Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Local Government Committee

HB 1714

Brief Description: Concerning impact fee deferrals.

Sponsors: Representatives Duerr, Goehner, Fitzgibbon, Bateman, Ramel and Pollet.

Brief Summary of Bill

- Repeals provisions requiring that a lien be imposed on a property receiving an impact fee deferral.
- Repeals provisions requiring the Department of Commerce to submit an annual report to the legislature on impact fee deferrals .
- Repeals the option to defer collection of an impact fee until the time of closing of the first sale of the property.

Hearing Date:

Staff: Kellen Wright (786-7134).

Background:

Impact fees are charges assessed by a local government on a new development to help pay for the increased services that will be required because of that development. For example, if a new residential development would require increased school facilities for the new residents, then an impact fee could be assessed to pay for the facilities. Approval of a new development may be conditioned on the payment of impact fees.

Local governments planning under the Growth Management Act are authorized to impose impact fees for public streets, publicly owned parks and recreation facilities, school facilities, and fire protection facilities. This authority is contingent on the local government revising its comprehensive plan to identify current deficiencies in public facilities serving existing

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development and how those deficiencies will be eliminated within a reasonable period of time; the additional demands placed on existing public facilities by new development; and the additional public facility improvements required to serve new development. Impact fees may only be used on public facilities that are included in the capital facilities element of the comprehensive plan, that are reasonably related to the new development, that are designed to provide service areas to the community at large, and that will also reasonably benefit the new development.

These new facilities may not be solely financed through impact fees. In addition, impact fees may not be used to correct preexisting deficiencies in current public facilities, and the impact fees assessed may not exceed a proportionate share of the costs of a facility that are reasonably related to the new development. The local government may provide exemptions from impact fees for low-income housing or other development activities with a broad public purpose.

The ordinance establishing impact fees must include a schedule of impact fees for each type of development activity. With some exceptions, impact fees must be collected prior to construction, and must be kept in a separate account depending on the type of public facility for which it was collected. Local governments collecting impact fees must produce an annual report detailing the fees that have been collected and for what they have been used. If impact fees are not used within 10 years of collection, they generally must be returned. A developer who has paid an impact fee may receive a refund if the development does not proceed and no impact materializes.

The local government collecting impact fees must provide a program for deferring collection of impact fees imposed for single-family detached and attached residential construction. The local government must provide a process for an applicant for a building permit for a single-family residence to request deferral of the full impact fee payment. The local government must provide at least one of three deferral options:
- Deferring collection of the fee until final inspection;
- Deferring collection until the certificate of occupancy or equivalent certifications; or
- Deferring collection until the time of the closing of the first sale of the property after the issuance of the building permit.

The local government may withhold the certification of final inspection, of occupancy, or an equivalent certification until the impact fees have been paid in full. The total deferral period cannot exceed 18 months from the time that a building permit is issued.

An applicant for a deferral must grant the local government a deferred impact fee lien in the amount of the deferred fee against the property. The lien must be in a form approved by the local government, signed by all owners of the property, and recorded in the county in which the property is located. The resulting lien is junior to one mortgage for construction on the property.

If the impact fees are not timely paid, then the local government can foreclose on the lien. A school district may also initiate foreclosure proceedings, if it has requested that the local government do so over unpaid school impact fees and greater than 45 days have passed without the local government taking action. The extinguishment of the lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection or the issuance of a certificate of occupancy or equivalent certification at the time of closing on the first sale. Once the fees have been properly paid, the lien must be released.

Each applicant for an impact fee deferral is entitled to receive up to twenty deferrals annually in each city or county. This limit can be increased by the local government, provided that a school district on whose behalf the local government collects impact fees is consulted and any objections interposed by the district to the increased deferral limit are given substantial weight. A local government may collect reasonable administrative fees from applicants for the deferral program in order to implement the deferral program.

A local government that had an impact fee deferral process in place on or prior to April 1, 2015 is exempt from the requirements for the deferred impact fee program, as long as the preexisting program delays all impact fees and remains in place after September 1, 2016.

The Department of Commerce must collect information on impact fee deferrals and provide an annual report to the legislature. The report must include the number of deferrals, the number of deferrals that were not fully and timely paid, and any other information the Department of Commerce deems appropriate.

Summary of Bill:

The option to defer collection of an impact fee imposed on single-family residential construction until the time of closing of the first sale of the property is repealed.

The requirement to impose a lien on the property subject to a deferred impact fee, and provisions related to the lien, are repealed.

The requirement that the Department of Commerce provide an annual report to the legislature on impact fee deferrals is repealed.

Appropriation: None.

Fiscal Note: Requested on January 19, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.