

SENATE BILL REPORT

SB 5614

As Reported by Senate Committee On:
Housing, February 21, 2025

Title: An act relating to impact fees.

Brief Description: Concerning impact fees.

Sponsors: Senators Salomon, Trudeau, Alvarado, Liias, Frame and Nobles.

Brief History:

Committee Activity: Housing: 2/12/25, 2/21/25 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Sets the impact fees at the rate adopted by the local government at the time a fully completed permit application is submitted.
- Modifies the impact fee deferral requirements by removing the lien requirements and limits on the number of deferrals allowed per applicant and requiring local governments adopt a system for the deferred collection of impact fees that includes a process to execute a promissory note in favor of the local government imposing the impact fees by September 1, 2026.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5614 be substituted therefor, and the substitute bill do pass.

Signed by Senators Bateman, Chair; Alvarado, Vice Chair; Orwall, Salomon and Trudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Goehner, Ranking Member; Gildon.

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

Staff: Melissa Van Gorkom (786-7491)

Background: Impact Fees. Impact fees are one-time charges assessed by a local government on new development activities to help pay for the increased services that will be required because of new growth and development. Development activity includes any construction or expansion of a building or use, any change in use of a building, or any change in the use of land, that creates an additional need for public 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 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.

With some exceptions, impact fees must be collected prior to construction, and must be kept in a separate account depending on the type of public facility for which it was collected. Local governments collecting impact fees must produce an annual report detailing the fees that have been collected and what the fees have been used for. If impact fees are not used within ten 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.

Impact Fee Deferrals. A local government collecting impact fees must provide a program for deferring collection of impact fees imposed for single-family residential construction. A local government may collect reasonable administrative fees from program applicants in order to implement the deferral system.

Deferral Options. The local government must provide a process for an applicant for a building permit for a single-family attached or detached residence to request deferral of the full impact fee payment until the time of:

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

The total deferral period cannot exceed 18 months from the time the building permit is issued. The local government may withhold the certification of final inspection or the certificate of occupancy, or equivalent certification until the impact fees have been paid in full.

Limit on Number of Deferrals. 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, if a school district on whose behalf the local government collects impact

fees is consulted and any objections interposed by the school district to the increased deferral limit are given substantial weight.

Deferred Impact Fee Lien. 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.

Foreclosure of Deferred Impact Fee Lien. 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 initiate foreclosure because of unpaid school impact fees and more than 45 days have passed without the local government taking action. If a priority lien is foreclosed, and the deferred impact fee lien is extinguished, the obligation to pay the impact fees is not affected, and the fees must still be paid 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.

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

Annual Report on Impact Fees by the Department of Commerce. The Department of Commerce (Commerce) 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 Commerce deems appropriate.

Joint Legislative Audit and Review Committee Report on Impact Fees. As part of the 2015 legislation creating the impact fee deferral requirements, the Legislature also required the Joint Legislative Audit and Review Committee (JLARC) to collect data on the use and cost of deferral programs and to review implementation of impact fee deferrals. JLARC submitted its final report on impact fee deferral programs to the Legislature in December 2021. The statute containing the JLARC report requirement expired on January 1, 2022.

Summary of Bill (First Substitute): Impact Fees. Impact fees on development activity shall be considered under the impact fees ordinances in effect on the subject location at the time a fully completed project permit application has been submitted to the appropriate city official.

Impact Fee Deferral. Local government must adopt a system for the deferred collection of impact fees—except impact fees for school facilities—that includes a process for an

applicant for a building permit for single-family attached or detached residences to execute a promissory note in favor of the local government imposing the impact fees for the full value of the impact fees by September 1, 2026. If lots have not been created in the subdivision, then the note must be recorded for the entire subdivision.

The ability of the local government imposing the impact fees to collect a reasonable administrative fee from applicants is repealed. The note must be recorded with the county auditor at the expense of the applicant.

Deferral Options. The promissory note must come due at the time of the:

- issuance of a certificate of occupancy or equivalent certification;
- final inspection; or
- closing of the first sale of the lot or unit after the issuance of the building permit.

If the local government has determined that payment is due at the time of the issuance of a certificate or at the time of final inspection, the local government may withhold the certificate or inspection until the fee has been paid in full. If the fee has not been paid in full by the time of the first sale, then the fees immediately become due.

An applicant for an impact fee deferral must provide written disclosure of a deferral agreement to a property buyer as provided for in laws regulating a seller's disclosure obligations in real property transactions.

Limit on Number of Deferrals. The annual limit on the number of impact fee deferrals that an applicant may receive is repealed.

Interest and Penalties. If the impact fees have not been paid within one month of the first sale, then the note will bear interest at the rate of the short-term federal rate plus 2 percent. This rate must be adjusted annually, and the county treasurer must provide the local government with the rate prior to December 31st of the year that precedes the year in which the adjusted rate will apply.

In addition to interest, late payment will also subject the applicant to penalties. If the impact fees have not been paid in full at the time of the first sale, the applicant must be assessed a penalty of 5 percent on the amount due. This penalty increases to 10 percent if the impact fees have not been paid within two months of the first sale, and to 20 percent if the impact fees have not been paid within three months of the first sale.

Interest and fees may only be collected from the applicant and cannot be a lien against the property sold by the applicant for which the impact fees were due. If the fees were not paid within one month of first sale the applicant is personally liable for the full amount of the promissory note, unless the sale was recorded in the county property record.

Deferred Impact Fee Lien. 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.

Annual Report on Impact Fees by the Department of Commerce. The provisions requiring that Commerce submit an annual report to the Legislature on impact fee deferrals is repealed.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Repeals provisions requiring the Department of Commerce to submit an annual report to the Legislature on impact fee deferrals.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Multifamily projects require years of planning, permitting, and financing even before construction begins and during that time, changing impact fee rates create uncertainty that makes it hard to secure capital or even budget accurately to deliver the project at a predictable cost. Predictability is essential to securing financing. Assessing the deferral fees at the time of application provide predictability and certainty. Additionally, while impact fee deferral plays a role in housing affordability, the current lien based process is administratively burdensome and discourages participation. Financing has been hard for projects because banks won't lend when there is a lien. The JLARC study indicates that there has been little nonpayment issues. In today's high interest rate environment, which is different than when the report was conducted, the benefits of an accessible deferral process are even greater.

CON: Impact fees are an important tool for counties to fund essential services and infrastructure. This weakens that tool. Use of promissory notes will be more expensive and may be an unconstitutional grant of public credit.

OTHER: We supported removing the lien authority last year and not replacing it because the JLARC report showed that there is not as much concern. The deferral system was set up to address their concern regarding payment of impact fees at the time of building permits. Since then, some concerns have been expressed regarding how the timing and the placement of liens on the property could affect the building process. We drafted alternative language that adds to the framework but it is fundamentally based on the promissory note. Suggest removing the promissory note and instead place a note on the plat, which would be a more

cost effective way to ensure the costs are paid at the end when the title company is clearing out closure and servicing some of those debts.

Locking in the impact fees at the date of application is a concern because impact fees have to be tied to the proportional actual impact of the project and if cost to address those impacts go up over time, the fee would not reflect the cost and the public will pay for it rather than the developer. Concerned that school impact fees are not included and they are by and large the highest amounts owed in terms of fees. Transit is incredibly expensive and we need funding for paratransit.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Alex Harrington, NAIOP Washington State.

CON: Curtis Steinhauer, Washington State Association of Counties.

OTHER: Carl Schroeder, Association of Washington Cities; Andrea Smiley, Building Industry Association of Washington; Joe Kunzler; Grace Yuan, Puget Sound School Coalition.

Persons Signed In To Testify But Not Testifying: No one.