is not necessary. Local governments should be allowed to collect fees that are consistent with their own needs and preferences. The City of Covington did not adopt a deferral process because of several reasons, including concurrency, increased administrative and processing costs, and increased duties resulting from being a collecting agent. Cities do not have the funds that they used to, and impact fees are extremely important to getting projects moving. Some building departments have only one employee. The covenant-based process called for in the bill will require time and cost to develop and implement. The current law should be retained rather than the one-size-fits-all mandate of this bill. This bill differs from a previous version and should be modified to accommodate the needs of title companies. This bill will have implementation challenges.

The prime sponsor has also sponsored a bill to phase in the Legislature's response to the Supreme Court's *McCleary* decision. That bill will call for smaller class sizes of 15 or 17 students, but when a new 150-unit development occurs, that development will create capacity problems that conflict with the goal of having smaller class sizes. If schools are not exempted from the bill, a disclosure statement indicating that the schools might not have needed capacity for students should be required. The conversations about deferrals should be local ones.

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

(With concerns) Laura Merrill, Washington Association of Counties.

(Opposed) Lori Cloud, Tahoma School District; Denise Stiffarm, Puget Sound School Coalition; Doug Levy, Cities of Everett, Issaquah, Renton, Redmond, Kent, and Puyallup; Mitch Denning, Alliance of Education Association; April Putney, Futurewise; Derek Matheson, City of Covington; Dwight A. Bickel, Washington Land Title Association; Marcia Fromhold, Evergreen and Vancouver School Districts; Carl Schroeder, Association of Washington Cities; and Marie Sullivan, Washington State School Director's Association.

Persons Signed In To Testify But Not Testifying: None.