

ESB 5923 - H COMM AMD
By Committee on Local Government

ADOPTED AND ENGROSSED 4/14/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.02.050 and 1994 c 257 s 24 are each amended to
4 read as follows:

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

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

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

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

16 (2) Counties, cities, and towns that are required or choose to
17 plan under RCW 36.70A.040 are authorized to impose impact fees on
18 development activity as part of the financing for public facilities,
19 provided that the financing for system improvements to serve new
20 development must provide for a balance between impact fees and other
21 sources of public funds and cannot rely solely on impact fees.

22 (3)(a)(i) Counties, cities, and towns collecting impact fees
23 must, by September 1, 2016, adopt and maintain a system for the
24 deferred collection of impact fees for single-family detached and
25 attached residential construction. The deferral system must include a
26 process by which an applicant for a building permit for a single-
27 family detached or attached residence may request a deferral of the
28 full impact fee payment. The deferral system offered by a county,
29 city, or town under this subsection (3) must include one or more of
30 the following options:

31 (A) Deferring collection of the impact fee payment until final
32 inspection;

1 (B) Deferring collection of the impact fee payment until
2 certificate of occupancy or equivalent certification; or

3 (C) Deferring collection of the impact fee payment until the time
4 of closing of the first sale of the property occurring after the
5 issuance of the applicable building permit.

6 (ii) Counties, cities, and towns utilizing the deferral process
7 required by this subsection (3)(a) may withhold certification of
8 final inspection, certificate of occupancy, or equivalent
9 certification until the impact fees have been paid in full.

10 (iii) The amount of impact fees that may be deferred under this
11 subsection (3) must be determined by the fees in effect at the time
12 the applicant applies for a deferral.

13 (iv) Unless an agreement to the contrary is reached between the
14 buyer and seller, the payment of impact fees due at closing of a sale
15 must be made from the seller's proceeds. In the absence of an
16 agreement to the contrary, the seller bears strict liability for the
17 payment of the impact fees.

18 (b) The term of an impact fee deferral under this subsection (3)
19 may not exceed eighteen months from the date of building permit
20 issuance.

21 (c) Except as may otherwise be authorized in accordance with (f)
22 of this subsection (3), an applicant seeking a deferral under this
23 subsection (3) must grant and record a deferred impact fee lien
24 against the property in favor of the county, city, or town in the
25 amount of the deferred impact fee. The deferred impact fee lien,
26 which must include the legal description, tax account number, and
27 address of the property, must also be:

28 (i) In a form approved by the county, city, or town;

29 (ii) Signed by all owners of the property, with all signatures
30 acknowledged as required for a deed, and recorded in the county where
31 the property is located;

32 (iii) Binding on all successors in title after the recordation;
33 and

34 (iv) Junior and subordinate to one mortgage for the purpose of
35 construction upon the same real property granted by the person who
36 applied for the deferral of impact fees.

37 (d)(i) If impact fees are not paid in accordance with a deferral
38 authorized by this subsection (3), and in accordance with the term
39 provisions established in (b) of this subsection (3), the county,

1 city, or town may institute foreclosure proceedings in accordance
2 with chapter 61.12 RCW.

3 (ii) If the county, city, or town does not institute foreclosure
4 proceedings for unpaid school impact fees within forty-five days
5 after receiving notice from a school district requesting that it do
6 so, the district may institute foreclosure proceedings with respect
7 to the unpaid impact fees.

8 (e)(i) Upon receipt of final payment of all deferred impact fees
9 for a property, the county, city, or town must execute a release of
10 deferred impact fee lien for the property. The property owner at the
11 time of the release, at his or her expense, is responsible for
12 recording the lien release.

13 (ii) The extinguishment of a deferred impact fee lien by the
14 foreclosure of a lien having priority does not affect the obligation
15 to pay the impact fees as a condition of final inspection,
16 certificate of occupancy, or equivalent certification, or at the time
17 of closing of the first sale.

18 (f) A county, city, or town with an impact fee deferral process
19 on or before April 1, 2015, is exempt from the requirements of this
20 subsection (3) if the deferral process delays all impact fees and
21 remains in effect after September 1, 2016.

22 (g)(i) Each applicant for a single-family residential
23 construction permit, in accordance with his or her contractor
24 registration number or other unique identification number, is
25 entitled to annually receive deferrals under this subsection (3) for
26 the first twenty single-family residential construction building
27 permits per county, city, or town. A county, city, or town, however,
28 may elect, by ordinance, to defer more than twenty single-family
29 residential construction building permits for an applicant. If the
30 county, city, or town collects impact fees on behalf of one or more
31 school districts for which the collection of impact fees could be
32 delayed, the county, city, or town must consult with the district or
33 districts about the additional deferrals. A county, city, or town
34 considering additional deferrals must give substantial weight to
35 recommendations of each applicable school district regarding the
36 number of additional deferrals. If the county, city, or town
37 disagrees with the recommendations of one or more school districts,
38 the county, city, or town must provide the district or districts with
39 a written rationale for its decision.

1 (ii) For purposes of this subsection (3)(g), an "applicant"
2 includes an entity that controls the applicant, is controlled by the
3 applicant, or is under common control with the applicant.

4 (h) Counties, cities, and towns may collect reasonable
5 administrative fees to implement this subsection (3) from permit
6 applicants who are seeking to delay the payment of impact fees under
7 this subsection (3).

8 (i) In accordance with sections 3 and 4 of this act, counties,
9 cities, and towns must cooperate with and provide requested data,
10 materials, and assistance to the department of commerce and the joint
11 legislative audit and review committee.

12 (4) The impact fees:

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

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

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

19 ~~((+4))~~ (5)(a) Impact fees may be collected and spent only for
20 the public facilities defined in RCW 82.02.090 which are addressed by
21 a capital facilities plan element of a comprehensive land use plan
22 adopted pursuant to the provisions of RCW 36.70A.070 or the
23 provisions for comprehensive plan adoption contained in chapter
24 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town
25 is required to adopt its development regulations under chapter 36.70A
26 RCW, continued authorization to collect and expend impact fees
27 ~~((shall be))~~ is contingent on the county, city, or town adopting or
28 revising a comprehensive plan in compliance with RCW 36.70A.070, and
29 on the capital facilities plan identifying:

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

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

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

37 (b) If the capital facilities plan of the county, city, or town
38 is complete other than for the inclusion of those elements which are
39 the responsibility of a special district, the county, city, or town

1 may impose impact fees to address those public facility needs for
2 which the county, city, or town is responsible.

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

5 The comprehensive plan of a county or city that is required or
6 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
7 and descriptive text covering objectives, principles, and standards
8 used to develop the comprehensive plan. The plan shall be an
9 internally consistent document and all elements shall be consistent
10 with the future land use map. A comprehensive plan shall be adopted
11 and amended with public participation as provided in RCW 36.70A.140.
12 Each comprehensive plan shall include a plan, scheme, or design for
13 each of the following:

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

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

1 care facilities; and (d) makes adequate provisions for existing and
2 projected needs of all economic segments of the community.

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

17 (4) A utilities element consisting of the general location,
18 proposed location, and capacity of all existing and proposed
19 utilities, including, but not limited to, electrical lines,
20 telecommunication lines, and natural gas lines.

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

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

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

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

4 (i) Containing or otherwise controlling rural development;

5 (ii) Assuring visual compatibility of rural development with the
6 surrounding rural area;

7 (iii) Reducing the inappropriate conversion of undeveloped land
8 into sprawling, low-density development in the rural area;

9 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
10 and surface water and groundwater resources; and

11 (v) Protecting against conflicts with the use of agricultural,
12 forest, and mineral resource lands designated under RCW 36.70A.170.

13 (d) Limited areas of more intensive rural development. Subject to
14 the requirements of this subsection and except as otherwise
15 specifically provided in this subsection (5)(d), the rural element
16 may allow for limited areas of more intensive rural development,
17 including necessary public facilities and public services to serve
18 the limited area as follows:

19 (i) Rural development consisting of the infill, development, or
20 redevelopment of existing commercial, industrial, residential, or
21 mixed-use areas, whether characterized as shoreline development,
22 villages, hamlets, rural activity centers, or crossroads
23 developments.

24 (A) A commercial, industrial, residential, shoreline, or mixed-
25 use area (~~shall be~~) are subject to the requirements of (d)(iv) of
26 this subsection, but (~~shall~~) are not (~~be~~) subject to the
27 requirements of (c)(ii) and (iii) of this subsection.

28 (B) Any development or redevelopment other than an industrial
29 area or an industrial use within a mixed-use area or an industrial
30 area under this subsection (5)(d)(i) must be principally designed to
31 serve the existing and projected rural population.

32 (C) Any development or redevelopment in terms of building size,
33 scale, use, or intensity shall be consistent with the character of
34 the existing areas. Development and redevelopment may include changes
35 in use from vacant land or a previously existing use so long as the
36 new use conforms to the requirements of this subsection (5);

37 (ii) The intensification of development on lots containing, or
38 new development of, small-scale recreational or tourist uses,
39 including commercial facilities to serve those recreational or
40 tourist uses, that rely on a rural location and setting, but that do

1 not include new residential development. A small-scale recreation or
2 tourist use is not required to be principally designed to serve the
3 existing and projected rural population. Public services and public
4 facilities shall be limited to those necessary to serve the
5 recreation or tourist use and shall be provided in a manner that does
6 not permit low-density sprawl;

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

23 (iv) A county shall adopt measures to minimize and contain the
24 existing areas or uses of more intensive rural development, as
25 appropriate, authorized under this subsection. Lands included in such
26 existing areas or uses shall not extend beyond the logical outer
27 boundary of the existing area or use, thereby allowing a new pattern
28 of low-density sprawl. Existing areas are those that are clearly
29 identifiable and contained and where there is a logical boundary
30 delineated predominately by the built environment, but that may also
31 include undeveloped lands if limited as provided in this subsection.
32 The county shall establish the logical outer boundary of an area of
33 more intensive rural development. In establishing the logical outer
34 boundary, the county shall address (A) the need to preserve the
35 character of existing natural neighborhoods and communities, (B)
36 physical boundaries, such as bodies of water, streets and highways,
37 and land forms and contours, (C) the prevention of abnormally
38 irregular boundaries, and (D) the ability to provide public
39 facilities and public services in a manner that does not permit low-
40 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
7 provisions 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
10 that is planning under all of the provisions of this chapter pursuant
11 to RCW 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
15 and 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
23 department of transportation in monitoring the performance of state
24 facilities, to plan improvements for the facilities, and to assess
25 the impact of land- use decisions on state-owned transportation
26 facilities;

27 (iii) Facilities and services needs, including:

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

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

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

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

12 (D) Specific actions and requirements for bringing into
13 compliance locally owned transportation facilities or services that
14 are below an 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
19 current and future demands. Identified needs on state-owned
20 transportation facilities must be consistent with the statewide
21 multimodal 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
26 the comprehensive plan, the appropriate parts of which shall serve as
27 the basis for the six-year street, road, or transit program required
28 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
29 35.58.2795 for public transportation systems. The multiyear financing
30 plan should be coordinated with the ten-year investment program
31 developed by the office of financial management as required by RCW
32 47.05.030;

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

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

40 (vi) Demand-management strategies;

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

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

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

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

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

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

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 44.28
16 RCW to read as follows:

17 (1) The joint legislative audit and review committee must review
18 the impact fee deferral requirements of RCW 82.02.050(3). The review
19 must consist of an examination of issued impact fee deferrals,
20 including: (a) The number of deferrals requested of and issued by
21 counties, cities, and towns; (b) the type of impact fee deferred; (c)
22 the monetary amount of deferrals, by jurisdiction; (d) whether the
23 deferral process was efficiently administered; (e) the number of
24 deferrals that were not fully and timely paid; and (f) the costs to
25 counties, cities, and towns for collecting timely and delinquent
26 fees. The review must also include an evaluation of whether the
27 impact fee deferral process required by RCW 82.02.050(3) was
28 effective in providing a locally administered process for the
29 deferral and full payment of impact fees.

30 (2) The review required by this section must, in accordance with
31 RCW 43.01.036, be submitted to the appropriate committees of the
32 house of representatives and the senate on or before September 1,
33 2021.

34 (3) In complying with this section, and in accordance with
35 section 4 of this act, the joint legislative audit and review
36 committee must make its collected data and associated materials
37 available, upon request, to the department of commerce.

38 (4) This section expires January 1, 2022.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.31
2 RCW to read as follows:

3 (1) Beginning December 1, 2018, and each year thereafter, the
4 department of commerce must prepare an annual report on the impact
5 fee deferral process established in RCW 82.02.050(3). The report must
6 include: (a) The number of deferrals requested of and issued by
7 counties, cities, and towns; (b) the number of deferrals that were
8 not fully and timely paid; and (c) other information as deemed
9 appropriate.

10 (2) The report required by this section must, in accordance with
11 RCW 43.01.036, be submitted to the appropriate committees of the
12 house of representatives and the senate.

13 NEW SECTION. **Sec. 5.** This act takes effect September 1, 2016."

14 Correct the title.

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