

HB 1468 - H AMD 1079

By Representative Callan

ADOPTED 02/13/2024

1 Beginning on page 1, line 4, strike all of section 1 and insert
2 the following:

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

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

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

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

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

16 (2) Counties, cities, and towns that are required or choose to
17 plan under RCW 36.70A.040 are authorized to impose impact fees on
18 development activity as part of the financing for public facilities,
19 provided that the financing for system improvements to serve new
20 development must provide for a balance between impact fees and other
21 sources of public funds and cannot rely solely on impact fees.

22 (3) (a) ~~((i))~~ Counties, cities, and towns collecting impact fees
23 must, by September 1, ~~((2016))~~ 2025, adopt and maintain a system for
24 the deferred collection of impact fees for single-family detached and
25 attached residential construction. The deferral system must include a
26 process by which an applicant for a building permit for ~~((a))~~ single-
27 family detached or attached residences may ~~((request a deferral of~~
28 ~~the full impact fee payment. The deferral system offered by a county,~~
29 ~~city, or town under this subsection (3) must include one or more of~~
30 ~~the following options:~~

31 ~~(A) Deferring collection of the impact fee payment until final~~
32 ~~inspection;~~

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

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

6 ~~(ii) Counties, cities, and towns utilizing the deferral process~~
7 ~~required by this subsection (3)(a)) execute a promissory note in~~
8 ~~favor of the county, city, or town imposing the impact fee for the~~
9 ~~full value of the impact fees imposed. The note must come due at the~~
10 ~~time provided for in (b) of this subsection (3). The note must~~
11 ~~identify each impact fee that it covers and the total amount of fees~~
12 ~~that are due. The note must be recorded with the county auditor at~~
13 ~~the expense of the applicant. If lots have not been created on the~~
14 ~~subdivision, the note must be recorded for the entire subdivision.~~
15 ~~The payment of the fees detailed in the promissory note is the legal~~
16 ~~responsibility of the applicant.~~

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

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

21 (ii) At the time of the closing of the first sale of the lot or
22 unit occurring after the issuance of the applicable building permit;
23 or

24 (iii) At the time of final inspection.

25 (c) (i) If a county, city, or town has determined that payment of
26 the impact fees is due at the time of the issuance of the certificate
27 of occupancy or equivalent certification or at the time of the final
28 inspection, the county, city, or town may withhold certification of
29 final inspection, the certificate of occupancy, or equivalent
30 certification until the impact fees have been paid in full. If the
31 applicant has not paid in full by the time of the first sale of the
32 lot or unit occurring after the issuance of the applicable building
33 permit, then the impact fees are due immediately at the time of sale.

34 (ii) If the full impact fees have not been paid within one month
35 of the sale of the first sale of the lot or unit occurring after the
36 issuance of the applicable building permit, then the note bears
37 interest at the rate provided for in RCW 82.32.050(2). The rate must
38 be adjusted on the first day of January of each year for use in
39 computing interest for that calendar year. The county treasurer must
40 provide the county, city, or town covered by the promissory note with

1 the variable rate on or before December 31st of the year preceding
2 the year in which the rate applies.

3 (iii) In addition to the interest provided for in (c)(ii) of this
4 subsection (3), if an applicant has not paid the impact fees in full
5 within one month of the first sale of the lot or unit occurring after
6 the issuance of the applicable building permit, the applicant must
7 additionally be assessed a penalty of five percent of the total
8 amount remaining due on the promissory note. If the promissory note
9 has not been paid in full within two months of the time of the first
10 sale of the lot or unit occurring after the issuance of the
11 applicable building permit, the applicant must instead be assessed a
12 penalty of 10 percent of the total amount remaining due on the
13 promissory note. If the promissory note has not been paid in full
14 within three months of the time of the first sale of the lot or unit
15 occurring after the issuance of the applicable building permit, the
16 applicant must instead be assessed a penalty of 20 percent of the
17 total amount remaining due on the promissory note.

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

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

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

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

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

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

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

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

12 ~~(iii) Binding on all successors in title after the recordation;~~
13 ~~and~~

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

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

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

27 ~~(e) (i) Upon receipt of final payment of all deferred impact fees~~
28 ~~for a property, the county, city, or town must execute a release of~~
29 ~~deferred impact fee lien for the property. The property owner at the~~
30 ~~time of the release, at his or her expense, is responsible for~~
31 ~~recording the lien release.~~

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

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

1 ~~((g)(i) Each applicant for a single-family residential~~
2 ~~construction permit, in accordance with his or her contractor~~
3 ~~registration number or other unique identification number, is~~
4 ~~entitled to annually receive deferrals under this subsection (3) for~~
5 ~~the first twenty single-family residential construction building~~
6 ~~permits per county, city, or town. A county, city, or town, however,~~
7 ~~may elect, by ordinance, to defer more than twenty single-family~~
8 ~~residential construction building permits for an applicant. If the~~
9 ~~county, city, or town collects impact fees on behalf of one or more~~
10 ~~school districts for which the collection of impact fees could be~~
11 ~~delayed, the county, city, or town must consult with the district or~~
12 ~~districts about the additional deferrals. A county, city, or town~~
13 ~~considering additional deferrals must give substantial weight to~~
14 ~~recommendations of each applicable school district regarding the~~
15 ~~number of additional deferrals. If the county, city, or town~~
16 ~~disagrees with the recommendations of one or more school districts,~~
17 ~~the county, city, or town must provide the district or districts with~~
18 ~~a written rationale for its decision.~~

19 ~~((ii))~~ (h) For purposes of this subsection (3) ~~((g))~~, an
20 "applicant" includes an entity that controls the applicant, is
21 controlled by the applicant, or is under common control with the
22 applicant.

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

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

31 (4) The impact fees:

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

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

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

38 (5) (a) Impact fees may be collected and spent only for the public
39 facilities defined in RCW 82.02.090 which are addressed by a capital
40 facilities plan element of a comprehensive land use plan adopted

1 pursuant to the provisions of RCW 36.70A.070 or the provisions for
2 comprehensive plan adoption contained in chapter 36.70, 35.63, or
3 35A.63 RCW. After the date a county, city, or town is required to
4 adopt its development regulations under chapter 36.70A RCW, continued
5 authorization to collect and expend impact fees is contingent on the
6 county, city, or town adopting or revising a comprehensive plan in
7 compliance with RCW 36.70A.070, and on the capital facilities plan
8 identifying:

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

12 (ii) Additional demands placed on existing public facilities by
13 new development; and

14 (iii) Additional public facility improvements required to serve
15 new development.

16 (b) If the capital facilities plan of the county, city, or town
17 is complete other than for the inclusion of those elements which are
18 the responsibility of a special district, the county, city, or town
19 may impose impact fees to address those public facility needs for
20 which the county, city, or town is responsible."

EFFECT: Requires that an applicant seeking an impact fee deferral execute and record a promissory note for the full amount of the deferred fees in favor of the county, city, or town imposing the fee.

Allows for the option of the payment of the deferred fee to occur at the time of the closing of the first sale of the lot or unit that occurs after the issuance of a building permit.

Provides that the withholding of a certificate of occupancy, certification of final inspection, or equivalent certification is discretionary, rather than mandatory, if the impact fees deferred until the issuance of such a certification have not been paid.

Provides for the imposition of a penalty and interest if a deferred impact fee has not been paid when due.

Requires that, if impact fees are deferred until the closing of the first sale of the property, the applicant must provide a written disclosure of the deferral agreement to the buyer.

Removes provisions limiting an applicant to 20 annual impact fee deferrals and allowing counties, cities, and towns to collect reasonable administrative fees related to the deferral.

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