

Local Government Committee

HB 1709

Brief Description: Establishing a process for the payment of impact fees through provisions stipulated in recorded covenants.

Sponsors: Representatives Springer, Kretz, Takko, Pike, Wilcox and Fitzgibbon.

Brief Summary of Bill

- Obligates counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification.
- Authorizes counties, cities, and towns to adopt alternative impact fee collection deferral systems if certain requirements are met.
- Exempts counties, cities, and towns that have pre-existing impact fee delay processes that meet certain requirements from the obligation to establish an impact fee deferral system.
- Delays the starting of the six-year time frame for satisfying concurrency provisions of the Growth Management Act until after the county or city receives full payment of all deferred impact fees.
- Makes all provisions effective July 1, 2016.

Hearing Date: 2/10/15

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act and Concurrency

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all counties and cities, and a

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significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA.

The GMA directs counties and cities that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, including land use and transportation, each of which is a subset of a comprehensive plan. The implementation of comprehensive plans occurs through locally adopted development regulations mandated by the GMA.

The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs. A provision of the sub-element for facilities and services needs requires planning jurisdictions to adopt level of service (LOS) standards for all locally owned arterials and transit routes.

Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the proposed development will cause the LOS on a locally owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this "concurrency" prohibition may be made if improvements or strategies to accommodate development impacts are made concurrent with the development. These strategies may include:

- increased public transportation service;
- ridesharing programs;
- demand management; and
- other transportation systems management strategies.

"Concurrent with the development" means improvements or strategies that are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

Transportation elements may also include, in addition to improvements or strategies to accommodate the impacts of development authorized under the GMA, multimodal transportation improvements or strategies that are made concurrent with the development.

Impact Fees

Planning jurisdictions may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. This financing must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees. Additionally, impact fees:

- may only be imposed for system improvements, a term defined in statute, that are reasonably related to the new development;
- may not exceed a proportionate share of the costs of system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

Impact fees may be collected and spent only for qualifying public facilities that are included within a capital facilities plan element of a comprehensive plan. "Public facilities," within the context of impact fee statutes, are the following capital facilities that are owned or operated by government entities:

- public streets and roads;

- publicly owned parks, open space, and recreation facilities;
- school facilities; and
- fire protection facilities.

County and city ordinances by which impact fees are imposed must conform with specific requirements. Among other obligations, these ordinances:

- must include a schedule of impact fees for each type of development activity for which a fee is imposed;
- may provide an exemption for low-income housing and other development activities with broad public purposes; and
- must allow the imposing jurisdiction to adjust the standard impact fee for unusual circumstances in specific cases to ensure that fees are imposed fairly.

Covenants.

Covenants are formal agreements or promises between individuals. Covenants may be used to ensure the execution or prevention of an action. A covenant for title is a covenant that binds the person conveying the property to ensure the completeness, security, and continuance of the title transferred.

Land Divisions.

The process by which land divisions may occur is governed by state and local requirements. Local governments, the entities charged with receiving and determining land division proposals, must adopt associated ordinances and procedures in conformity with state requirements. Numerous statutorily defined terms are applicable in land use division actions. Examples include the following:

- "*Subdivision*" generally means the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.
- "*Preliminary plat*" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision.
- "*Short subdivision*" generally means the division or redivision of land into four or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. The legislative authority of any planning jurisdiction may, with some limitations, increase the number of lots, tracts, or parcels to be regulated as short subdivisions to nine.
- "*Short plat*" is the map or representation of a short subdivision.
- "*Final plat*" is the final drawing of the subdivision and dedication prepared for a filing for record with the county auditor. A final plat must contain elements and requirements mandated by statute and applicable local government regulations.

Gubernatorial Veto of Engrossed Substitute House Bill 1652 (2013).

Legislation adopted in 2013 (*i.e.*, ESHB 1652) obligated counties, cities, and towns to adopt deferral systems for the collection of impact fees from applicants for residential building permits through a covenant-based process, or through a process that delays payment until final inspection, certificate of occupancy, or equivalent certification. The legislation was vetoed in its entirety by the Governor on May 21, 2013.

Summary of Bill:

Impact Fee Payment Deferral Processes.

Counties, cities, and towns that collect impact fees must adopt a system for the collection of impact fees from applicants for residential building permits issued for a lot or unit created by a subdivision, short subdivision, site development permit, binding site plan, or condominium that includes one or more of the following:

- A process by which an applicant for any development permit that requires payment of an impact fee must record a covenant against title to the lot or unit subject to the impact fee obligation. Covenants recorded through this process must satisfy delineated requirements, including requiring payment of all impact fees applicable to the lot or unit at the rates in effect at the time the building permit was issued, less a credit for paid deposits. The covenants must provide for the payment of the impact fees at the time of closing or 18 or more months after the issuance of a building permit, whichever is earlier; or
- A process by which an applicant may apply for a deferral of the impact fee payment until final inspection or certificate of occupancy, or equivalent certification.

As an alternative to these impact fee deferral processes, counties, cities, and towns may adopt local deferral systems that differ from the covenant and final inspection or certificate of occupancy processes if the payment timing provisions are consistent with those processes.

Additionally, a county, city, or town with an impact fee deferral process on or before July 1, 2016, is exempted from the obligation to establish an impact fee deferral system if the locally adopted deferral process, which may be amended in accordance with specified requirements, delays all fees and remains in effect after July 1, 2016.

Lastly, in each calendar year that an applicant received a deferral, the applicant may receive deferrals for no fewer than 20 single-family residential construction building permits per jurisdiction. A county, city, or town, however, may elect to defer more than 20 of the building permits for an applicant if:

- the county, city, or town collects impact fees on behalf of the jurisdiction or jurisdictions for which the collection of impact fees would be delayed; and
- the county, city, or town and the jurisdiction or jurisdictions for which the collection of impact fees would be delayed agree to the additional deferrals.

Growth Management Act: Delayed Start of Concurrency Time Frame.

If the collection of impact fees is delayed through a covenant-based deferral process, a final inspection or certificate of occupancy deferral process, or an authorized alternative local government deferral system, the six-year time frame for completing improvements or strategies for complying with concurrency provisions of the GMA may not begin until after the county or city receives full payment of all impact fees due.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2016.