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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 Lias

Read first time 01/11/18. Referred to Committee on Local Government.

1            AN ACT Relating to exempting impact fees for low-income housing  
2 development; amending RCW 82.02.060; reenacting and amending RCW  
3 82.02.090; providing an effective date; and declaring an emergency.

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

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

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

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

18            ~~((b))~~ (ii) An adjustment to the cost of the public facilities  
19 for past or future payments made or reasonably anticipated to be made  
20 by new development to pay for particular system improvements in the

1 form of user fees, debt service payments, taxes, or other payments  
2 earmarked for or proratable to the particular system improvement;  
3 ~~((e))~~ (iii) The availability of other means of funding public  
4 facility improvements;  
5 ~~((d))~~ (iv) The cost of existing public facilities improvements;  
6 and  
7 ~~((e))~~ (v) The methods by which public facilities improvements  
8 were financed;  
9 ~~((2))~~ (b) May provide an exemption for ~~((low-income housing,~~  
10 ~~and other))~~ development activities with broad public purposes, from  
11 these impact fees, provided that the impact fees for such development  
12 activity ~~((shall be))~~ are paid from public funds other than impact  
13 fee accounts;  
14 ~~((3))~~ (c) May provide an exemption from impact fees for low-  
15 income housing~~((. Local governments that grant exemptions for low-~~  
16 ~~income housing under this subsection (3) may either: Grant a partial~~  
17 ~~exemption of not more than eighty percent of impact fees, in which~~  
18 ~~case there is no explicit requirement to pay the exempted portion of~~  
19 ~~the fee from public funds other than impact fee accounts; or provide~~  
20 ~~a full waiver, in which case the remaining percentage of the exempted~~  
21 ~~fee must be paid from public funds other than impact fee accounts. An~~  
22 ~~exemption for low-income housing granted under subsection (2) of this~~  
23 ~~section or))~~ up to one hundred percent of impact fees, with no  
24 explicit requirement to pay the exempted portion of the fee from  
25 public funds other than impact fee accounts. An exemption for low-  
26 income housing granted under this subsection ~~((3))~~ (1)(c) must be  
27 conditioned upon requiring the developer to record a covenant that,  
28 except as provided otherwise by this subsection, prohibits using the  
29 property for any purpose other than for low-income housing. At a  
30 minimum, the covenant must address price restrictions and household  
31 income limits for the low-income housing, unless used as a shelter  
32 for people experiencing homelessness, and that if the property is  
33 converted to a use other than for low-income housing, the property  
34 owner must pay the applicable impact fees in effect at the time of  
35 conversion. Covenants required by this subsection must be recorded  
36 with the applicable county auditor or recording officer. A local  
37 government granting an exemption under ~~((subsection (2) of this~~  
38 ~~section or))~~ this subsection ~~((3))~~ (1)(c) for low-income housing  
39 may not collect revenue lost through granting an exemption by  
40 increasing impact fees unrelated to the exemption. A school district

1 who receives school impact fees must approve any exemption under  
2 (~~(subsection (2) of this section or)~~) this subsection (~~((3))~~) (1)(c);  
3 (~~((4) Shall)~~) (d) Must provide a credit for the value of any  
4 dedication of land for, improvement to, or new construction of any  
5 system improvements provided by the developer, to facilities that are  
6 identified in the capital facilities plan and that are required by  
7 the county, city, or town as a condition of approving the development  
8 activity;

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

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

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

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

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

32 **Sec. 2.** RCW 82.02.090 and 2010 c 86 s 1 are each reenacted and  
33 amended to read as follows:

34 (~~(Unless the context clearly requires otherwise, the following~~  
35 ~~definitions shall apply in RCW 82.02.050 through 82.02.090:))~~ The  
36 definitions in this section apply throughout RCW 82.02.050 through  
37 82.02.090 unless the context clearly requires otherwise.

38 (1) "Development activity" means any construction or expansion of  
39 a building, structure, or use, any change in use of a building or

1 structure, or any changes in the use of land, that creates additional  
2 demand and need for public facilities. "Development activity" does  
3 not include:

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

6 (b) Buildings or structures constructed as shelters that provide  
7 emergency housing for people experiencing homelessness, or emergency  
8 shelters for victims of domestic violence, as defined in RCW  
9 70.123.020.

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

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of  
12 the state government and its existing public institutions, and takes  
13 effect April 1, 2018.

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