

# SENATE BILL REPORT

## ESB 5923

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As Amended by House, April 14, 2015

**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, Dandel, Hobbs, Warnick and Chase.

**Brief History:**

**Committee Activity:** Trade & Economic Development: 2/18/15 [DP, DNP, w/oRec].

Passed Senate: 3/03/15, 33-15.

Passed House: 4/14/15, 82-15.

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### SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Brown, Chair; Braun, Vice Chair; Chase, Ranking Minority Member; Angel and Ericksen.

**Minority Report:** Do not pass.

Signed by Senator McCoy.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Frockt.

**Staff:** Jeff Olsen (786-7428)

**Background:** The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. GMA establishes land use designation and environmental protection requirements for all counties and cities.

Planning jurisdictions may impose impact fees on development activity as part of the financing of public facilities needed to serve new growth and development. Impact fees may be collected and spent only for qualifying public facilities that are included within a comprehensive plan.

Legislation adopted in 2013 – 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

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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.*

final inspection, certificate of occupancy, or equivalent certification. The legislation was vetoed in its entirety by the Governor on May 21, 2013.

**Summary of Engrossed Bill:** Counties, cities, and towns that collect impact fees must adopt a system for the collection of impact fees from applicants for residential building permits 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 certain requirements, including requiring payment of all impact fees 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 the deferral process, counties, cities, and towns may adopt local deferral systems if the payment timing provisions are consistent. Additionally, a county, city, or town with an impact fee deferral process on or before July 1, 2016, is exempt from the obligation to establish an impact fee deferral system if the locally adopted deferral process delays all fees and remains in effect after July 1, 2016. Lastly, in each calendar year that an applicant received a deferral, the applicant must receive deferrals for the first 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.

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 timeframe for completing improvements or strategies for complying with concurrency provisions of GMA may not begin until after the county or city receives full payment of all impact fees due.

**Appropriation:** None.

**Fiscal Note:** Requested on February 26, 2015.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The construction industry is still recovering from the economic downturn, and this will help builders with the upfront costs of construction. The impact fees are only being deferred from the beginning of the process to the end, when the property is sold. The deferral is limited to the first 20 permits for each builder to address concerns about the deferral benefitting large developers. Many home

builders impacted by these fees are very small family-owned businesses. Impact fees in the Tri-Cities have impacted the number of new homes being built, impacting revenues and driving development to other areas.

CON: The deferral of collection of impact fees would prevent local governments from building the needed infrastructure to support growth, including schools. Local governments are already able to defer impact fees under current law, and there needs to be better grandfathering provisions for current deferral processes and more assurance that fees that are deferred will be collected. The deferral should exempt schools, it may take school districts some time to add portable classrooms, and delaying the fees makes acquiring the space needed more difficult.

**Persons Testifying:** PRO: Senator Brown, prime sponsor; Jeff Losey, Home Builders Assn. of Tri Cities; Bill Stauffacher, Building Industry Assn. of WA.

CON: Doug Levy, cities of Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Renton, and Redmond; Sarah Thornton, Pasco School District No. 1; Bryce Yadon, Futurewise; Charlie Brown, Puget Sound School Coalition; Carl Schroeder, Assn. of WA Cities.

**House Amendment(s):** The House amendment removes intent language and the covenant-based impact fee deferral system, and directs counties, cities, and towns that collect impact fees to adopt and maintain a system for the deferred collection of impact fees for single-family residential construction. Specifies that the amount of impact fees that may be deferred must be determined by the fees in effect at the time the applicant applies for a deferral, and that the maximum term of a deferral may not exceed 18 months from the date of building permit issuance. Authorizes local jurisdictions to withhold certification of final inspection or certificate of occupancy until the impact fees have been paid in full. Requires an applicant seeking a deferral to grant and record a deferred impact fee lien that is binding on all successors in title. Authorizes local jurisdictions to institute foreclosure proceedings for impact fees that were not paid in accordance with a deferral. If a local jurisdiction does not institute foreclosure proceedings for unpaid school impact fees within 45 days of receiving a notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees. Establishes school district consultation requirements that apply if a county, city, or town that collects impact fees on behalf of one or more school districts elects to annually defer more than 20 single-family residential construction building permits for an applicant. Requires the Joint Legislative Audit and Review Committee to review impact fee deferral requirements, and to submit a report to the appropriate committees of the House of Representatives and the Senate by September 1, 2021. Modifies the study and annual reporting requirements for the Department of Commerce and requires annual reports on the impact fee deferral process for submission to the appropriate committees of the House of Representatives and the Senate beginning in 2018.