HOUSE BILL REPORT
ESB 5923

As Passed House - Amended:
April 14, 2015

Title: An act relating to promoting economic recovery in the construction industry.

Brief Description: Promoting economic recovery in the construction industry.

Sponsors: Senators Brown, Liias, Roach, Dansel, Hobbs, Warnick and Chase.

Brief History:
Committee Activity:
Local Government: 3/17/15, 3/19/15 [DPA].
Floor Activity:
Passed House - Amended: 4/14/15, 82-15.

Brief Summary of Engrossed Bill
(As Amended by House)

- Obligates counties, cities, and towns that collect impact fees to, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction.
- Authorizes counties, cities, and towns to collect reasonable administrative fees to implement the deferral system from permit applicants seeking to delay the payment of impact fees.
- Delays the starting of the six-year time frame for satisfying transportation concurrency provisions of the Growth Management Act until deferred impact fees are due.
- Establishes impact fee deferral reporting requirements for the Joint Legislative Audit and Review Committee and the Department of Commerce.
- Makes all provisions effective September 1, 2016.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McBride, Peterson and Pike.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; McCaslin.

Staff: Ethan Moreno (786-7386).

Background:

Impact Fees.
Counties and cities that are obligated by population or choice to fully plan under Washington's Growth Management Act (GMA) may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. 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.

Growth Management Act and Concurrency.
The GMA is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA. The Department of Commerce provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

The GMA directs counties and cities that fully plan under the 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 the GMA.

The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs. A provision of the sub-element for facilities and services needs requires planning jurisdictions to adopt level-of-service (LOS) standards for all locally owned arterials and transit routes.

Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the proposed development will cause the LOS on a locally owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this "concurrency" prohibition may be made if improvements or strategies to accommodate development impacts are made concurrent with the development. These strategies may include:

- increased public transportation service;
- ridesharing programs;
- demand management; and
- other transportation systems management strategies.

"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.

Gubernatorial Veto of Engrossed Substitute House Bill 1652 (2013).
Legislation adopted in 2013 (*i.e.*, ESHB 1652) obligated counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification. The legislation was vetoed in its entirety by the Governor on May 21, 2013.

The Joint Legislative Audit and Review Committee.
The Joint Legislative Audit and Review Committee (JLARC), a committee consisting of eight appointed Senators and eight appointed members of the House of Representatives, is charged with conducting objective performance audits, program evaluations, special studies, and sunset reviews on behalf of the Legislature and Washington citizens. The JLARC makes recommendations to the Legislature and state agencies to improve the performance of state government and identify cost savings. The nonpartisan staff of the JLARC is directed by the Legislative Auditor, the executive officer of the JLARC.

Summary of Amended Bill:

Impact Fee Payment Deferral System - General Requirements.

Counties, cities, and towns (local governments) collecting impact fees must, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction. Local governments utilizing the deferral system may withhold certification of final inspection, or certificate of occupancy or equivalent certification, until the impact fees have been paid in full. The amount of impact fees that may be deferred must be determined by the fees in effect at the time the applicant applies for a deferral, and the maximum term of the deferral is 18 months from the date of building permit issuance. Additionally, local governments are authorized to collect reasonable administrative fees from permit applicants who are seeking to delay the payment of impact fees.

The deferral system must include a process by which an applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment. The deferral system also must include one or more of the following options:

- deferring collection of the impact fee payment until final inspection;
- deferring collection of the impact fee payment until certificate of occupancy or equivalent certification; or
- deferring collection of the impact fee payment until the time of closing of the first sale of the property occurring after the issuance of the applicable building permit.

Each applicant for a single-family residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals for the first 20 single-family residential construction building permits per county, city, or town. A local government, however, may elect to defer more than 20 of the building permits for an applicant. For purposes of the annual deferral provisions, "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

Governance provisions for local governments choosing to annually defer more than 20 single-family residential construction building permits per applicant are established. If a local government collects impact fees on behalf of one or more school districts for which the collection of impact fees could be delayed, the local government must consult with the district or districts about the additional deferrals. A local government considering additional deferrals must give substantial weight to recommendations applicable school districts regarding the number of additional deferrals, and must, if it disagrees with the recommendations, provide the district or districts with a written rationale for its decision.

Impact Fee Payment Deferral System - Lien Requirements and Foreclosure Provisions. With limited exceptions, an applicant seeking an impact fee deferral must grant and record a deferred impact fee lien (impact fee lien) against the property in favor of the county, city, or town and in the amount of the deferred fee. The impact fee lien, which must include the legal description, tax account number, and address of the property, must satisfy other requirements, including:

- containing signatures from all owners of the property, and recorded in the county where the property is located;
- being binding on all successors in title after the recordation; and

- having the status of being junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

If an impact fee is not paid in accordance with an authorized deferral, the local government may institute foreclosure proceedings in accordance with specific statutory provisions. If the local government does not institute foreclosure proceedings for unpaid school impact fees within 45 days of receiving notice from a school district requesting that the local government do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.

Upon receipt of final payment of all deferred impact fees for a property, the local government must execute a release of impact fee lien for the property. The extinguishment of an impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the deferred fees.

Impact Fee Payment Deferral System - Exception for Pre-existing Deferral Processes.
A local government with an impact fee deferral process on or before April 1, 2015, is exempted from the obligation to establish an impact fee deferral system, and the provisions governing it, if the locally adopted deferral process delays all impact fees and remains in effect after September 1, 2016.

Growth Management Act: Delayed Start of Concurrency Time Frame.
If the collection of impact fees is delayed through an impact fee payment deferral system, the six-year time frame for completing improvements or strategies for complying with the transportation concurrency provisions of the GMA must begin after full payment of all impact fees is due to the local government.

Recurring and One-time Reporting Requirements.
Beginning December 1, 2018, the Department of Commerce (Commerce) must prepare an annual report on the impact fee deferral process. The report, which must be submitted to the appropriate committees of the House of Representatives and the Senate, must include: the number of deferrals requested of and issued by counties, cities, and towns; the number of deferrals that were not fully and timely paid; and other information as deemed appropriate.

The Joint Legislative Audit and Review Committee (JLARC) must review the created impact fee deferral requirements. The review must consist of an examination of issued impact fee deferrals, including:

- the number of deferrals requested of and issued by counties, cities, and towns;
- the monetary amount of deferrals, by jurisdiction;
- whether the deferral process was efficiently administered; and
- the costs to counties, cities, and towns for collecting timely and delinquent fees.

The review, which must be submitted to the appropriate committees of the House of Representatives and the Senate on or before September 1, 2021, must also include an evaluation of whether the impact fee deferral process was effective in providing a locally administered process for the deferral and full payment of impact fees. In complying with the

review requirement, the JLARC must make its collected data and associated materials available, upon request, to the Commerce.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on September 1, 2016.

Staff Summary of Public Testimony:

(In support) When the City of Pasco implemented impact fees, building permit requests increased in Kennewick; there is a cause and effect relationship between impact fees and building permits. This bill defers impact fees, it does not eliminate them. The deferral proposed in the bill will give builders a bit of relief from the difficulties that impact fees create for them, as banks do not finance impact fees for builders. This bill was passed out of the Senate with bipartisan support.

The bill includes language relating to proper disclosures of impact fee implications for real estate transactions. The deferral provisions of the bill will reduce the carrying cost of a house for builders and will ultimately reduce the costs to home buyers.

This bill is quite similar to the original version of House Bill (HB) 1709. The bill should be passed out in its current form. Deferring the payment of impact fees until money changes hands in a real estate transaction will reduce the costs for home buyers. Local governments will be paid under this bill, as it is not an elimination of impact fees. Proponents of the bill want the professional aspects of the bill to work, and customers to leave with clean, clear titles. The construction industry was badly hurt in the recession, and the recovery is incomplete. This bill helps with *McCleary* decision-related funding obligations and the local tax base.

Supporters of the bill want to ensure that there is a process to ensure that impact fees are paid at closing or via a covenant within the 18-month period identified in the bill. Supporters of the bill will work with stakeholders to create amendatory language to address procedural aspects of the bill. Supporters also want a bright line to ensure that impact fees are paid at closing, and that the sequential processes of the bill work.

(In support with concerns) The first alternative deferral mechanism proposed in the bill is a good one, but there are concerns about the second deferral alternative in the bill. The second alternative does not require the recording of a covenant. Without that requirement, the deferral mechanism holds the certificate of occupancy hostage until the impact fee is paid, and may create difficulties for builders. The second alternative should be removed from the bill as, without a covenant, the purchaser is not obligated to pay the fees due.

(Opposed) The amendments to HB 1709 should also be attached to this bill. School districts have to plan for new students when the building permits are issued, and it takes six months for a district to site a portable school building. This bill would prevent districts from having the money to purchase needed facilities for students. A variant of this bill has been around

for about 18 years, but this bill does not work for school districts. The language in the bill regarding the 20 mandatory deferrals is broad and would allow deferrals for separately created limited liability companies.

Fast-growing school districts need impact fee money to purchase needed portables when students arrive. School districts should be exempted from the deferral provisions of the bill.

About 72 of Washington's 281 cities impose impact fees; those are cities in all corners of the state. The highest impact fees imposed are fees for schools. The committee should amend the bill to include the adopted amendment for HB 1709, as that language gives cities clear authority to deny occupancy until fees are paid, limits the bill to single-family homes and duplexes, and allows cities to continue using existing deferral systems.

The deferral provisions related to the first 20 applications are not very precise and could permit deferrals for spin-off limited liability companies. The Legislature should create precise language for the bill, and the deferral provision for the first 20 applications should be amended to match Substitute HB 1709. The amendments to HB 1709 were appropriate and gave better assurances to cities that fees would be paid. Some cities would like to keep working on the bill to develop a compromise that is acceptable to everyone.

Pasco School District is experiencing explosive growth, and the facilities that the district will add to respond to this growth will be financed with impact fees. The paramount duty of the state is to fund basic education. How would the Supreme Court view a bill that defers impact fees that school districts need? School districts should be exempted from the bill and existing deferral systems should be allowed to continue. As an alternative, the committee could also consider excluding communities with high growth rates from the bill.

Counties struggle with the best way to accommodate growth and finance the needed infrastructure. Impact fees are a local tool for financing this infrastructure. Snohomish County used an impact fee deferral system in 2012, 2013, and 2014. Local jurisdictions are in a better position to decide how and whether to defer impact fees. If the committee advances the bill, it should examine how to finance the infrastructure that growth demands.

One of the fundamental aspects of the Growth Management Act (GMA) is concurrency: the process of having infrastructure ready when development comes on-line. An impact fee deferral is contrary to this part of the GMA. The reporting provisions of the bill for the Department of Commerce require significant data collection efforts and cannot be accomplished within the timeframe established in the bill. Additionally, the effective date for the reporting requirements need to be amended in order to make the report provisions and effective date properly align.

Persons Testifying: (In support) Senator Brown, prime sponsor; Bill Clarke, Washington Realtors; Bill Stauffacher, Building Industry Association of Washington; and Denny Eliason, Washington Bankers Association, United Financial Lobby.

(In support with concerns) Dwight Bickel, Washington Land Trust Association.

(Opposed) Charlie Brown, Puget Sound Schools Coalition; Mitch Denning, Alliance of Educational Associations; Dave Williams, Association of Washington Cities; Doug Levy, Cities of Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Redmond, and Renton, and Washington Recreation and Park Association; Marie Sullivan, Pasco School District; Briahna Taylor, Snohomish County; and Jeff Wilson, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.