# SENATE BILL REPORT
# SB 6461

As of February 5, 2014

**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 Dansel, Hobbs, Ericksen and Hatfield.

**Brief History:**
**Committee Activity**: Governmental Operations: 2/04/14.

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 Originally enacted in 1990 and 1991, GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly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

In each calendar year that an applicant receives a deferral, the applicant may receive deferrals for no fewer than 30 building permits per jurisdiction. 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 on or before December 1, 2014, are not required to develop a new system for the collection of impact fees through a deferral covenant process if the deferral process delays all impact fees and remains in effect after December 1, 2014.

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, 2014.

**Staff Summary of Public Testimony**: PRO: A different version of this bill passed last year and was vetoed by the Governor. This bill has been amended to address the issues that were raised in the Governor's veto message. This bill is designed to ensure that communities and our smaller builders have the ability to defer impact fees until closing. This bill will help small builders who cannot obtain the financing upfront to finance impact fees and other soft costs associated with development. The state's tax base and the jobs base of the state rely upon the recovery of residential construction and this bill will help with that recovery. This bill has been narrowed to address the concerns of those in opposition to the concept of the bill. The limitation of 30 building permits is designed to still require the larger developers and builders to pay the impact fees upfront.

CON: School directors adopted a position to oppose any legislation that would have a negative fiscal impact on schools, and this bill would have a negative fiscal impact to schools. It is important to make sure that schools have the classroom space available when the students enroll in school. Schools are already facing classroom space issues because of legislation to reduce class sizes and the implementation of full-day kindergarten. School districts collaborate with their cities and counties on impact fees in order to help their local builders. Under this bill, a builder could seek deferrals from different local jurisdictions that are within one school district, which would have a significant impact to the school district. More than one builder may seek deferrals in a local jurisdiction, which would also greatly impact the school district. This bill allows a deferral of up to 18 months of the impact fee, but allows a builder to obtain a deferral in each calendar year. Some cities in the state are opposed to this bill because many cities have already adopted impact fee deferral processes. Cities work with builders through a development agreement to establish an impact fee deferral process. The limitation of 30 building permits is not sufficient because there will still be an impact on infrastructure. There is a need for capital to make improvements upfront. There is concern that the impact fees could be passed on to the home owner and these fees are the responsibility of the builder and the developer. Schools need the impact fees about 12 months before the students begin school in order to order portables or build new schools. This bill could lead to issues around the collection of impact fees.

**Persons Testifying**: PRO: Senator Dansel, prime sponsor; Bill Stauffacher, Building Industry Assn. of WA.

CON: John Williams, City of Battle Ground; Thomas Seigel, Superintendent Bethel Schools; Marie Sullivan, WA State School Directors' Assn.