

SHB 3067 - H AMD 1165

By Representative Simpson

ADOPTED AS AMENDED 2/15/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3  
4 "Sec. 1. RCW 82.02.050 and 1994 c 257 s 24 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  
21 development must provide for a balance between impact fees and other  
22 sources of public funds and cannot rely solely on impact fees.

23 (3) (a) Counties, cities, and towns collecting impact fees must  
24 make available to applicants for building permits issued for a lot or  
25 unit within a subdivision, short subdivision, or site development  
26 permit issuance a process by which the applicant may record a covenant  
27 against title to the property that requires payment equal to one

1 hundred percent of the impact fee rates in effect at the time of  
2 issuance of the building permit, less a credit for any deposits paid.  
3 Covenants recorded in accordance with this subsection (3) must provide  
4 for payment through escrow of the impact fee due and owing to be paid  
5 at the time of closing of sale of the lot or unit that is the subject  
6 of the building permit. Payment of such fees must be made from  
7 seller's proceeds, unless an agreement to the contrary is reached  
8 between buyer and seller. In the absence of an agreement to the  
9 contrary, the seller shall bear strict liability for the payment of  
10 said fees.

11 (b) A seller, and/or agents of a seller, of property subject to a  
12 covenant authorized under this subsection (3), must provide written  
13 disclosure of such covenant to a purchaser or prospective purchaser  
14 pursuant to the provisions of chapter 64.06 RCW. The disclosure of  
15 said covenant must include the amount of fees payable, and the  
16 governmental entities to which such fees are to be paid at closing.

17 (c) In the event the lot or unit is leased or rented rather than  
18 sold, all impact fees applicable to such lot or unit must be paid in  
19 full upon issuance of a certificate of occupancy or equivalent final  
20 occupancy approval.

21 (d) This subsection (3) applies only to: (i) Counties with more  
22 than one million five hundred thousand residents and the cities and  
23 towns within these counties; and (ii) counties adjoining counties  
24 meeting the requirements of (i) of this subsection (3)(d) that have  
25 more than six hundred fifty thousand but fewer than eight hundred  
26 thousand residents, and the cities and towns within these counties.

27 (e) This subsection (3) does not apply to dwellings governed by  
28 chapter 64.34 RCW.

29 (4) The impact fees:

30 (a) (~~Shall~~) Must only be imposed for system improvements that  
31 are reasonably related to the new development;

32 (b) (~~Shall~~) May not exceed a proportionate share of the costs of  
33 system improvements that are reasonably related to the new  
34 development; and

1 (c) (~~shall~~) Must be used for system improvements that will  
2 reasonably benefit the new development.

3 (~~(4)~~) (5)(a) Impact fees may be collected and spent only for the  
4 public facilities defined in RCW 82.02.090 which are addressed by a  
5 capital facilities plan element of a comprehensive land use plan  
6 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions  
7 for comprehensive plan adoption contained in chapter 36.70, 35.63, or  
8 35A.63 RCW. After the date a county, city, or town is required to  
9 adopt its development regulations under chapter 36.70A RCW, continued  
10 authorization to collect and expend impact fees (~~shall be~~) is  
11 contingent on the county, city, or town adopting or revising a  
12 comprehensive plan in compliance with RCW 36.70A.070, and on the  
13 capital facilities plan identifying:

14 (~~(a)~~) (i) Deficiencies in public facilities serving existing  
15 development and the means by which existing deficiencies will be  
16 eliminated within a reasonable period of time;

17 (~~(b)~~) (ii) Additional demands placed on existing public  
18 facilities by new development; and

19 (~~(c)~~) (iii) Additional public facility improvements required to  
20 serve new development.

21 (b) If the capital facilities plan of the county, city, or town is  
22 complete other than for the inclusion of those elements which are the  
23 responsibility of a special district, the county, city, or town may  
24 impose impact fees to address those public facility needs for which  
25 the county, city, or town is responsible.

26  
27 **Sec. 2.** RCW 36.70A.070 and 2005 c 360 s 2 are each amended to  
28 read as follows:

29 The comprehensive plan of a county or city that is required or  
30 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
31 and descriptive text covering objectives, principles, and standards  
32 used to develop the comprehensive plan. The plan shall be an  
33 internally consistent document and all elements shall be consistent  
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1 with the future land use map. A comprehensive plan shall be adopted  
2 and amended with public participation as provided in RCW 36.70A.140.

3 Each comprehensive plan shall include a plan, scheme, or design  
4 for each of the following:

5 (1) A land use element designating the proposed general  
6 distribution and general location and extent of the uses of land,  
7 where appropriate, for agriculture, timber production, housing,  
8 commerce, industry, recreation, open spaces, general aviation  
9 airports, public utilities, public facilities, and other land uses.  
10 The land use element shall include population densities, building  
11 intensities, and estimates of future population growth. The land use  
12 element shall provide for protection of the quality and quantity of  
13 groundwater used for public water supplies. Wherever possible, the  
14 land use element should consider utilizing urban planning approaches  
15 that promote physical activity. Where applicable, the land use  
16 element shall review drainage, flooding, and storm water run-off in  
17 the area and nearby jurisdictions and provide guidance for corrective  
18 actions to mitigate or cleanse those discharges that pollute waters of  
19 the state, including Puget Sound or waters entering Puget Sound.

20 (2) A housing element ensuring the vitality and character of  
21 established residential neighborhoods that: (a) Includes an inventory  
22 and analysis of existing and projected housing needs that identifies  
23 the number of housing units necessary to manage projected growth; (b)  
24 includes a statement of goals, policies, objectives, and mandatory  
25 provisions for the preservation, improvement, and development of  
26 housing, including single-family residences; (c) identifies sufficient  
27 land for housing, including, but not limited to, government-assisted  
28 housing, housing for low-income families, manufactured housing,  
29 multifamily housing, and group homes and foster care facilities; and  
30 (d) makes adequate provisions for existing and projected needs of all  
31 economic segments of the community.

32 (3) A capital facilities plan element consisting of: (a) An  
33 inventory of existing capital facilities owned by public entities,  
34 showing the locations and capacities of the capital facilities; (b) a

1 forecast of the future needs for such capital facilities; (c) the  
2 proposed locations and capacities of expanded or new capital  
3 facilities; (d) at least a six-year plan that will finance such  
4 capital facilities within projected funding capacities and clearly  
5 identifies sources of public money for such purposes; and (e) a  
6 requirement to reassess the land use element if probable funding falls  
7 short of meeting existing needs and to ensure that the land use  
8 element, capital facilities plan element, and financing plan within  
9 the capital facilities plan element are coordinated and consistent.  
10 Park and recreation facilities shall be included in the capital  
11 facilities plan element.

12 (4) A utilities element consisting of the general location,  
13 proposed location, and capacity of all existing and proposed  
14 utilities, including, but not limited to, electrical lines,  
15 telecommunication lines, and natural gas lines.

16 (5) Rural element. Counties shall include a rural element  
17 including lands that are not designated for urban growth, agriculture,  
18 forest, or mineral resources. The following provisions shall apply to  
19 the rural element:

20 (a) Growth management act goals and local circumstances. Because  
21 circumstances vary from county to county, in establishing patterns of  
22 rural densities and uses, a county may consider local circumstances,  
23 but shall develop a written record explaining how the rural element  
24 harmonizes the planning goals in RCW 36.70A.020 and meets the  
25 requirements of this chapter.

26 (b) Rural development. The rural element shall permit rural  
27 development, forestry, and agriculture in rural areas. The rural  
28 element shall provide for a variety of rural densities, uses,  
29 essential public facilities, and rural governmental services needed to  
30 serve the permitted densities and uses. To achieve a variety of rural  
31 densities and uses, counties may provide for clustering, density  
32 transfer, design guidelines, conservation easements, and other  
33 innovative techniques that will accommodate appropriate rural  
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1 densities and uses that are not characterized by urban growth and that  
2 are consistent with rural character.

3 (c) Measures governing rural development. The rural element shall  
4 include measures that apply to rural development and protect the rural  
5 character of the area, as established by the county, by:

6 (i) Containing or otherwise controlling rural development;

7 (ii) Assuring visual compatibility of rural development with the  
8 surrounding rural area;

9 (iii) Reducing the inappropriate conversion of undeveloped land  
10 into sprawling, low-density development in the rural area;

11 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and  
12 surface water and groundwater resources; and

13 (v) Protecting against conflicts with the use of agricultural,  
14 forest, and mineral resource lands designated under RCW 36.70A.170.

15 (d) Limited areas of more intensive rural development. Subject to  
16 the requirements of this subsection and except as otherwise  
17 specifically provided in this subsection (5)(d), the rural element may  
18 allow for limited areas of more intensive rural development, including  
19 necessary public facilities and public services to serve the limited  
20 area as follows:

21 (i) Rural development consisting of the infill, development, or  
22 redevelopment of existing commercial, industrial, residential, or  
23 mixed-use areas, whether characterized as shoreline development,  
24 villages, hamlets, rural activity centers, or crossroads developments.

25 (A) A commercial, industrial, residential, shoreline, or mixed-use  
26 area shall be subject to the requirements of (d)(iv) of this  
27 subsection, but shall not be subject to the requirements of (c)(ii)  
28 and (iii) of this subsection.

29 (B) Any development or redevelopment other than an industrial area  
30 or an industrial use within a mixed-use area or an industrial area  
31 under this subsection (5)(d)(i) must be principally designed to serve  
32 the existing and projected rural population.

33 (C) Any development or redevelopment in terms of building size,  
34 scale, use, or intensity shall be consistent with the character of the

1 existing areas. Development and redevelopment may include changes in  
2 use from vacant land or a previously existing use so long as the new  
3 use conforms to the requirements of this subsection (5);

4 (ii) The intensification of development on lots containing, or new  
5 development of, small-scale recreational or tourist uses, including  
6 commercial facilities to serve those recreational or tourist uses,  
7 that rely on a rural location and setting, but that do not include new  
8 residential development. A small-scale recreation or tourist use is  
9 not required to be principally designed to serve the existing and  
10 projected rural population. Public services and public facilities  
11 shall be limited to those necessary to serve the recreation or tourist  
12 use and shall be provided in a manner that does not permit low-density  
13 sprawl;

14 (iii) The intensification of development on lots containing  
15 isolated nonresidential uses or new development of isolated cottage  
16 industries and isolated small-scale businesses that are not  
17 principally designed to serve the existing and projected rural  
18 population and nonresidential uses, but do provide job opportunities  
19 for rural residents. Rural counties may allow the expansion of small-  
20 scale businesses as long as those small-scale businesses conform with  
21 the rural character of the area as defined by the local government  
22 according to RCW 36.70A.030(~~((+14))~~) (15). Rural counties may also  
23 allow new small-scale businesses to utilize a site previously occupied  
24 by an existing business as long as the new small-scale business  
25 conforms to the rural character of the area as defined by the local  
26 government according to RCW 36.70A.030(~~((+14))~~) (15). Public services  
27 and public facilities shall be limited to those necessary to serve the  
28 isolated nonresidential use and shall be provided in a manner that  
29 does not permit low-density sprawl;

30 (iv) A county shall adopt measures to minimize and contain the  
31 existing areas or uses of more intensive rural development, as  
32 appropriate, authorized under this subsection. Lands included in such  
33 existing areas or uses shall not extend beyond the logical outer  
34 boundary of the existing area or use, thereby allowing a new pattern

1 of low-density sprawl. Existing areas are those that are clearly  
2 identifiable and contained and where there is a logical boundary  
3 delineated predominately by the built environment, but that may also  
4 include undeveloped lands if limited as provided in this subsection.  
5 The county shall establish the logical outer boundary of an area of  
6 more intensive rural development. In establishing the logical outer  
7 boundary the county shall address (A) the need to preserve the  
8 character of existing natural neighborhoods and communities, (B)  
9 physical boundaries such as bodies of water, streets and highways, and  
10 land forms and contours, (C) the prevention of abnormally irregular  
11 boundaries, and (D) the ability to provide public facilities and  
12 public services in a manner that does not permit low-density sprawl;

13 (v) For purposes of (d) of this subsection, an existing area or  
14 existing use is one that was in existence:

15 (A) On July 1, 1990, in a county that was initially required to  
16 plan under all of the provisions of this chapter;

17 (B) On the date the county adopted a resolution under RCW  
18 36.70A.040(2), in a county that is planning under all of the  
19 provisions of this chapter under RCW 36.70A.040(2); or

20 (C) On the date the office of financial management certifies the  
21 county's population as provided in RCW 36.70A.040(5), in a county that  
22 is planning under all of the provisions of this chapter pursuant to  
23 RCW 36.70A.040(5).

24 (e) Exception. This subsection shall not be interpreted to permit  
25 in the rural area a major industrial development or a master planned  
26 resort unless otherwise specifically permitted under RCW 36.70A.360  
27 and 36.70A.365.

28 (6) A transportation element that implements, and is consistent  
29 with, the land use element.

30 (a) The transportation element shall include the following  
31 subelements:

32 (i) Land use assumptions used in estimating travel;

33 (ii) Estimated traffic impacts to state-owned transportation  
34 facilities resulting from land use assumptions to assist the



1 department of transportation in monitoring the performance of state  
2 facilities, to plan improvements for the facilities, and to assess the  
3 impact of land- use decisions on state-owned transportation  
4 facilities;

5 (iii) Facilities and services needs, including:

6 (A) An inventory of air, water, and ground transportation  
7 facilities and services, including transit alignments and general  
8 aviation airport facilities, to define existing capital facilities and  
9 travel levels as a basis for future planning. This inventory must  
10 include state-owned transportation facilities within the city or  
11 county's jurisdictional boundaries;

12 (B) Level of service standards for all locally owned arterials and  
13 transit routes to serve as a gauge to judge performance of the system.  
14 These standards should be regionally coordinated;

15 (C) For state-owned transportation facilities, level of service  
16 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,  
17 to gauge the performance of the system. The purposes of reflecting  
18 level of service standards for state highways in the local  
19 comprehensive plan are to monitor the performance of the system, to  
20 evaluate improvement strategies, and to facilitate coordination  
21 between the county's or city's six-year street, road, or transit  
22 program and the department of transportation's six-year investment  
23 program. The concurrency requirements of (b) of this subsection do  
24 not apply to transportation facilities and services of statewide  
25 significance except for counties consisting of islands whose only  
26 connection to the mainland are state highways or ferry routes. In  
27 these island counties, state highways and ferry route capacity must be  
28 a factor in meeting the concurrency requirements in (b) of this  
29 subsection;

30 (D) Specific actions and requirements for bringing into compliance  
31 locally owned transportation facilities or services that are below an  
32 established level of service standard;

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1 (E) Forecasts of traffic for at least ten years based on the  
2 adopted land use plan to provide information on the location, timing,  
3 and capacity needs of future growth;

4 (F) Identification of state and local system needs to meet current  
5 and future demands. Identified needs on state-owned transportation  
6 facilities must be consistent with the statewide multimodal  
7 transportation plan required under chapter 47.06 RCW;

8 (iv) Finance, including:

9 (A) An analysis of funding capability to judge needs against  
10 probable funding resources;

11 (B) A multiyear financing plan based on the needs identified in  
12 the comprehensive plan, the appropriate parts of which shall serve as  
13 the basis for the six-year street, road, or transit program required  
14 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
15 35.58.2795 for public transportation systems. The multiyear financing  
16 plan should be coordinated with the ~~((six-year improvement))~~ ten-year  
17 investment program developed by the ~~((department of transportation))~~  
18 office of financial management as required by RCW 47.05.030;

19 (C) If probable funding falls short of meeting identified needs, a  
20 discussion of how additional funding will be raised, or how land use  
21 assumptions will be reassessed to ensure that level of service  
22 standards will be met;

23 (v) Intergovernmental coordination efforts, including an  
24 assessment of the impacts of the transportation plan and land use  
25 assumptions on the transportation systems of adjacent jurisdictions;

26 (vi) Demand-management strategies;

27 (vii) Pedestrian and bicycle component to include collaborative  
28 efforts to identify and designate planned improvements for pedestrian  
29 and bicycle facilities and corridors that address and encourage  
30 enhanced community access and promote healthy lifestyles.

31 (b) After adoption of the comprehensive plan by jurisdictions  
32 required to plan or who choose to plan under RCW 36.70A.040, local  
33 jurisdictions must adopt and enforce ordinances which prohibit  
34 development approval if the development causes the level of service on

1 a locally owned transportation facility to decline below the standards  
2 adopted in the transportation element of the comprehensive plan,  
3 unless transportation improvements or strategies to accommodate the  
4 impacts of development are made concurrent with the development.  
5 These strategies may include increased public transportation service,  
6 ride sharing programs, demand management, and other transportation  
7 systems management strategies. For the purposes of this subsection  
8 (6) "concurrent with the development" shall mean that improvements or  
9 strategies are in place at the time of development, or that a  
10 financial commitment is in place to complete the improvements or  
11 strategies within six years. If the collection of impact fees is  
12 delayed under RCW 82.02.050(3), the six-year period required by this  
13 subsection (6)(b) must begin after the county or city receives full  
14 payment of all impact fees due.

15 (c) The transportation element described in this subsection (6),  
16 and the six-year plans required by RCW 35.77.010 for cities, RCW  
17 36.81.121 for counties, and RCW 35.58.2795 for public transportation  
18 systems, and the ten-year plan required by RCW 47.05.030 for the  
19 state, must be consistent.

20 (7) An economic development element establishing local goals,  
21 policies, objectives, and provisions for economic growth and vitality  
22 and a high quality of life. The element shall include: (a) A summary  
23 of the local economy such as population, employment, payroll, sectors,  
24 businesses, sales, and other information as appropriate; (b) a summary  
25 of the strengths and weaknesses of the local economy defined as the  
26 commercial and industrial sectors and supporting factors such as land  
27 use, transportation, utilities, education, workforce, housing, and  
28 natural/cultural resources; and (c) an identification of policies,  
29 programs, and projects to foster economic growth and development and  
30 to address future needs. A city that has chosen to be a residential  
31 community is exempt from the economic development element requirement  
32 of this subsection.

33 (8) A park and recreation element that implements, and is  
34 consistent with, the capital facilities plan element as it relates to

1 park and recreation facilities. The element shall include: (a)  
2 Estimates of park and recreation demand for at least a ten-year  
3 period; (b) an evaluation of facilities and service needs; and (c) an  
4 evaluation of intergovernmental coordination opportunities to provide  
5 regional approaches for meeting park and recreational demand.

6 (9) It is the intent that new or amended elements required after  
7 January 1, 2002, be adopted concurrent with the scheduled update  
8 provided in RCW 36.70A.130. Requirements to incorporate any such new  
9 or amended elements shall be null and void until funds sufficient to  
10 cover applicable local government costs are appropriated and  
11 distributed by the state at least two years before local government  
12 must update comprehensive plans as required in RCW 36.70A.130."

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**EFFECT:** 1) Requires that the payment of impact fees be made from the seller's proceeds from the sale of the property, unless the buyer and seller enter into an agreement to the contrary; 2) establishes that the seller is strictly liable for the payment of impact fees absent an agreement to the contrary between the buyer and seller; 3) revises provisions regarding a seller's duty to disclose the existence of the covenant to the buyer so as to require that such disclosure be made in accordance with the real property seller's disclosure requirements under chapter 64.06 RCW; 4) specifies that the act's impact fee covenant provisions are not applicable to dwellings subject to the Condominium Act under chapter 64.34 RCW; 5) requires that impact fees must be paid in full upon the issuance of a certificate of occupancy or its equivalent; 6) deletes amendatory provisions requiring the seller to make specified disclosures regarding the impact fee covenant at the time of the first meeting between buyer and seller; and 7) deletes amendatory provisions authorizing a buyer to nullify any purchase agreements and obtain specified reimbursements in the event the seller fails to meet specified covenant disclosure requirements.

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