

---

**SUBSTITUTE HOUSE BILL 1652**

---

**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Local Government (originally sponsored by Representatives Lias, Dahlquist, Takko, Kretz, Clibborn, Condotta, Upthegrove, Springer, Buys, and Ryu)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to establishing a process for the payment of impact  
2 fees through provisions stipulated in recorded covenants; and amending  
3 RCW 82.02.050 and 36.70A.070.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read  
6 as follows:

7 (1) It is the intent of the legislature:

8 (a) To ensure that adequate facilities are available to serve new  
9 growth and development;

10 (b) To promote orderly growth and development by establishing  
11 standards by which counties, cities, and towns may require, by  
12 ordinance, that new growth and development pay a proportionate share of  
13 the cost of new facilities needed to serve new growth and development;  
14 and

15 (c) To ensure that impact fees are imposed through established  
16 procedures and criteria so that specific developments do not pay  
17 arbitrary fees or duplicative fees for the same impact.

18 (2) Counties, cities, and towns that are required or choose to plan  
19 under RCW 36.70A.040 are authorized to impose impact fees on

1 development activity as part of the financing for public facilities,  
2 provided that the financing for system improvements to serve new  
3 development must provide for a balance between impact fees and other  
4 sources of public funds and cannot rely solely on impact fees.

5 (3)(a) Counties, cities, and towns collecting impact fees must  
6 adopt a permanent system for the collection of impact fees from  
7 applicants for residential building permits issued for a lot or unit  
8 created by a subdivision, short subdivision, site development permit,  
9 binding site plan, or condominium that includes one or more of the  
10 following:

11 (i)(A) A process by which an applicant for any development permit  
12 that requires payment of an impact fee may record a covenant against  
13 title to the lot or unit subject to the impact fee obligation. A  
14 covenant under this subsection (3)(a)(i) must also serve as a lien.  
15 The covenant must require payment equal to one hundred percent of the  
16 impact fee applicable to the lot or unit at the rates in effect at the  
17 time the building permit was issued, less a credit for any deposits  
18 paid.

19 (B) Covenants recorded in accordance with this subsection (3)(a)(i)  
20 must provide for payment of the impact fee through escrow at the  
21 earlier of the following: The time of closing of sale of the  
22 applicable lot or unit; or in accordance with the applicable county,  
23 city, or town ordinance, eighteen or more months after the building  
24 permit is issued. Payment of impact fees due at closing of a sale  
25 must, unless an agreement to the contrary is reached between buyer and  
26 seller, be made from the seller's proceeds. In the absence of an  
27 agreement to the contrary, the seller bears strict liability for the  
28 payment of the impact fees.

29 (C) The seller must provide written disclosure of the covenant  
30 authorized under this subsection (3)(a)(i) as required by chapter 64.06  
31 RCW.

32 (D) Upon receiving payment of impact fees due, the applicable  
33 county, city, or town must remove the covenant recorded in accordance  
34 with this subsection (3)(a)(i); or

35 (ii) A process by which an applicant may apply for a deferral of  
36 the impact fee payment until final inspection or certificate of  
37 occupancy, or equivalent certification.

1 (b) Counties, cities, and towns may adopt local systems for the  
2 collection of impact fees that differ from the requirements of this  
3 subsection (3) if the payment timing provisions are consistent with  
4 those of this subsection.

5 (4) The impact fees:

6 (a) Shall only be imposed for system improvements that are  
7 reasonably related to the new development;

8 (b) Shall not exceed a proportionate share of the costs of system  
9 improvements that are reasonably related to the new development; and

10 (c) Shall be used for system improvements that will reasonably  
11 benefit the new development.

12 ~~((+4))~~ (5)(a) Impact fees may be collected and spent only for the  
13 public facilities defined in RCW 82.02.090 which are addressed by a  
14 capital facilities plan element of a comprehensive land use plan  
15 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions  
16 for comprehensive plan adoption contained in chapter 36.70, 35.63, or  
17 35A.63 RCW. After the date a county, city, or town is required to  
18 adopt its development regulations under chapter 36.70A RCW, continued  
19 authorization to collect and expend impact fees ~~((shall be))~~ is  
20 contingent on the county, city, or town adopting or revising a  
21 comprehensive plan in compliance with RCW 36.70A.070, and on the  
22 capital facilities plan identifying:

23 ~~((+a))~~ (i) Deficiencies in public facilities serving existing  
24 development and the means by which existing deficiencies will be  
25 eliminated within a reasonable period of time;

26 ~~((+b))~~ (ii) Additional demands placed on existing public  
27 facilities by new development; and

28 ~~((+c))~~ (iii) Additional public facility improvements required to  
29 serve new development.

30 (b) If the capital facilities plan of the county, city, or town is  
31 complete other than for the inclusion of those elements which are the  
32 responsibility of a special district, the county, city, or town may  
33 impose impact fees to address those public facility needs for which the  
34 county, city, or town is responsible.

35 **Sec. 2.** RCW 36.70A.070 and 2010 1st sp.s. c 26 s 6 are each  
36 amended to read as follows:

37 The comprehensive plan of a county or city that is required or

1 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
2 and descriptive text covering objectives, principles, and standards  
3 used to develop the comprehensive plan. The plan shall be an  
4 internally consistent document and all elements shall be consistent  
5 with the future land use map. A comprehensive plan shall be adopted  
6 and amended with public participation as provided in RCW 36.70A.140.

7 Each comprehensive plan shall include a plan, scheme, or design for  
8 each of the following:

9 (1) A land use element designating the proposed general  
10 distribution and general location and extent of the uses of land, where  
11 appropriate, for agriculture, timber production, housing, commerce,  
12 industry, recreation, open spaces, general aviation airports, public  
13 utilities, public facilities, and other land uses. The land use  
14 element shall include population densities, building intensities, and  
15 estimates of future population growth. The land use element shall  
16 provide for protection of the quality and quantity of groundwater used  
17 for public water supplies. Wherever possible, the land use element  
18 should consider utilizing urban planning approaches that promote  
19 physical activity. Where applicable, the land use element shall review  
20 drainage, flooding, and storm water run-off in the area and nearby  
21 jurisdictions and provide guidance for corrective actions to mitigate  
22 or cleanse those discharges that pollute waters of the state, including  
23 Puget Sound or waters entering Puget Sound.

24 (2) A housing element ensuring the vitality and character of  
25 established residential neighborhoods that: (a) Includes an inventory  
26 and analysis of existing and projected housing needs that identifies  
27 the number of housing units necessary to manage projected growth; (b)  
28 includes a statement of goals, policies, objectives, and mandatory  
29 provisions for the preservation, improvement, and development of  
30 housing, including single-family residences; (c) identifies sufficient  
31 land for housing, including, but not limited to, government-assisted  
32 housing, housing for low-income families, manufactured housing,  
33 multifamily housing, and group homes and foster care facilities; and  
34 (d) makes adequate provisions for existing and projected needs of all  
35 economic segments of the community.

36 (3) A capital facilities plan element consisting of: (a) An  
37 inventory of existing capital facilities owned by public entities,  
38 showing the locations and capacities of the capital facilities; (b) a

1 forecast of the future needs for such capital facilities; (c) the  
2 proposed locations and capacities of expanded or new capital  
3 facilities; (d) at least a six-year plan that will finance such capital  
4 facilities within projected funding capacities and clearly identifies  
5 sources of public money for such purposes; and (e) a requirement to  
6 reassess the land use element if probable funding falls short of  
7 meeting existing needs and to ensure that the land use element, capital  
8 facilities plan element, and financing plan within the capital  
9 facilities plan element are coordinated and consistent. Park and  
10 recreation facilities shall be included in the capital facilities plan  
11 element.

12 (4) A utilities element consisting of the general location,  
13 proposed location, and capacity of all existing and proposed utilities,  
14 including, but not limited to, electrical lines, telecommunication  
15 lines, and natural gas lines.

16 (5) Rural element. Counties shall include a rural element  
17 including lands that are not designated for urban growth, agriculture,  
18 forest, or mineral resources. The following provisions shall apply to  
19 the rural element:

20 (a) Growth management act goals and local circumstances. Because  
21 circumstances vary from county to county, in establishing patterns of  
22 rural densities and uses, a county may consider local circumstances,  
23 but shall develop a written record explaining how the rural element  
24 harmonizes the planning goals in RCW 36.70A.020 and meets the  
25 requirements of this chapter.

26 (b) Rural development. The rural element shall permit rural  
27 development, forestry, and agriculture in rural areas. The rural  
28 element shall provide for a variety of rural densities, uses, essential  
29 public facilities, and rural governmental services needed to serve the  
30 permitted densities and uses. To achieve a variety of rural densities  
31 and uses, counties may provide for clustering, density transfer, design  
32 guidelines, conservation easements, and other innovative techniques  
33 that will accommodate appropriate rural densities and uses that are not  
34 characterized by urban growth and that are consistent with rural  
35 character.

36 (c) Measures governing rural development. The rural element shall  
37 include measures that apply to rural development and protect the rural  
38 character of the area, as established by the county, by:

- 1 (i) Containing or otherwise controlling rural development;
- 2 (ii) Assuring visual compatibility of rural development with the  
3 surrounding rural area;
- 4 (iii) Reducing the inappropriate conversion of undeveloped land  
5 into sprawling, low-density development in the rural area;
- 6 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and  
7 surface water and groundwater resources; and
- 8 (v) Protecting against conflicts with the use of agricultural,  
9 forest, and mineral resource lands designated under RCW 36.70A.170.
- 10 (d) Limited areas of more intensive rural development. Subject to  
11 the requirements of this subsection and except as otherwise  
12 specifically provided in this subsection (5)(d), the rural element may  
13 allow for limited areas of more intensive rural development, including  
14 necessary public facilities and public services to serve the limited  
15 area as follows:
- 16 (i) Rural development consisting of the infill, development, or  
17 redevelopment of existing commercial, industrial, residential, or  
18 mixed-use areas, whether characterized as shoreline development,  
19 villages, hamlets, rural activity centers, or crossroads developments.
- 20 (A) A commercial, industrial, residential, shoreline, or mixed-use  
21 area shall be subject to the requirements of (d)(iv) of this  
22 subsection, but shall not be subject to the requirements of (c)(ii) and  
23 (iii) of this subsection.
- 24 (B) Any development or redevelopment other than an industrial area  
25 or an industrial use within a mixed-use area or an industrial area  
26 under this subsection (5)(d)(i) must be principally designed to serve  
27 the existing and projected rural population.
- 28 (C) Any development or redevelopment in terms of building size,  
29 scale, use, or intensity shall be consistent with the character of the  
30 existing areas. Development and redevelopment may include changes in  
31 use from vacant land or a previously existing use so long as the new  
32 use conforms to the requirements of this subsection (5);
- 33 (ii) The intensification of development on lots containing, or new  
34 development of, small-scale recreational or tourist uses, including  
35 commercial facilities to serve those recreational or tourist uses, that  
36 rely on a rural location and setting, but that do not include new  
37 residential development. A small-scale recreation or tourist use is  
38 not required to be principally designed to serve the existing and

1 projected rural population. Public services and public facilities  
2 shall be limited to those necessary to serve the recreation or tourist  
3 use and shall be provided in a manner that does not permit low-density  
4 sprawl;

5 (iii) The intensification of development on lots containing  
6 isolated nonresidential uses or new development of isolated cottage  
7 industries and isolated small-scale businesses that are not principally  
8 designed to serve the existing and projected rural population and  
9 nonresidential uses, but do provide job opportunities for rural  
10 residents. Rural counties may allow the expansion of small-scale  
11 businesses as long as those small-scale businesses conform with the  
12 rural character of the area (~~as defined by the local government~~  
13 ~~according to RCW 36.70A.030(15)~~). Rural counties may also allow new  
14 small-scale businesses to utilize a site previously occupied by an  
15 existing business as long as the new small-scale business conforms to  
16 the rural character of the area (~~as defined by the local government~~  
17 ~~according to RCW 36.70A.030(15)~~). Public services and public  
18 facilities shall be limited to those necessary to serve the isolated  
19 nonresidential use and shall be provided in a manner that does not  
20 permit low-density sprawl. For the purposes of this subsection, "rural  
21 character" has the same meaning as provided in RCW 36.70A.030;

22 (iv) A county shall adopt measures to minimize and contain the  
23 existing areas or uses of more intensive rural development, as  
24 appropriate, authorized under this subsection. Lands included in such  
25 existing areas or uses shall not extend beyond the logical outer  
26 boundary of the existing area or use, thereby allowing a new pattern of  
27 low-density sprawl. Existing areas are those that are clearly  
28 identifiable and contained and where there is a logical boundary  
29 delineated predominately by the built environment, but that may also  
30 include undeveloped lands if limited as provided in this subsection.  
31 The county shall establish the logical outer boundary of an area of  
32 more intensive rural development. In establishing the logical outer  
33 boundary, the county shall address (A) the need to preserve the  
34 character of existing natural neighborhoods and communities, (B)  
35 physical boundaries, such as bodies of water, streets and highways, and  
36 land forms and contours, (C) the prevention of abnormally irregular  
37 boundaries, and (D) the ability to provide public facilities and public  
38 services in a manner that does not permit low-density sprawl;

1 (v) For purposes of (d) of this subsection, an existing area or  
2 existing use is one that was in existence:

3 (A) On July 1, 1990, in a county that was initially required to  
4 plan under all of the provisions of this chapter;

5 (B) On the date the county adopted a resolution under RCW  
6 36.70A.040(2), in a county that is planning under all of the provisions  
7 of this chapter under RCW 36.70A.040(2); or

8 (C) On the date the office of financial management certifies the  
9 county's population as provided in RCW 36.70A.040(5), in a county that  
10 is planning under all of the provisions of this chapter pursuant to RCW  
11 36.70A.040(5).

12 (e) Exception. This subsection shall not be interpreted to permit  
13 in the rural area a major industrial development or a master planned  
14 resort unless otherwise specifically permitted under RCW 36.70A.360 and  
15 36.70A.365.

16 (6) A transportation element that implements, and is consistent  
17 with, the land use element.

18 (a) The transportation element shall include the following  
19 subelements:

20 (i) Land use assumptions used in estimating travel;

21 (ii) Estimated traffic impacts to state-owned transportation  
22 facilities resulting from land use assumptions to assist the department  
23 of transportation in monitoring the performance of state facilities, to  
24 plan improvements for the facilities, and to assess the impact of land-  
25 use decisions on state-owned transportation facilities;

26 (iii) Facilities and services needs, including:

27 (A) An inventory of air, water, and ground transportation  
28 facilities and services, including transit alignments and general  
29 aviation airport facilities, to define existing capital facilities and  
30 travel levels as a basis for future planning. This inventory must  
31 include state-owned transportation facilities within the city or  
32 county's jurisdictional boundaries;

33 (B) Level of service standards for all locally owned arterials and  
34 transit routes to serve as a gauge to judge performance of the system.  
35 These standards should be regionally coordinated;

36 (C) For state-owned transportation facilities, level of service  
37 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,  
38 to gauge the performance of the system. The purposes of reflecting



1 level of service standards for state highways in the local  
2 comprehensive plan are to monitor the performance of the system, to  
3 evaluate improvement strategies, and to facilitate coordination between  
4 the county's or city's six-year street, road, or transit program and  
5 the office of financial management's ten-year investment program. The  
6 concurrency requirements of (b) of this subsection do not apply to  
7 transportation facilities and services of statewide significance except  
8 for counties consisting of islands whose only connection to the  
9 mainland are state highways or ferry routes. In these island counties,  
10 state highways and ferry route capacity must be a factor in meeting the  
11 concurrency requirements in (b) of this subsection;

12 (D) Specific actions and requirements for bringing into compliance  
13 locally owned transportation facilities or services that are below an  
14 established level of service standard;

15 (E) Forecasts of traffic for at least ten years based on the  
16 adopted land use plan to provide information on the location, timing,  
17 and capacity needs of future growth;

18 (F) Identification of state and local system needs to meet current  
19 and future demands. Identified needs on state-owned transportation  
20 facilities must be consistent with the statewide multimodal  
21 transportation plan required under chapter 47.06 RCW;

22 (iv) Finance, including:

23 (A) An analysis of funding capability to judge needs against  
24 probable funding resources;

25 (B) A multiyear financing plan based on the needs identified in the  
26 comprehensive plan, the appropriate parts of which shall serve as the  
27 basis for the six-year street, road, or transit program required by RCW  
28 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795  
29 for public transportation systems. The multiyear financing plan should  
30 be coordinated with the ten-year investment program developed by the  
31 office of financial management as required by RCW 47.05.030;

32 (C) If probable funding falls short of meeting identified needs, a  
33 discussion of how additional funding will be raised, or how land use  
34 assumptions will be reassessed to ensure that level of service  
35 standards will be met;

36 (v) Intergovernmental coordination efforts, including an assessment  
37 of the impacts of the transportation plan and land use assumptions on  
38 the transportation systems of adjacent jurisdictions;

1 (vi) Demand-management strategies;

2 (vii) Pedestrian and bicycle component to include collaborative  
3 efforts to identify and designate planned improvements for pedestrian  
4 and bicycle facilities and corridors that address and encourage  
5 enhanced community access and promote healthy lifestyles.

6 (b) After adoption of the comprehensive plan by jurisdictions  
7 required to plan or who choose to plan under RCW 36.70A.040, local  
8 jurisdictions must adopt and enforce ordinances which prohibit  
9 development approval if the development causes the level of service on  
10 a locally owned transportation facility to decline below the standards  
11 adopted in the transportation element of the comprehensive plan, unless  
12 transportation improvements or strategies to accommodate the impacts of  
13 development are made concurrent with the development. These strategies  
14 may include increased public transportation service, ride sharing  
15 programs, demand management, and other transportation systems  
16 management strategies. For the purposes of this subsection (6),  
17 "concurrent with the development" means that improvements or strategies  
18 are in place at the time of development, or that a financial commitment  
19 is in place to complete the improvements or strategies within six  
20 years. If the collection of impact fees is delayed under RCW  
21 82.02.050(3), the six-year period required by this subsection (6)(b)  
22 must begin after the county or city receives full payment of all impact  
23 fees due.

24 (c) The transportation element described in this subsection (6),  
25 the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121  
26 for counties, and RCW 35.58.2795 for public transportation systems, and  
27 the ten-year investment program required by RCW 47.05.030 for the  
28 state, must be consistent.

29 (7) An economic development element establishing local goals,  
30 policies, objectives, and provisions for economic growth and vitality  
31 and a high quality of life. The element shall include: (a) A summary  
32 of the local economy such as population, employment, payroll, sectors,  
33 businesses, sales, and other information as appropriate; (b) a summary  
34 of the strengths and weaknesses of the local economy defined as the  
35 commercial and industrial sectors and supporting factors such as land  
36 use, transportation, utilities, education, workforce, housing, and  
37 natural/cultural resources; and (c) an identification of policies,  
38 programs, and projects to foster economic growth and development and to

1 address future needs. A city that has chosen to be a residential  
2 community is exempt from the economic development element requirement  
3 of this subsection.

4 (8) A park and recreation element that implements, and is  
5 consistent with, the capital facilities plan element as it relates to  
6 park and recreation facilities. The element shall include: (a)  
7 Estimates of park and recreation demand for at least a ten-year period;  
8 (b) an evaluation of facilities and service needs; and (c) an  
9 evaluation of intergovernmental coordination opportunities to provide  
10 regional approaches for meeting park and recreational demand.

11 (9) It is the intent that new or amended elements required after  
12 January 1, 2002, be adopted concurrent with the scheduled update  
13 provided in RCW 36.70A.130. Requirements to incorporate any such new  
14 or amended elements shall be null and void until funds sufficient to  
15 cover applicable local government costs are appropriated and  
16 distributed by the state at least two years before local government  
17 must update comprehensive plans as required in RCW 36.70A.130.

--- END ---