

HOUSE BILL REPORT

EHB 1468

As Passed House:

February 13, 2024

Title: An act relating to impact fee deferrals.

Brief Description: Concerning impact fee deferrals.

Sponsors: Representatives Goehner, Duerr, Jacobsen, Griffey, Barkis, Robertson, Hutchins, Chapman, Riccelli, Berg, Bateman and Pollet.

Brief History:

Committee Activity:

Local Government: 1/31/23, 2/3/23 [DP].

Floor Activity:

Passed House: 2/13/24, 97-0.

Brief Summary of Engrossed Bill

- Requires local governments to establish a system for impact fee deferrals by September 1, 2025, that would allow an applicant for a fee deferral to execute a promissory note for the full value of the fees in favor of the local government imposing the fees, and details requirements for the note, the payment of the note, and the penalties and interest that must be imposed if the note is not timely paid.
- Repeals provisions requiring that a lien be imposed on a property receiving an impact fee deferral in favor of the local government providing the deferral, allowing a local government to collect reasonable administrative fees from applicants, and limiting the number of annual deferrals that an applicant can receive.
- Repeals provisions requiring the Department of Commerce to submit an annual report to the Legislature on impact fee deferrals.

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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 6 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Kellen Wright (786-7134).

Background:

Impact fees are one-time charges assessed by a local government on new development activities to help pay for the increased services that will be required because of new growth and development. Development activity includes any construction or expansion of a building or use, any change in use of a building, or any change in the use of land, that creates an additional need for public 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 and roads, publicly owned parks and recreation facilities, school facilities, and fire protection facilities. Impact fees may only be used on public facilities that are included in the capital facilities element of the comprehensive plan. The public facilities must be reasonably related to the new development, must reasonably benefit it, and must be designed to provide service areas to the community at large. The public facilities on which impact fees can be spent are public streets and roads; publicly owned parks, open spaces, and recreation facilities; school facilities; and fire protection facilities.

The ordinance establishing impact fees must include a schedule of impact fees for each type of development activity and the fee imposed for each kind of facility. The ordinance must also designate one or more reasonable geographic areas in which a defined set of public facilities provides service to developments within the area, and within which the local government will calculate and impose impact fees for different land-use categories per unit of development. General improvements to public facilities, and the general benefits thereof, within a service area have been found to be reasonably related to, and to reasonably benefit, new developments within the service area. The ordinance imposing impact fees must also provide that the fees can be adjusted in unique circumstances when it is fair to do so, and developers must be allowed to provide data and studies to support an adjustment of the fee. 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.

A local government collecting impact fees must provide a program for deferring collection of impact fees imposed for single-family residential construction. The local government must provide a process for an applicant for a building permit for a single-family attached or detached residence to request deferral of the full impact fee payment. The local government

must provide at least one of three deferral options:

- deferral of the fee until final inspection;
- deferral of the fee until the certificate of occupancy or equivalent certification (certificate of occupancy); or
- deferral of the fee until the time of the closing of the first sale of the property after the issuance of the building permit.

If the deferral is to the time of final inspection or to the issuance of a certificate of occupancy, the local government may withhold the certification of final inspection or the certificate of occupancy until the impact fees have been paid in full. If the deferral is to the time of the closing of the first sale of the property, the seller bears strict liability for the payment of the fees and the fees must come from the seller's proceeds, unless a different agreement is reached between the buyer and seller. 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 construction mortgage 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 initiate foreclosure because of unpaid school impact fees and more 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, the issuance of a certificate of occupancy, or at the time of closing on the first sale of the property. 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 school 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 deferred impact fee program requirements, as long as the preexisting program delays all impact fees and remains in place after September 1, 2016.

The Department of Commerce (Department) 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 deems appropriate. Local governments must cooperate with the Department in the production of this report, and must provide any data or other assistance that is requested.

Summary of Engrossed Bill:

Counties, cities, and towns (local government) must adopt a system for the deferred collection of impact fees by September 1, 2025. The system must include a process for an applicant for a building permit for single family attached or detached residences to execute a promissory note in favor of the local government imposing the impact fees for the full value of the impact fees. The note must be recorded with the county auditor at the expense of the applicant. If lots have not been created in the subdivision, then the note must be recorded for the entire subdivision.

The promissory note must come due at the time of:

- the issuance of a certificate or occupancy or equivalent certification;
- the final inspection; or
- the closing of the first sale of the lot or unit after the issuance of the building permit (first sale).

If the local government has determined that payment is due at the time of the issuance of a certificate or at the time of final inspection, the local government may withhold the certificate or inspection until the fee has been paid in full. If the fee has not been paid in full by the time of the first sale, then the fees immediately become due.

If the impact fees have not been paid within one month of the first sale, then the note will bear interest at the rate of the short-term federal rate plus two percent. This rate must be adjusted annually, and the county treasurer must provide the local government with the rate prior to December 31 of the year that precedes the year in which the adjusted rate will apply.

In addition to interest, late payment will also subject the applicant to penalties. If the impact fees have not been paid in full at the time of the first sale, the applicant must be assessed a penalty of 5 percent on the amount due. This penalty increases instead to 10 percent if the impact fees have not been paid within two months of the first sale, and to 20 percent if the impact fees have not been paid within three months of the first sale.

Interest and fees may only be collected from the applicant, and cannot be a lien against the property sold by the applicant for which the impact fees were due. If the fees were not paid, and a sale was made but not recorded in the county property record, then the owners of the applicant are personally liable for the full amount of the promissory note.

An applicant for an impact fee deferral must provide written disclosure of a deferral agreement to a property buyer as provided for in laws regulating a seller's disclosure

obligations in real property transactions.

The requirement that a lien be imposed on a property receiving an impact fee deferral in favor of the local government providing the deferral, and provisions related to the lien, are repealed.

The annual limit on the number of impact fee deferrals that an applicant may receive is repealed.

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

The ability of the local government imposing the impact fees to collect a reasonable administrative fee from applicants is repealed.

Appropriation: None.

Fiscal Note: Available.

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 came out of a Joint Legislative Audit and Review Committee study, and has passed through the committee before. The bill is trying to make it more affordable for builders to do their work, and allows deferrals with the need for a lien against the property. The study showed that the lien was not needed, and that it added unnecessary complications to the process. Most deferrals occur in only a few communities, because they removed the lien requirement and that is why the deferral program works there. Deferrals are important because impact fees can have a significant upfront cost, and financing those fees has a carrying cost going forward. The bill should be amended to allow a deferral until the final sale. This would allow developers to pay after they collect money for the development.

(Opposed) There are many provisions in the Growth Management Act to encourage affordable housing. The low usage of liens could be because of a lack of information about them and because of the pandemic. Nothing requires a developer to use a deferral, and there is no lien required if there is no deferral. The lien was a compromise negotiated with the building community and cities to ensure that impact fees were paid while allowing for deferrals. There needs to be a mechanism to ensure that the fees are collected from the developer and that the new homeowner is not surprised by a requirement to pay the fee. It could be possible to withhold a final inspection or certificate of occupancy until the fees are paid, but Washington is diverse and some communities don't impose these requirements.

The lien is therefore important to make sure that school districts receive their impact fee revenue. If the lien was removed, then there would be no enforcement mechanism in some circumstances. The study covered those communities that had grandfathered deferral programs, but did not address the others.

(Other) This is an important bill. Our communities are not sustainable, and our products come from far away. Companies like Amazon and others that provide delivery services have become like developments, and they don't pay impact fees. The definitions should be changed so that impact fees can be collected from those like Amazon that use the roads. Deferrals should be provided to those that reduce the amount of travel that is needed. There is currently no requirement to centralize development activity, and deferrals should be used as an incentive to build sustainable communities.

Persons Testifying: (In support) Representative Keith Goehner, prime sponsor; and Bill Stauffacher.

(Opposed) Grace Yuan and Charlie Brown, Puget Sound Schools Coalition.

(Other) John Worthington.

Persons Signed In To Testify But Not Testifying: None.