

# SENATE BILL REPORT

## SB 5664

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As Reported by Senate Committee On:  
Governmental Operations, February 21, 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:** Senators Rivers, Hobbs, Benton, Roach, Hatfield, Chase, Hewitt, Schoesler, Ericksen and Dammeier.

**Brief History:**

**Committee Activity:** Governmental Operations: 2/18/13, 2/21/13 [DPS, DNP].

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### SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

**Majority Report:** That Substitute Senate Bill No. 5664 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Braun and Rivers.

**Minority Report:** Do not pass.

Signed by Senators Conway and Fraser.

**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 Originally enacted in 1990 and 1991, GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly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 of the 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

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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.

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 need to 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 (Recommended Substitute):** 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. 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.

Impact fees for school facilities may not be deferred. 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. Any agreement or covenant for deferral of impact fees entered into under a separate process is not impaired or affected by this bill. The Department of Commerce (COM) must report to the Legislature by December 1, 2014, regarding the deferrals and their outcomes.

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

**EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Substitute):** Provides that any portion of the impact fee collected for school facilities may not be deferred by a county, city, or town that collects impact fees. Requires that the COM report to the Legislature regarding deferrals of the payment of impact fees. Establishes that any county, city, or town that has an impact fee deferral process is exempt from adopting an impact fee deferral process under this bill.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: This bill is intended to achieve several key policy objectives: to help the home construction industry get back to building homes; to generate state and local tax revenues that will help deal with those things that the Legislature needs to fund; and help school districts and local governments to generate more tax dollars to fund critical programs. With a deferral system, schools and local governments will still get impact fees, although it will be a bit later in time. The same costs that exist for building a house add to the costs of affordable housing and having an option where impact fees can be paid at a time when a final loan comes due or rent is being earned on the property helps affordable housing. It may make sense to amend the disclosure requirements so that all the disclosure requirements are in the same place. Banking has changed and it is challenging to finance impact fees upfront. Local governments and school districts have expanded the number of years they have to use impact fees.

CON: The current flexibility that cities have allows cities to establish a deferral process for impact fees. A number of amendments were agreed to on a bill similar to this in previous sessions. It would be helpful to consider those amendments. Grandfathering in the deferral processes that some cities have already adopted would be very helpful. There are other ways to work with builders, including trying to keep impact fees very low. This bill needs a sunset provision and a reporting provision to see whether deferral programs work to help builders and the community. In rampantly growing school districts, the districts need these dollars from impact fees at the time of the building permit in order to purchase portables and make arrangements to house the new students.

**Persons Testifying:** PRO: Senator Rivers, prime sponsor; Scott Hildebrand, Master Builders Assn. of King and Snohomish Counties; Bill Stauffacher, Building Industry Assn. of WA; Kim Herman, WA State Housing Finance Commission; Jeanette McKague, WA Realtors.

CON: Mitch Denning, Alliance of Educational Assns.; Doug Levy, Cities of Everett, Kent, Renton, Puyallup, Redmond, and Issaquah; Carl Schroeder, Assn. of WA Cities; Grace Yuan, Puget Sound School Coalition.