

# SENATE BILL REPORT

## ESHB 1652

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As of April 1, 2013

**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:** Passed House: 3/06/13, 73-24.

**Committee Activity:** Governmental Operations: 3/28/13.

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### SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

**Staff:** Karen Epps (786-7424)

**Background:** The Growth Management Act (GMA). GMA is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly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 them that are obligated to satisfy all planning requirements under GMA.

GMA directs counties and cities that fully plan under 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 GMA.

GMA requires planning jurisdictions to include a capital facilities plan element in their comprehensive plans. The capital facilities element is required before a jurisdiction can impose impact fees. The capital facilities plan implements the land use element of the comprehensive plan, and these two elements, including the financing plan within the capital facilities element, must be coordinated and consistent.

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Concurrency is one of the goals of GMA and refers to the timely provision of public facilities and services relative to the demand for them. 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.

GMA gives special attention to concurrency for transportation. GMA requires that transportation improvements or strategies to accommodate development impacts be made concurrently with land development. Transportation elements may also include, in addition to improvements or strategies to accommodate the impacts of development authorized under GMA, multimodal transportation improvements or strategies that are made concurrent with the development.

Impact Fees. Planning jurisdictions may impose impact fees on development activity in order to finance certain public facility improvements that are addressed by the capital facilities plan element of a comprehensive plan. 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.

**Summary of Bill:** 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 the 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. Payment of impact fees due at the closing of a sale must, unless an agreement is made to the contrary, be paid by the seller. The seller must provide written disclosure of the covenant; or

- a process by which an applicant may apply for a deferral of the impact fee payment until the final inspection or certificate of occupancy, or an 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. Counties, cities, and towns with an impact fee deferral process are not required to develop a new system for the collection of impact fees through a deferral covenant process.

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 under GMA may not begin until after the county or city receives full payment of all impact fees due.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This is an important bill that can help get the construction industry back on track in Washington. The payment of impact fees at the time the building permit is issued is a hindrance for small builders. Small builders must finance those impact fees, which leads to increased costs for the home buyer. This bill is designed to make the process work better for both the local governments that depend on these fees and for private industry that is trying to build homes and get the economy moving. This bill delays the payment of impact fees until the project is sold, which is when the developer receives profit from their work so they do not need to finance those impact fees. The building industry is experiencing an uptick with the possibly of 17,000 housing starts this year. Financing impact fees has become more difficult and impact fees are between one-third to two-thirds of the upfront costs of home construction. The change of the effective date for this bill was a good faith effort to help schools. Having the bill take effect on December 1 means that impact fees will be paid upfront this year so that schools may receive impact fees for the 2013-2014 school year. This is designed as a way to allow schools to prepare for the change in when impact fees will come in.

CON: There is concern because this bill does not allow for local control. The ability to defer impact fees is one tool that cities can use when working with developers, but cities also consider height and set-back changes, and up-front environmental review when working with developers. Cities would prefer to pick the right tool when working with developers. An impact fee deferral system costs cities money to administer the program and to secure payment once a house is occupied. The building industry numbers are better than they have been in six years. One of the big issues facing Puget Sound builders is a shortage of lots. There is a need to look at data to see how often and how successfully these programs are used. Counties have concerns about the time and costs of implementing the program outlined in this bill. There are concerns around the covenant process and the lien process in this bill. Schools use the impact fees when the students arrive and there are no facilities for them. Schools use the impact fees to put portables on site and portables must be ordered in the spring for the next school year. Additionally, these impact fees are used to build new schools as needed. This bill should be amended to exempt school impact fees. School districts rely regularly and early on receipt of impact fees to make capacity improvements. Unlike parks and roads, school capacity improvement must be constructed and in place when students arrive. For districts that are unable to pay these costs upfront, impact fees provide a critical funding source. If impact fees are deferred until closing, capacity changes needed to provide for students when they arrive at school will be compromised.

**Persons Testifying:** PRO: Representative Lias, prime sponsor, Bill Stauffacher, Building Industry of WA.

CON: Laura Merrill, WA State Assn. of Counties; Doug Levy, Cities of Everett, Kent, Renton, Puyallup, Redmond, and Issaquah, WA Recreation & Park Assn.; Carl Schroeder, Assn. of WA Cities; Lori Cloud, Tahoma School District, Puget Sound School Coalition; William Adamo, Riverview School District.