
SUBSTITUTE SENATE BILL 5607

State of Washington

62nd Legislature

2011 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Fain, Haugen, Harper, White, and Ericksen)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to establishing a process for the payment of impact
2 fees through provisions stipulated in recorded covenants; and amending
3 RCW 82.02.050 and 36.70A.070.

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

5 **Sec. 1.** RCW 82.02.050 and 1994 c 257 s 24 are each amended to read
6 as follows:

7 (1) It is the intent of the legislature:

8 (a) To ensure that adequate facilities are available to serve new
9 growth and development;

10 (b) To promote orderly growth and development by establishing
11 standards by which counties, cities, and towns may require, by
12 ordinance, that new growth and development pay a proportionate share of
13 the cost of new facilities needed to serve new growth and development;
14 and

15 (c) To ensure that impact fees are imposed through established
16 procedures and criteria so that specific developments do not pay
17 arbitrary fees or duplicative fees for the same impact.

18 (2) Counties, cities, and towns that are required or choose to plan
19 under RCW 36.70A.040 are authorized to impose impact fees on

1 development activity as part of the financing for public facilities,
2 provided that the financing for system improvements to serve new
3 development must provide for a balance between impact fees and other
4 sources of public funds and cannot rely solely on impact fees.

5 (3)(a) Counties, cities, and towns collecting impact fees must make
6 available, in addition to other fee deferral ordinances that may have
7 been adopted, to applicants for building permits issued for a lot or
8 unit created by a subdivision, short subdivision, site development
9 permit, or condominium either:

10 (i)(A) A process by which the applicant may record a covenant,
11 which must also serve as a lien, against title to the lot or unit that
12 requires payment equal to one hundred percent of the impact fee
13 applicable to that lot or unit at the rates in effect at the time of
14 issuance of the building permit, less a credit for any deposits paid.

15 (B) Covenants recorded in accordance with this subsection (3)(a)(i)
16 must provide for payment through escrow of the impact fee at the time
17 of closing of sale of the unit that is the subject of the building
18 permit or within eighteen months after issuance of the building permit,
19 whichever is earlier. Payment of fees due at closing of a sale must be
20 made from seller's proceeds, unless an agreement to the contrary is
21 reached between buyer and seller. In the absence of such agreement to
22 the contrary, the seller bears strict liability for payment of such
23 fees; or

24 (ii) A process by which an applicant may apply for deferral of
25 impact fee payment until final inspection or certificate of occupancy,
26 or equivalent certification.

27 (b) A seller, and/or agents of a seller, of property subject to a
28 covenant authorized under this subsection (3) must provide written
29 disclosure of such covenant to a purchaser or prospective purchaser as
30 provided in chapter 64.06 RCW. Disclosure of such covenant must
31 include the amount of fees payable, and the government(s) or
32 district(s) to which fees are to be paid at closing.

33 (c) In the event the lot or unit is leased or rented rather than
34 sold, all impact fees applicable to such lot or unit must be paid in
35 full upon issuance of a certificate of occupancy or equivalent final
36 occupancy approval.

37 (d) This subsection (3) does not apply to dwellings built on land

1 owned or otherwise controlled by a party who contracts for the
2 construction of a dwelling.

3 (e) Notwithstanding the provisions of this section, any portion of
4 an impact fee necessary for school facilities must be paid at the time
5 any impact fee without a deferral would ordinarily be due.

6 (4) The impact fees:

7 (a) (~~Shall~~) Must only be imposed for system improvements that are
8 reasonably related to the new development;

9 (b) (~~Shall~~) May not exceed a proportionate share of the costs of
10 system improvements that are reasonably related to the new development;
11 and

12 (c) (~~Shall~~) Must be used for system improvements that will
13 reasonably benefit the new development.

14 (~~(4)~~) (5)(a) Impact fees may be collected and spent only for the
15 public facilities defined in RCW 82.02.090 which are addressed by a
16 capital facilities plan element of a comprehensive land use plan
17 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions
18 for comprehensive plan adoption contained in chapter 36.70, 35.63, or
19 35A.63 RCW. After the date a county, city, or town is required to
20 adopt its development regulations under chapter 36.70A RCW, continued
21 authorization to collect and expend impact fees (~~shall be~~) is
22 contingent on the county, city, or town adopting or revising a
23 comprehensive plan in compliance with RCW 36.70A.070, and on the
24 capital facilities plan identifying:

25 (~~(a)~~) (i) Deficiencies in public facilities serving existing
26 development and the means by which existing deficiencies will be
27 eliminated within a reasonable period of time;

28 (~~(b)~~) (ii) Additional demands placed on existing public
29 facilities by new development; and

30 (~~(c)~~) (iii) Additional public facility improvements required to
31 serve new development.

32 (b) If the capital facilities plan of the county, city, or town is
33 complete other than for the inclusion of those elements which are the
34 responsibility of a special district, the county, city, or town may
35 impose impact fees to address those public facility needs for which the
36 county, city, or town is responsible.

1 **Sec. 2.** RCW 36.70A.070 and 2010 1st sp.s. c 26 s 6 are each
2 amended to read as follows:

3 The comprehensive plan of a county or city that is required or
4 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
5 and descriptive text covering objectives, principles, and standards
6 used to develop the comprehensive plan. The plan shall be an
7 internally consistent document and all elements shall be consistent
8 with the future land use map. A comprehensive plan shall be adopted
9 and amended with public participation as provided in RCW 36.70A.140.

10 Each comprehensive plan shall include a plan, scheme, or design for
11 each of the following:

12 (1) A land use element designating the proposed general
13 distribution and general location and extent of the uses of land, where
14 appropriate, for agriculture, timber production, housing, commerce,
15 industry, recreation, open spaces, general aviation airports, public
16 utilities, public facilities, and other land uses. The land use
17 element shall include population densities, building intensities, and
18 estimates of future population growth. The land use element shall
19 provide for protection of the quality and quantity of groundwater used
20 for public water supplies. Wherever possible, the land use element
21 should consider utilizing urban planning approaches that promote
22 physical activity. Where applicable, the land use element shall review
23 drainage, flooding, and storm water run-off in the area and nearby
24 jurisdictions and provide guidance for corrective actions to mitigate
25 or cleanse those discharges that pollute waters of the state, including
26 Puget Sound or waters entering Puget Sound.

27 (2) A housing element ensuring the vitality and character of
28 established residential neighborhoods that: (a) Includes an inventory
29 and analysis of existing and projected housing needs that identifies
30 the number of housing units necessary to manage projected growth; (b)
31 includes a statement of goals, policies, objectives, and mandatory
32 provisions for the preservation, improvement, and development of
33 housing, including single-family residences; (c) identifies sufficient
34 land for housing, including, but not limited to, government-assisted
35 housing, housing for low-income families, manufactured housing,
36 multifamily housing, and group homes and foster care facilities; and
37 (d) makes adequate provisions for existing and projected needs of all
38 economic segments of the community.

1 (3) A capital facilities plan element consisting of: (a) An
2 inventory of existing capital facilities owned by public entities,
3 showing the locations and capacities of the capital facilities; (b) a
4 forecast of the future needs for such capital facilities; (c) the
5 proposed locations and capacities of expanded or new capital
6 facilities; (d) at least a six-year plan that will finance such capital
7 facilities within projected funding capacities and clearly identifies
8 sources of public money for such purposes; and (e) a requirement to
9 reassess the land use element if probable funding falls short of
10 meeting existing needs and to ensure that the land use element, capital
11 facilities plan element, and financing plan within the capital
12 facilities plan element are coordinated and consistent. Park and
13 recreation facilities shall be included in the capital facilities plan
14 element.

15 (4) A utilities element consisting of the general location,
16 proposed location, and capacity of all existing and proposed utilities,
17 including, but not limited to, electrical lines, telecommunication
18 lines, and natural gas lines.

19 (5) Rural element. Counties shall include a rural element
20 including lands that are not designated for urban growth, agriculture,
21 forest, or mineral resources. The following provisions shall apply to
22 the rural element:

23 (a) Growth management act goals and local circumstances. Because
24 circumstances vary from county to county, in establishing patterns of
25 rural densities and uses, a county may consider local circumstances,
26 but shall develop a written record explaining how the rural element
27 harmonizes the planning goals in RCW 36.70A.020 and meets the
28 requirements of this chapter.

29 (b) Rural development. The rural element shall permit rural
30 development, forestry, and agriculture in rural areas. The rural
31 element shall provide for a variety of rural densities, uses, essential
32 public facilities, and rural governmental services needed to serve the
33 permitted densities and uses. To achieve a variety of rural densities
34 and uses, counties may provide for clustering, density transfer, design
35 guidelines, conservation easements, and other innovative techniques
36 that will accommodate appropriate rural densities and uses that are not
37 characterized by urban growth and that are consistent with rural
38 character.

1 (c) Measures governing rural development. The rural element shall
2 include measures that apply to rural development and protect the rural
3 character of the area, as established by the county, by:

4 (i) Containing or otherwise controlling rural development;

5 (ii) Assuring visual compatibility of rural development with the
6 surrounding rural area;

7 (iii) Reducing the inappropriate conversion of undeveloped land
8 into sprawling, low-density development in the rural area;

9 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
10 surface water and groundwater resources; and

11 (v) Protecting against conflicts with the use of agricultural,
12 forest, and mineral resource lands designated under RCW 36.70A.170.

13 (d) Limited areas of more intensive rural development. Subject to
14 the requirements of this subsection and except as otherwise
15 specifically provided in this subsection (5)(d), the rural element may
16 allow for limited areas of more intensive rural development, including
17 necessary public facilities and public services to serve the limited
18 area as follows:

19 (i) Rural development consisting of the infill, development, or
20 redevelopment of existing commercial, industrial, residential, or
21 mixed-use areas, whether characterized as shoreline development,
22 villages, hamlets, rural activity centers, or crossroads developments.

23 (A) A commercial, industrial, residential, shoreline, or mixed-use
24 area (~~shall be~~) is subject to the requirements of (d)(iv) of this
25 subsection, but (~~shall~~) is not (~~be~~) subject to the requirements of
26 (c)(ii) and (iii) of this subsection.

27 (B) Any development or redevelopment other than an industrial area
28 or an industrial use within a mixed-use area or an industrial area
29 under this subsection (5)(d)(i) must be principally designed to serve
30 the existing and projected rural population.

31 (C) Any development or redevelopment in terms of building size,
32 scale, use, or intensity shall be consistent with the character of the
33 existing areas. Development and redevelopment may include changes in
34 use from vacant land or a previously existing use so long as the new
35 use conforms to the requirements of this subsection (5);

36 (ii) The intensification of development on lots containing, or new
37 development of, small-scale recreational or tourist uses, including
38 commercial facilities to serve those recreational or tourist uses, that

1 rely on a rural location and setting, but that do not include new
2 residential development. A small-scale recreation or tourist use is
3 not required to be principally designed to serve the existing and
4 projected rural population. Public services and public facilities
5 shall be limited to those necessary to serve the recreation or tourist
6 use and shall be provided in a manner that does not permit low-density
7 sprawl;

8 (iii) The intensification of development on lots containing
9 isolated nonresidential uses or new development of isolated cottage
10 industries and isolated small-scale businesses that are not principally
11 designed to serve the existing and projected rural population and
12 nonresidential uses, but do provide job opportunities for rural
13 residents. Rural counties may allow the expansion of small-scale
14 businesses as long as those small-scale businesses conform with the
15 rural character of the area (~~as defined by the local government~~
16 ~~according to RCW 36.70A.030(15)~~). Rural counties may also allow new
17 small-scale businesses to utilize a site previously occupied by an
18 existing business as long as the new small-scale business conforms to
19 the rural character of the area (~~as defined by the local government~~
20 ~~according to RCW 36.70A.030(15)~~). Public services and public
21 facilities shall be limited to those necessary to serve the isolated
22 nonresidential use and shall be provided in a manner that does not
23 permit low-density sprawl. For the purposes of this subsection, "rural
24 character" has the same meaning as provided in RCW 36.70A.030;

25 (iv) A county shall adopt measures to minimize and contain the
26 existing areas or uses of more intensive rural development, as
27 appropriate, authorized under this subsection. Lands included in such
28 existing areas or uses shall not extend beyond the logical outer
29 boundary of the existing area or use, thereby allowing a new pattern of
30 low-density sprawl. Existing areas are those that are clearly
31 identifiable and contained and where there is a logical boundary
32 delineated predominately by the built environment, but that may also
33 include undeveloped lands if limited as provided in this subsection.
34 The county shall establish the logical outer boundary of an area of
35 more intensive rural development. In establishing the logical outer
36 boundary, the county shall address (A) the need to preserve the
37 character of existing natural neighborhoods and communities, (B)
38 physical boundaries, such as bodies of water, streets and highways, and

1 land forms and contours, (C) the prevention of abnormally irregular
2 boundaries, and (D) the ability to provide public facilities and public
3 services in a manner that does not permit low-density sprawl;

4 (v) For purposes of (d) of this subsection, an existing area or
5 existing use is one that was in existence:

6 (A) On July 1, 1990, in a county that was initially required to
7 plan under all of the provisions of this chapter;

8 (B) On the date the county adopted a resolution under RCW
9 36.70A.040(2), in a county that is planning under all of the provisions
10 of this chapter under RCW 36.70A.040(2); or

11 (C) On the date the office of financial management certifies the
12 county's population as provided in RCW 36.70A.040(5), in a county that
13 is planning under all of the provisions of this chapter pursuant to RCW
14 36.70A.040(5).

15 (e) Exception. This subsection shall not be interpreted to permit
16 in the rural area a major industrial development or a master planned
17 resort unless otherwise specifically permitted under RCW 36.70A.360 and
18 36.70A.365.

19 (6) A transportation element that implements, and is consistent
20 with, the land use element.

21 (a) The transportation element shall include the following
22 subelements:

23 (i) Land use assumptions used in estimating travel;

24 (ii) Estimated traffic impacts to state-owned transportation
25 facilities resulting from land use assumptions to assist the department
26 of transportation in monitoring the performance of state facilities, to
27 plan improvements for the facilities, and to assess the impact of land-
28 use decisions on state-owned transportation facilities;

29 (iii) Facilities and services needs, including:

30 (A) An inventory of air, water, and ground transportation
31 facilities and services, including transit alignments and general
32 aviation airport facilities, to define existing capital facilities and
33 travel levels as a basis for future planning. This inventory must
34 include state-owned transportation facilities within the city or
35 county's jurisdictional boundaries;

36 (B) Level of service standards for all locally owned arterials and
37 transit routes to serve as a gauge to judge performance of the system.
38 These standards should be regionally coordinated;

1 (C) For state-owned transportation facilities, level of service
2 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,
3 to gauge the performance of the system. The purposes of reflecting
4 level of service standards for state highways in the local
5 comprehensive plan are to monitor the performance of the system, to
6 evaluate improvement strategies, and to facilitate coordination between
7 the county's or city's six-year street, road, or transit program and
8 the office of financial management's ten-year investment program. The
9 concurrency requirements of (b) of this subsection do not apply to
10 transportation facilities and services of statewide significance except
11 for counties consisting of islands whose only connection to the
12 mainland are state highways or ferry routes. In these island counties,
13 state highways and ferry route capacity must be a factor in meeting the
14 concurrency requirements in (b) of this subsection;

15 (D) Specific actions and requirements for bringing into compliance
16 locally owned transportation facilities or services that are below an
17 established level of service standard;

18 (E) Forecasts of traffic for at least ten years based on the
19 adopted land use plan to provide information on the location, timing,
20 and capacity needs of future growth;

21 (F) Identification of state and local system needs to meet current
22 and future demands. Identified needs on state-owned transportation
23 facilities must be consistent with the statewide multimodal
24 transportation plan required under chapter 47.06 RCW;

25 (iv) Finance, including:

26 (A) An analysis of funding capability to judge needs against
27 probable funding resources;

28 (B) A multiyear financing plan based on the needs identified in the
29 comprehensive plan, the appropriate parts of which shall serve as the
30 basis for the six-year street, road, or transit program required by RCW
31 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795
32 for public transportation systems. The multiyear financing plan should
33 be coordinated with the ten-year investment program developed by the
34 office of financial management as required by RCW 47.05.030;

35 (C) If probable funding falls short of meeting identified needs, a
36 discussion of how additional funding will be raised, or how land use
37 assumptions will be reassessed to ensure that level of service
38 standards will be met;

1 (v) Intergovernmental coordination efforts, including an assessment
2 of the impacts of the transportation plan and land use assumptions on
3 the transportation systems of adjacent jurisdictions;

4 (vi) Demand-management strategies;

5 (vii) Pedestrian and bicycle component to include collaborative
6 efforts to identify and designate planned improvements for pedestrian
7 and bicycle facilities and corridors that address and encourage
8 enhanced community access and promote healthy lifestyles.

9 (b) After adoption of the comprehensive plan by jurisdictions
10 required to plan or who choose to plan under RCW 36.70A.040, local
11 jurisdictions must adopt and enforce ordinances which prohibit
12 development approval if the development causes the level of service on
13 a locally owned transportation facility to decline below the standards
14 adopted in the transportation element of the comprehensive plan, unless
15 transportation improvements or strategies to accommodate the impacts of
16 development are made concurrent with the development. These strategies
17 may include increased public transportation service, ride sharing
18 programs, demand management, and other transportation systems
19 management strategies. For the purposes of this subsection (6),
20 "concurrent with the development" means that improvements or strategies
21 are in place at the time of development, or that a financial commitment
22 is in place to complete the improvements or strategies within six
23 years. If the collection of impact fees is delayed under RCW
24 82.02.050(3), the six-year period required by this subsection (6)(b)
25 must begin after the county or city receives full payment of all impact
26 fees due.

27 (c) The transportation element described in this subsection (6),
28 the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121
29 for counties, and RCW 35.58.2795 for public transportation systems, and
30 the ten-year investment program required by RCW 47.05.030 for the
31 state, must be consistent.

32 (7) An economic development element establishing local goals,
33 policies, objectives, and provisions for economic growth and vitality
34 and a high quality of life. The element shall include: (a) A summary
35 of the local economy such as population, employment, payroll, sectors,
36 businesses, sales, and other information as appropriate; (b) a summary
37 of the strengths and weaknesses of the local economy defined as the
38 commercial and industrial sectors and supporting factors such as land

1 use, transportation, utilities, education, workforce, housing, and
2 natural/cultural resources; and (c) an identification of policies,
3 programs, and projects to foster economic growth and development and to
4 address future needs. A city that has chosen to be a residential
5 community is exempt from the economic development element requirement
6 of this subsection.

7 (8) A park and recreation element that implements, and is
8 consistent with, the capital facilities plan element as it relates to
9 park and recreation facilities. The element shall include: (a)
10 Estimates of park and recreation demand for at least a ten-year period;
11 (b) an evaluation of facilities and service needs; and (c) an
12 evaluation of intergovernmental coordination opportunities to provide
13 regional approaches for meeting park and recreational demand.

14 (9) It is the intent that new or amended elements required after
15 January 1, 2002, be adopted concurrent with the scheduled update
16 provided in RCW 36.70A.130. Requirements to incorporate any such new
17 or amended elements (~~(shall be)~~) are null and void until funds
18 sufficient to cover applicable local government costs are appropriated
19 and distributed by the state at least two years before local government
20 must update comprehensive plans as required in RCW 36.70A.130.

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