
ENGROSSED HOUSE BILL 1468

State of Washington

68th Legislature

2023 Regular Session

By Representatives Goehner, Duerr, Jacobsen, Griffey, Barkis, Robertson, Hutchins, Chapman, Riccelli, Berg, Bateman, and Pollet

Read first time 01/20/23. Referred to Committee on Local Government.

1 AN ACT Relating to impact fee deferrals; amending RCW 82.02.050;
2 and repealing RCW 43.31.980.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.02.050 and 2015 c 241 s 1 are each amended to
5 read as follows:

6 (1) It is the intent of the legislature:

7 (a) To ensure that adequate facilities are available to serve new
8 growth and development;

9 (b) To promote orderly growth and development by establishing
10 standards by which counties, cities, and towns may require, by
11 ordinance, that new growth and development pay a proportionate share
12 of the cost of new facilities needed to serve new growth and
13 development; and

14 (c) To ensure that impact fees are imposed through established
15 procedures and criteria so that specific developments do not pay
16 arbitrary fees or duplicative fees for the same impact.

17 (2) Counties, cities, and towns that are required or choose to
18 plan under RCW 36.70A.040 are authorized to impose impact fees on
19 development activity as part of the financing for public facilities,
20 provided that the financing for system improvements to serve new

1 development must provide for a balance between impact fees and other
2 sources of public funds and cannot rely solely on impact fees.

3 (3) (a) ~~((i))~~ Counties, cities, and towns collecting impact fees
4 must, by September 1, ~~((2016))~~ 2025, adopt and maintain a system for
5 the deferred collection of impact fees for single-family detached and
6 attached residential construction. The deferral system must include a
7 process by which an applicant for a building permit for ~~((a))~~ single-
8 family detached or attached residences may ~~((request a deferral of~~
9 ~~the full impact fee payment. The deferral system offered by a county,~~
10 ~~city, or town under this subsection (3) must include one or more of~~
11 ~~the following options:~~

12 ~~(A) Deferring collection of the impact fee payment until final~~
13 ~~inspection;~~

14 ~~(B) Deferring collection of the impact fee payment until~~
15 ~~certificate of occupancy or equivalent certification; or~~

16 ~~(C) Deferring collection of the impact fee payment until the time~~
17 ~~of closing of the first sale of the property occurring after the~~
18 ~~issuance of the applicable building permit.~~

19 ~~(ii) Counties, cities, and towns utilizing the deferral process~~
20 ~~required by this subsection (3) (a))~~ execute a promissory note in
21 favor of the county, city, or town imposing the impact fee for the
22 full value of the impact fees imposed. The note must come due at the
23 time provided for in (b) of this subsection (3). The note must
24 identify each impact fee that it covers and the total amount of fees
25 that are due. The note must be recorded with the county auditor at
26 the expense of the applicant. If lots have not been created on the
27 subdivision, the note must be recorded for the entire subdivision.
28 The payment of the fees detailed in the promissory note is the legal
29 responsibility of the applicant.

30 (b) The promissory note must include a provision for payment of
31 the impact fee:

32 (i) At the time of the issuance of a certificate of occupancy or
33 equivalent certification for the lot or unit;

34 (ii) At the time of the closing of the first sale of the lot or
35 unit occurring after the issuance of the applicable building permit;
36 or

37 (iii) At the time of final inspection.

38 (c) (i) If a county, city, or town has determined that payment of
39 the impact fees is due at the time of the issuance of the certificate
40 of occupancy or equivalent certification or at the time of the final

1 inspection, the county, city, or town may withhold certification of
2 final inspection, the certificate of occupancy, or equivalent
3 certification until the impact fees have been paid in full. If the
4 applicant has not paid in full by the time of the first sale of the
5 lot or unit occurring after the issuance of the applicable building
6 permit, then the impact fees are due immediately at the time of sale.

7 (ii) If the full impact fees have not been paid within one month
8 of the sale of the first sale of the lot or unit occurring after the
9 issuance of the applicable building permit, then the note bears
10 interest at the rate provided for in RCW 82.32.050(2). The rate must
11 be adjusted on the first day of January of each year for use in
12 computing interest for that calendar year. The county treasurer must
13 provide the county, city, or town covered by the promissory note with
14 the variable rate on or before December 31st of the year preceding
15 the year in which the rate applies.

16 (iii) In addition to the interest provided for in (c)(ii) of this
17 subsection (3), if an applicant has not paid the impact fees in full
18 within one month of the first sale of the lot or unit occurring after
19 the issuance of the applicable building permit, the applicant must
20 additionally be assessed a penalty of five percent of the total
21 amount remaining due on the promissory note. If the promissory note
22 has not been paid in full within two months of the time of the first
23 sale of the lot or unit occurring after the issuance of the
24 applicable building permit, the applicant must instead be assessed a
25 penalty of 10 percent of the total amount remaining due on the
26 promissory note. If the promissory note has not been paid in full
27 within three months of the time of the first sale of the lot or unit
28 occurring after the issuance of the applicable building permit, the
29 applicant must instead be assessed a penalty of 20 percent of the
30 total amount remaining due on the promissory note.

31 (iv) The interest and penalties provided for in this subsection
32 (3)(c) are collectible only from the applicant and may not be a lien
33 against the property sold by the applicant for which the impact fees
34 were due. Owners of an applicant who has not paid the impact fees in
35 full within one month of the first sale of the lot or unit occurring
36 after the issuance of the applicable building permit are personally
37 liable for the full amount of the note, unless the sale has been
38 recorded in the official county property record.

1 ~~((iii))~~ (d) The amount of impact fees that may be deferred
2 under this subsection (3) must be determined by the fees in effect at
3 the time the applicant applies for a deferral.

4 ~~((iv) Unless an agreement to the contrary is reached between the
5 buyer and seller, the payment of impact fees due at closing of a sale
6 must be made from the seller's proceeds. In the absence of an
7 agreement to the contrary, the seller bears strict liability for the
8 payment of the impact fees.~~

9 ~~(b))~~ (e) The applicant must provide written disclosure of a
10 deferral agreement to a property buyer as required by chapter 64.06
11 RCW.

12 (f) The term of an impact fee deferral under this subsection (3)
13 may not exceed ~~((eighteen))~~ 18 months from the date of building
14 permit issuance.

15 ~~((c) Except as may otherwise be authorized in accordance with
16 (f) of this subsection (3), an applicant seeking a deferral under
17 this subsection (3) must grant and record a deferred impact fee lien
18 against the property in favor of the county, city, or town in the
19 amount of the deferred impact fee. The deferred impact fee lien,
20 which must include the legal description, tax account number, and
21 address of the property, must also be:~~

22 ~~(i) In a form approved by the county, city, or town;~~

23 ~~(ii) Signed by all owners of the property, with all signatures
24 acknowledged as required for a deed, and recorded in the county where
25 the property is located;~~

26 ~~(iii) Binding on all successors in title after the recordation;
27 and~~

28 ~~(iv) Junior and subordinate to one mortgage for the purpose of
29 construction upon the same real property granted by the person who
30 applied for the deferral of impact fees.~~

31 ~~(d)(i) If impact fees are not paid in accordance with a deferral
32 authorized by this subsection (3), and in accordance with the term
33 provisions established in (b) of this subsection (3), the county,
34 city, or town may institute foreclosure proceedings in accordance
35 with chapter 61.12 RCW.~~

36 ~~(ii) If the county, city, or town does not institute foreclosure
37 proceedings for unpaid school impact fees within forty-five days
38 after receiving notice from a school district requesting that it do
39 so, the district may institute foreclosure proceedings with respect
40 to the unpaid impact fees.~~

1 ~~(e)(i) Upon receipt of final payment of all deferred impact fees~~
2 ~~for a property, the county, city, or town must execute a release of~~
3 ~~deferred impact fee lien for the property. The property owner at the~~
4 ~~time of the release, at his or her expense, is responsible for~~
5 ~~recording the lien release.~~

6 ~~(ii) The extinguishment of a deferred impact fee lien by the~~
7 ~~foreclosure of a lien having priority does not affect the obligation~~
8 ~~to pay the impact fees as a condition of final inspection,~~
9 ~~certificate of occupancy, or equivalent certification, or at the time~~
10 ~~of closing of the first sale.~~

11 ~~(f))~~ (g) A county, city, or town with an impact fee deferral
12 process on or before April 1, 2015, is exempt from the requirements
13 of this subsection (3) if the deferral process delays all impact fees
14 and remains in effect after September 1, 2016.

15 ~~((g)(i) Each applicant for a single-family residential~~
16 ~~construction permit, in accordance with his or her contractor~~
17 ~~registration number or other unique identification number, is~~
18 ~~entitled to annually receive deferrals under this subsection (3) for~~
19 ~~the first twenty single-family residential construction building~~
20 ~~permits per county, city, or town. A county, city, or town, however,~~
21 ~~may elect, by ordinance, to defer more than twenty single-family~~
22 ~~residential construction building permits for an applicant. If the~~
23 ~~county, city, or town collects impact fees on behalf of one or more~~
24 ~~school districts for which the collection of impact fees could be~~
25 ~~delayed, the county, city, or town must consult with the district or~~
26 ~~districts about the additional deferrals. A county, city, or town~~
27 ~~considering additional deferrals must give substantial weight to~~
28 ~~recommendations of each applicable school district regarding the~~
29 ~~number of additional deferrals. If the county, city, or town~~
30 ~~disagrees with the recommendations of one or more school districts,~~
31 ~~the county, city, or town must provide the district or districts with~~
32 ~~a written rationale for its decision.~~

33 ~~(ii))~~ (h) For purposes of this subsection (3) ~~((g))~~, an
34 "applicant" includes an entity that controls the applicant, is
35 controlled by the applicant, or is under common control with the
36 applicant.

37 ~~((h) Counties, cities, and towns may collect reasonable~~
38 ~~administrative fees to implement this subsection (3) from permit~~
39 ~~applicants who are seeking to delay the payment of impact fees under~~
40 ~~this subsection (3).~~

1 ~~(i) In accordance with RCW 44.28.812 and 43.31.980, counties,~~
2 ~~cities, and towns must cooperate with and provide requested data,~~
3 ~~materials, and assistance to the department of commerce and the joint~~
4 ~~legislative audit and review committee.))~~

5 (4) The impact fees:

6 (a) Shall only be imposed for system improvements that are
7 reasonably related to the new development;

8 (b) Shall not exceed a proportionate share of the costs of system
9 improvements that are reasonably related to the new development; and

10 (c) Shall be used for system improvements that will reasonably
11 benefit the new development.

12 (5) (a) Impact fees may be collected and spent only for the public
13 facilities defined in RCW 82.02.090 which are addressed by a capital
14 facilities plan element of a comprehensive land use plan adopted
15 pursuant to the provisions of RCW 36.70A.070 or the provisions for
16 comprehensive plan adoption contained in chapter 36.70, 35.63, or
17 35A.63 RCW. After the date a county, city, or town is required to
18 adopt its development regulations under chapter 36.70A RCW, continued
19 authorization to collect and expend impact fees is contingent on the
20 county, city, or town adopting or revising a comprehensive plan in
21 compliance with RCW 36.70A.070, and on the capital facilities plan
22 identifying:

23 (i) Deficiencies in public facilities serving existing
24 development and the means by which existing deficiencies will be
25 eliminated within a reasonable period of time;

26 (ii) Additional demands placed on existing public facilities by
27 new development; and

28 (iii) Additional public facility improvements required to serve
29 new development.

30 (b) If the capital facilities plan of the county, city, or town
31 is complete other than for the inclusion of those elements which are
32 the responsibility of a special district, the county, city, or town
33 may impose impact fees to address those public facility needs for
34 which the county, city, or town is responsible.

35 NEW SECTION. **Sec. 2.** RCW 43.31.980 (Impact fee annual report)
36 and 2015 c 241 s 4 are each repealed.

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