
Local Government Committee

HB 1468

Brief Description: Concerning impact fee deferrals.

Sponsors: Representatives Goehner, Duerr, Jacobsen, Griffey, Barkis, Robertson, Hutchins, Chapman, Riccelli, Berg, Bateman and Pollet.

Brief Summary of Bill

- Repeals provisions requiring that a lien be imposed on a property receiving an impact fee deferral in favor of the local government providing the deferral.
- Repeals provisions requiring the Department of Commerce to submit an annual report to the Legislature on impact fee deferrals.
- Repeals the option to defer collection of an impact fee until the time of closing of the first sale of the property.

Hearing Date: 1/31/23

Staff: Kellen Wright (786-7134).

Background:

Impact fees are one-time charges assessed by a local government on a new development to help pay for the increased services that will be required because of that development. For example, if a new residential development would require increased school facilities for the new residents, then an impact fee could be assessed on the residential development to help pay for the facilities. Approval of a new development may be conditioned on the payment of impact fees.

Local governments planning under the Growth Management Act are authorized to impose impact

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fees for public streets and roads; publicly owned parks and recreation facilities; school facilities; and fire protection facilities. Impact fees may only be used on public facilities that are included in the capital facilities element of the comprehensive plan. The public facilities must be reasonably related to the new development, must reasonably benefit it, and must be designed to provide service areas to the community at large. The public facilities on which impact fees can be spent are public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities.

The ordinance establishing impact fees must include a schedule of impact fees for each type of development activity and the fee imposed for each kind of facility. The ordinance must also designate one or more reasonable geographic areas in which a defined set of public facilities provides service to developments within the area, and within which the local government will calculate and impose impact fees for different land use categories per unit of development. If impact fees are not used within 10 years of collection, they generally must be returned. A developer who has paid an impact fee may receive a refund if the development does not proceed and no impact materializes.

A local government collecting impact fees must provide a program for deferring collection of impact fees imposed for single-family detached and attached residential construction. The local government must provide a process for an applicant for a building permit for a single-family residence to request deferral of the full impact fee payment. The local government must provide at least one of three deferral options:

- deferral of the fee until final inspection;
- deferral of the fee until the certificate of occupancy or equivalent certification; or
- deferral of the fee until the time of the closing of the first sale of the property after the issuance of the building permit.

If the deferral is to the time of final inspection or to the issuance of a certificate of occupancy or equivalent certification, the local government may withhold the certification of final inspection, of occupancy, or an equivalent certification until the impact fees have been paid in full. If the deferral is to the time of the closing of the first sale of the property, the seller bears strict liability for the payment of the fees and the fees must come from the seller's proceeds, unless a different agreement is reached between the buyer and seller. The total deferral period cannot exceed 18 months from the time that a building permit is issued.

An applicant for a deferral must grant the local government a deferred impact fee lien in the amount of the deferred fee against the property. The lien must be in a form approved by the local government, signed by all owners of the property, and recorded in the county in which the property is located. The resulting lien is junior to one construction mortgage on the property. The extinguishment of the lien by foreclosure of a lien having priority does not affect the obligation to pay impact fees as a condition of final inspection, the issuance of a certificate of occupancy or equivalent certificate, or at the time of the closing of the first sale.

If the impact fees are not timely paid, then the local government can foreclose on the lien. A

school district may also initiate foreclosure proceedings, if it has requested that the local government do so over unpaid school impact fees and more than 45 days have passed without the local government taking action. The extinguishment of the lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, the issuance of a certificate of occupancy or equivalent certification, or at the time of closing on the first sale. Once the fees have been properly paid, the lien must be released.

Each applicant for an impact fee deferral is entitled to receive up to 20 deferrals annually in each city or county. This limit can be increased by the local government, provided that a school district on whose behalf the local government collects impact fees is consulted, and any objections interposed by the district to the increased deferral limit are given substantial weight. A local government may collect reasonable administrative fees from applicants for the deferral program in order to implement the deferral program.

A local government that had an impact fee deferral process in place on or prior to April 1, 2015, is exempt from the requirements for the deferred impact fee program, as long as the preexisting program delays all impact fees and remains in place after September 1, 2016.

The Department of Commerce (Department) must collect information on impact fee deferrals and provide an annual report to the Legislature. The report must include the number of deferrals, the number of deferrals that were not fully and timely paid, and any other information the Department deems appropriate. Local governments must cooperate with the Department in the production of this report, and must provide any data or other assistance that is requested.

Summary of Bill:

The option to defer collection of an impact fee imposed on single-family residential construction until the time of closing of the first sale of the property is repealed.

The requirement that a lien be imposed on a property receiving an impact fee deferral in favor of the local government providing the deferral, and provisions related to the lien, are repealed.

The requirement that the Department provide an annual report to the Legislature on impact fee deferrals is repealed.

Appropriation: None.

Fiscal Note: Requested on January 20, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.