

# HOUSE BILL REPORT

## ESB 5923

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**As Reported by House Committee On:**  
Local Government

**Title:** An act relating to promoting economic recovery in the construction industry.

**Brief Description:** Promoting economic recovery in the construction industry.

**Sponsors:** Senators Brown, Lias, Roach, Dansel, Hobbs, Warnick and Chase.

**Brief History:**

**Committee Activity:**

Local Government: 3/17/15, 3/19/15 [DPA].

**Brief Summary of Engrossed Bill  
(As Amended by Committee)**

- 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 meeting certain requirements from the obligation to establish a new 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 September 1, 2016.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McBride, Peterson and Pike.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; McCaslin.

**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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all counties and cities, and a significantly wider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.

#### 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.

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#### **Summary of Amended 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 single-family detached or attached residential construction that includes:

- 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 of final payment of the impact fee, 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. Cities utilizing this deferral process may withhold certification of the final inspection, certificate of occupancy, or equivalent certification until the impact fee payment has been made in full.

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 a new impact fee deferral system if the locally adopted deferral process remains in effect after July 1, 2016.

Lastly, each applicant for a single-family residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals for the first 20 single-family residential construction building permits per county or city. 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.

#### **Amended Bill Compared to Engrossed Bill:**

The amended bill makes the following changes to the engrossed bill:

- specifies that the impact fee deferral process required in the underlying bill is to apply to residential building permits issued for single-family detached or attached residential construction, rather than for residential permits issued for a lot or unit

- created by a subdivision, short subdivision, site development permit, binding site plan, or condominium;
- specifies that if the covenant-based deferral option is used, the covenant must require payment equal to 100 percent of the applicable impact fee at the rates in effect at the time of final payment of the impact fee, rather than at the rates in effect at the time the building permit was issued;
  - specifies that cities using 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, are authorized to withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fee payment has been made in full;
  - removes a provision governing the amendment process for impact fee deferral processes of counties, cities, and towns that are in effect on or before July 1, 2016;
  - modifies deferral provisions to specify that each applicant for a single-family residential construction building permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to receive a deferral for the first 20 single-family residential construction building permits per county or city (the underlying bill specifies that the applicant must receive deferrals for the first 20 single-family residential construction building permits per jurisdiction);
  - removes all proposed reporting requirements for the Department of Commerce; and
  - changes the effective date of the bill from July 1, 2016, to September 1, 2016.
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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect on September 1, 2016.

**Staff Summary of Public Testimony:**

(In support) When the City of Pasco implemented impact fees, building permit requests increased in Kennewick; there is a cause and effect relationship between impact fees and building permits. This bill defers impact fees, it does not eliminate them. The deferral proposed in the bill will give builders a bit of relief from the difficulties that impact fees create for them, as banks do not finance impact fees for builders. This bill was passed out of the Senate with bipartisan support.

The bill includes language relating to proper disclosures of impact fee implications for real estate transactions. The deferral provisions of the bill will reduce the carrying cost of a house for builders and will ultimately reduce the costs to home buyers.

This bill is quite similar to the original version of House Bill (HB) 1709. The bill should be passed out in its current form. Deferring the payment of impact fees until money changes hands in a real estate transaction will reduce the costs for home buyers. Local governments will be paid under this bill, as it is not an elimination of impact fees. Proponents of the bill

want the professional aspects of the bill to work, and customers to leave with clean, clear titles. The construction industry was badly hurt in the recession, and the recovery is incomplete. This bill helps with *McCleary* decision-related funding obligations and the local tax base.

Supporters of the bill want to ensure that there is a process to ensure that impact fees are paid at closing or via a covenant within the 18-month period identified in the bill. Supporters of the bill will work with stakeholders to create amendatory language to address procedural aspects of the bill. Supporters also want a bright line to ensure that impact fees are paid at closing, and that the sequential processes of the bill work.

(In support with concerns) The first alternative deferral mechanism proposed in the bill is a good one, but there are concerns about the second deferral alternative in the bill. The second alternative does not require the recording of a covenant. Without that requirement, the deferral mechanism holds the certificate of occupancy hostage until the impact fee is paid, and may create difficulties for builders. The second alternative should be removed from the bill as, without a covenant, the purchaser is not obligated to pay the fees due.

(Opposed) The amendments to HB 1709 should also be attached to this bill. School districts have to plan for new students when the building permits are issued, and it takes six months for a district to site a portable school building. This bill would prevent districts from having the money to purchase needed facilities for students. A variant of this bill has been around for about 18 years, but this bill does not work for school districts. The language in the bill regarding the 20 mandatory deferrals is broad and would allow deferrals for separately created LLCs.

Fast-growing school districts need impact fee money to purchase needed portables when students arrive. School districts should be exempted from the deferral provisions of the bill.

About 72 of Washington's 281 cities impose impact fees; those are cities in all corners of the state. The highest impact fees imposed are fees for schools. The committee should amend the bill to include the adopted amendment for HB 1709, as that language gives cities clear authority to deny occupancy until fees are paid, limits the bill to single-family homes and duplexes, and allows cities to continue using existing deferral systems.

The deferral provisions related to the first 20 applications are not very precise and could permit deferrals for spin-off limited liability companies. The Legislature should create precise language for the bill, and the deferral provision for the first 20 applications should be amended to match Substitute HB 1709. The amendments to HB 1709 were appropriate and gave better assurances to cities that fees would be paid. Some cities would like to keep working on the bill to develop a compromise that is acceptable to everyone.

Pasco School District is experiencing explosive growth, and the facilities that the district will add to respond to this growth will be financed with impact fees. The paramount duty of the state is to fund basic education. How would the Supreme Court view a bill that defers impact fees that school districts need? School districts should be exempted from the bill and existing deferral systems should be allowed to continue. As an alternative, the committee could also consider excluding communities with high growth rates from the bill.

Counties struggle with the best way to accommodate growth and finance the needed infrastructure. Impact fees are a local tool for financing this infrastructure. Snohomish County used an impact fee deferral system in 2012, 2013, and 2014. Local jurisdictions are in a better position to decide how and whether to defer impact fees. If the committee advances the bill, it should examine how to finance the infrastructure that growth demands.

One of the fundamental aspects of the Growth Management Act is concurrency: the process of having infrastructure ready when development comes on-line. An impact fee deferral is contrary to this part of the GMA. The reporting provisions of the bill for the Department of Commerce require significant data collection efforts and cannot be accomplished within the timeframe established in the bill. Additionally, the effective date for the reporting requirements need to be amended in order to make the report provisions and effective date properly align.

**Persons Testifying:** (In support) Senator Brown, prime sponsor; Bill Clarke, Washington Realtors; Bill Stauffacher, Building Industry Association of Washington; and Denny Eliason, Washington Bankers Association, United Financial Lobby.

(In support with concerns) Dwight Bickel, Washington Land Trust Association.

(Opposed) Charlie Brown, Puget Sound Schools Coalition; Mitch Denning, Alliance of Educational Associations; Dave Williams, Association of Washington Cities; Doug Levy, Cities of Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Redmond, and Renton, and Washington Recreation and Park Association; Marie Sullivan, Pasco School District; Briahna Taylor, Snohomish County; and Jeff Wilson, Department of Commerce.

**Persons Signed In To Testify But Not Testifying:** None.