S-3743.1

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**SENATE BILL 6294**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senators Kuderer, Sheldon, Warnick, Walsh, Palumbo, and Liias

AN ACT Relating to exempting impact fees for low-income housing development; amending RCW 82.02.060; reenacting and amending RCW 82.02.090; providing an effective date; and declaring an emergency.

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

**Sec.**  RCW 82.02.060 and 2012 c 200 s 1 are each amended to read as follows:

(1) The local ordinance by which impact fees are imposed:

((~~(1) Shall~~)) (a) Must include a schedule of impact fees ((~~which shall be~~)) that are adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule ((~~shall~~)) must be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees ((~~shall~~)) must incorporate, among other things, the following:

((~~(a)~~)) (i) The cost of public facilities necessitated by new development;

((~~(b)~~)) (ii) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;

((~~(c)~~)) (iii) The availability of other means of funding public facility improvements;

((~~(d)~~)) (iv) The cost of existing public facilities improvements; and

((~~(e)~~)) (v) The methods by which public facilities improvements were financed;

((~~(2)~~)) (b) May provide an exemption for ((~~low-income housing, and other~~)) development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity ((~~shall be~~)) are paid from public funds other than impact fee accounts;

((~~(3)~~)) (c) May provide an exemption from impact fees for low-income housing((~~. Local governments that grant exemptions for low-income housing under this subsection (3) may either: Grant a partial exemption of not more than eighty percent of impact fees, in which case there is no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts; or provide a full waiver, in which case the remaining percentage of the exempted fee must be paid from public funds other than impact fee accounts. An exemption for low-income housing granted under subsection (2) of this section or~~)) up to one hundred percent of impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds other than impact fee accounts. An exemption for low-income housing granted under this subsection ((~~(3)~~)) (1)(c) must be conditioned upon requiring the developer to record a covenant that, except as provided otherwise by this subsection, prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, unless used as a shelter for people experiencing homelessness, and that if the property is converted to a use other than for low-income housing, the property owner must pay the applicable impact fees in effect at the time of conversion. Covenants required by this subsection must be recorded with the applicable county auditor or recording officer. A local government granting an exemption under ((~~subsection (2) of this section or~~)) this subsection ((~~(3)~~)) (1)(c) for low-income housing may not collect revenue lost through granting an exemption by increasing impact fees unrelated to the exemption. A school district who receives school impact fees must approve any exemption under ((~~subsection (2) of this section or~~)) this subsection ((~~(3)~~)) (1)(c);

((~~(4) Shall~~)) (d) Must provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

((~~(5) Shall~~)) (e) Must allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

((~~(6) Shall~~)) (f) Must include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

((~~(7) Shall~~)) (g) Must establish one or more reasonable service areas within which it ((~~shall~~)) calculates and imposes impact fees for various land use categories per unit of development; and

((~~(8)~~)) (h) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee ((~~shall~~)) may not be imposed to make up for any system improvement deficiencies.

(2) For purposes of this section, "low-income housing" means housing with a monthly housing expense, that is no greater than thirty percent of eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

**Sec.**  RCW 82.02.090 and 2010 c 86 s 1 are each reenacted and amended to read as follows:

((~~Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:~~)) The definitions in this section apply throughout RCW 82.02.050 through 82.02.090 unless the context clearly requires otherwise.

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include:

(a) Buildings or structures constructed by a regional transit authority; or

(b) Buildings or structures constructed as shelters that provide emergency housing for people experiencing homelessness, or emergency shelters for victims of domestic violence, as defined in RCW 70.123.020.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser ((~~shall be~~)) is considered the owner of the real property if the contract is recorded.

(5) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. ((~~No~~)) An improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town ((~~shall be~~)) is not considered a project improvement.

(6) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas ((~~shall~~)) must be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2018.

**--- END ---**