

HOUSE BILL REPORT

HB 1714

As Reported by House Committee On:
Local Government

Title: An act relating to impact fee deferrals.

Brief Description: Concerning impact fee deferrals.

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

Brief History:

Committee Activity:

Local Government: 1/25/22, 1/26/22 [DP].

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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Berg.

Minority Report: Without recommendation. Signed by 3 members: Representatives Griffey, Assistant Ranking Minority Member; Robertson and Senn.

Staff: Kellen Wright (786-7134).

Background:

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

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 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 and will reasonably benefit it, and that are designed to provide service areas to the community at large.

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 what the fees have been used for. 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 to request deferral of the full impact fee payment for a building permit for a single-family residence.

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 certification; 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, 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. If a priority lien is foreclosed, and the deferred impact fee lien is extinguished, the obligation to pay the impact fees is not affected, and the fees must still be paid as a condition of final inspection, the issuance of a certificate of occupancy or equivalent certification, or 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 20 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, provided that 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.

Staff Summary of Public Testimony:

(In support) This bill implements the recommendations from the Joint Legislative Audit and Review Committee. This is a common sense bill. The tracking of impact fee deferrals is difficult for the city and the developer. The lien process is challenging for both the builder and the city, and can complicate the point-of-sale transaction for the property owner. Impact fees are usually collected at the time of final inspection, or the issuance of a certificate of occupancy. The current system is not used much. This bill would simplify tracking requirements and would ensure that fees are paid at the time of development.

(Opposed) None.

(Other) The deferral process is not widely utilized because the lien and the administrative fees are required on each individual lot and is very costly. Allowing payment of the deferred fees at the time of closing would be best. Hopefully, fixing the issues will allow more houses to be built more quickly and for the program to work well. There are already exemptions from impact fees available for affordable housing. Payment at the time of permit issuance is the easiest way for developers and the city, and there is no lien required in that case. The lien was a compromise adopted when the bill was originally drafted. Almost all of the use of the deferral programs occurs in areas that were grandfathered in and didn't have to comply with the prior bill's requirements. Some cities don't do final inspections, and some counties don't issue certificates of occupancy, so there is no guarantee that schools will get their funding. Taxpayers want to make sure that developers pay their fair share of costs.

Persons Testifying: (In support) Representative Davina Duerr, prime sponsor; and Boyd Benson, City of Bothell.

(Other) Alex Hur, Master Builders Association of King and Snohomish Counties; and Grace Yuan, Puget Sound School Coalition.

Persons Signed In To Testify But Not Testifying: None.