

HOUSE BILL REPORT

HB 2677

As Reported by House Committee On: Local Government

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 Springer, Dahlquist, Habib, Takko, Haler, Walsh, Manweller, Tharinger, Harris, Pike, Sawyer and Hayes.

Brief History:

Committee Activity:

Local Government: 1/30/14, 2/5/14 [DP].

Brief Summary of 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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 9 members: Representatives Takko, Chair; Gregerson, Vice Chair; Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Farrell, Fitzgibbon, Pike, Springer and Taylor.

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.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a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;
- ridesharing 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 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 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 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, 2014, 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, 2014.

Lastly, in each calendar year that an applicant received a deferral, the applicant may receive deferrals for no less than 30 building permits per jurisdiction.

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, 2014.

Staff Summary of Public Testimony:

(In support) This is the latest version of a bill that's been around for a few years. The bill is in response to the hardships that builders have faced in recent years, and is a reasonable approach to lessening the burden that builders are facing in recovering from the great recession. Under this bill, the deferred impact fees will be paid.

The previous version of this bill was widely supported by both legislative chambers, but vetoed by Governor Inslee. This bill is an appropriate response to the Governor's veto message request to help small builders. In Washington, our building starts are at 1981 numbers, but our population has doubled from what it was at that time. Soft costs for builders, such as impact fees, now have to be financed by them in cash. Stormwater provisions and other requirements have also increased building costs. New construction will benefit the tax rolls by converting a \$50,000 vacant lot into a \$250,000 home. The Supreme Court's McCleary decision is an important aspect of this conversation.

(Other) Planners have had questions about the administration of provisions called for in the bill and may offer an amendment to the bill.

(Opposed) Various versions of this bill have been around for years. Under this bill, homebuyers may be less likely to support school ballot measures if they learn about deferred fees. Postponing the fees prevents school districts from performing the adequate planning necessary to finance schools. If the fees are paid 18 months after the building permit is issued, the residents may occupy the building or apartment before the fees are received by the district. The bill shifts the financial demands of financing growth to school districts, and school districts cannot afford this.

This is a preemption bill – this is the State of Washington determining when impact fees are to be collected. This bill would prevent some cities from continuing to implement their existing deferral practices. The 30-permit minimum threshold established in the bill could have a large cumulative impact on cities. This bill does not consider the size of a jurisdiction, and assumes that the jurisdictions can absorb the required processing costs. Perhaps the timeline provisions of the bill should be adjusted, as should the exemptions for small jurisdictions.

The City of Puyallup supports its builders and instituted its own deferral plan. The deferrals applied to all permits, but exempted school impact fees. The deferral option was allowed to expire, as it received very little interest. After the option's expiration, permitting numbers in the city increased. The 30-permit minimum threshold represents a sizeable number for Puyallup. The covenant and lien requirements will require administrative efforts for

compliance. It is unclear how mortgage defaults will be addressed if the bill is implemented, as the unpaid fees may be passed on to the homeowner. The City of Battle Ground already defers fees with established builders, and in accordance with the city's priorities.

Schools need to receive impact fee money early enough to respond to growth. The impact fee money is for the immediate impact of the new student showing up for class, not for long-term bond projects. Deferral systems do not work for school districts, and districts have lost hundreds of thousands of dollars through deferrals. Receiving impact fees promptly is important to school districts as the fees help districts qualify for state matching funds. The 30-permit minimum threshold in the bill is too large; a lot of homebuilders don't build 30 homes, plus many builders establish LLCs that could evade the bill's provisions. The bill also creates an untested mandate to manage covenant systems and would require districts to either front-fund capacity increase or delay capacity increases; neither approach is fair. This bill is not needed.

The difficulty under this bill is the collection process. Cities will need to have priority lien authority to collect unpaid fees; that approach is more helpful for cities. The covenant mechanism called for in the bill is the wrong mechanism. A covenant can be changed by the covenant writer. The deferral process should be optional, and perhaps school district impact fees should be exempted. Delaying the collection of fees is a good idea, but the enforcement mechanism should be changed to one that is enforceable.

Persons Testifying: (In support) Representative Springer, prime sponsor; and Bill Stauffacher, Building Industry Association of Washington.

(Other) Laura Merrill, Washington State Association of Counties.

(Opposed) Susan Steinbrenner, Evergreen Public Schools; Doug Levy, Association of Washington Cities and the Cities of Everett, Kent, Renton, Puyallup, Redmond, Issaquah and Lake Stevens; Tom Utterback, City of Puyallup; Tom Seigel and Jim Hansen, Bethel School District; John Williams, City of Battleground; Bill Adamo, Puget Sound School Coalition; and Craig Ritchie, City of Sequim.

Persons Signed In To Testify But Not Testifying: None.