
Housing Committee

HB 1252

Brief Description: Concerning impact fee deferrals.

Sponsors: Representatives Bateman, Hutchins, Barkis, Fitzgibbon, Robertson, Tharinger, Reed, Christian, Schmidt and Pollet.

Brief Summary of Bill

- Modifies the impact fee deferral requirements by making certain changes including removing the lien and foreclosure requirements, the limits on the number of deferrals allowed per applicant, and the provision related to collection of administrative fees.

Hearing Date: 1/30/23

Staff: Audrey Vasek (786-7383).

Background:

Impact Fees.

Impact fees are one-time charges assessed by a local government on a new development project to help pay for new or expanded public capital facilities that will directly address the increased demand for services created by the development. For example, if a new residential development would require increased school facilities for the new residents, then a local government could assess an impact fee on the development project to pay for the facilities. Approval of a new development may be conditioned on the payment of impact fees.

Local Government Authority to Impose 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

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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.

The ordinance establishing impact fees must include a schedule of impact fees for each type of development activity. The local government may provide exemptions from impact fees for low-income housing or other development activities with a broad public purpose.

Limits on Use of Impact Fees.

Impact fees may only be used for 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.

Collection, Reporting, and Refund of Impact Fees.

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.

Impact Fee Deferrals.

Local governments collecting impact fees must provide a system for deferring collection of impact fees imposed for single-family detached and attached residential construction. A local government may collect reasonable administrative fees from program applicants in order to implement the deferral system.

Deferral Options.

Upon application from a developer, a local government must defer collection of the full impact fee payment for single-family residential construction until the time of:

- final inspection;
- issuance of the certificate of occupancy or equivalent certification; or
- the closing of the first sale of the property after the issuance of the building permit.

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

Limit on Number of Deferrals.

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 if a school district on whose behalf the local government collects school impact fees is consulted and any objections interposed by the district to the increased deferral limit are given substantial weight.

Deferred Impact Fee Lien.

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 a mortgage for construction on the property.

Foreclosure of Deferred Impact Fee Lien.

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.

Exemptions from Deferred Impact Fee Collection Program Requirements.

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.

Annual Report on Impact Fees by the Department of Commerce.

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.

Joint Legislative Audit and Review Committee Report on Impact Fees.

As part of the 2015 legislation creating the impact fee deferral requirements, the Legislature also required the Joint Legislative Audit and Review Committee (JLARC) to collect data on the use and cost of deferral programs and to review implementation of impact fee deferrals. The JLARC submitted its final report on impact fee deferral programs to the Legislature in December 2021. The statute containing the JLARC report requirement expired on January 1, 2022.

Summary of Bill:

The impact fee deferral requirements are revised. By September 1, 2024, local governments

collecting impact fees must provide an impact fee deferral system for single-family residential construction that provides a process for a building permit applicant to request a voluntary deferral agreement.

The voluntary deferral agreement process has several differences from the existing deferral process:

- The lien and foreclosure requirements are removed.
- The limits on the number of deferrals allowed per applicant are removed.
- The provision authorizing a local government to collect reasonable administrative fees from program applicants in order to implement the deferral system is removed.
- A requirement that the seller provide written disclosure of a deferral agreement to the buyer as required by the statutes governing sellers' disclosures during real property transfers is added.
- The requirement that a local government cooperate with and provide required data to the Department of Commerce for the purposes of the statute requiring an annual report on impact fees, and to the JLARC for the purpose of the now-expired statute requiring JLARC to review the impact fee deferral requirements, is removed.

Additionally, the voluntary deferral agreement must be publicly posted and must include a provision for payment of the impact fee at the time of:

- the issuance of a certificate of occupancy or equivalent certification for the unit;
- closing of the first sale of the unit occurring after the issuance of the building permit; or
- at the time of final inspection.

If a local government determines that payment of the impact fees is due at the time of certification of final inspection, issuance of the certificate of occupancy, or issuance of equivalent certification, the local government may withhold the issuance of the certificate until the impact fees have been paid in full.

Appropriation: None.

Fiscal Note: Requested on January 26, 2023.

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