
SUBSTITUTE SENATE BILL 5664

State of Washington

63rd Legislature

2013 Regular Session

By Senate Governmental Operations (originally sponsored by Senators Rivers, Hobbs, Benton, Roach, Hatfield, Chase, Hewitt, Schoesler, Ericksen, and Dammeier)

READ FIRST TIME 02/22/13.

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

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
6 adopt a permanent system for the collection of impact fees from
7 applicants for residential building permits issued for a lot or unit
8 created by a subdivision, short subdivision, site development permit,
9 binding site plan, or condominium that includes one or more of the
10 following:

11 (i)(A) A process by which an applicant for any development permit
12 that requires payment of an impact fee may record a covenant against
13 title to the lot or unit subject to the impact fee obligation. A
14 covenant under this subsection (3)(a)(i) must also serve as a lien.
15 The covenant must require payment equal to one hundred percent of the
16 impact fee applicable to the lot or unit at the rates in effect at the
17 time the building permit was issued, less a credit for any deposits
18 paid.

19 (B) Covenants recorded in accordance with this subsection (3)(a)(i)
20 must provide for payment of the impact fee through escrow at the
21 earlier of the following: The time of closing of sale of the
22 applicable lot or unit; or in accordance with the applicable county,
23 city, or town ordinance, eighteen or more months after the building
24 permit is issued. Payment of impact fees due at closing of a sale
25 must, unless an agreement to the contrary is reached between buyer and
26 seller, be made from the seller's proceeds. In the absence of an
27 agreement to the contrary, the seller bears strict liability for the
28 payment of the impact fees.

29 (C) Either a seller or a seller's agent, or both, of property
30 subject to a deferral covenant authorized under this subsection
31 (3)(a)(i) must provide written disclosure of the covenant to a
32 purchaser or prospective purchaser. Disclosure of the covenant must
33 include the amount of impact fees payable and the entities to which
34 fees are to be paid at closing.

35 (D) Upon receiving payment of impact fees due, the applicable
36 county, city, or town must remove the covenant recorded in accordance
37 with this subsection (3)(a)(i); or

1 (ii) A process by which an applicant may apply for a deferral of
2 the impact fee payment until final inspection or certificate of
3 occupancy, or equivalent certification.

4 (b) Counties, cities, and towns may adopt local systems for the
5 collection of impact fees that differ from the requirements of this
6 subsection (3) if the payment timing provisions are consistent with
7 those of this subsection.

8 (c) Counties, cities, or towns that collect impact fees may not
9 defer any portion of the impact fee collected for school facilities.

10 (d) Any agreement of covenant for deferral of payment of impact
11 fees entered into or imposed under the authority of this section does
12 not impact the validity of a contract, development, condition, or other
13 agreement adopted under separate authority.

14 (e) By December 1, 2014, the department of commerce, within
15 existing resources, is to report to the legislature regarding deferrals
16 created under this subsection and their outcomes.

17 (f) Prior to the effective date of this section, any county, city,
18 or town with an impact fee deferral process is exempt from the
19 provisions of this section.

20 (4) The impact fees:

21 (a) Shall only be imposed for system improvements that are
22 reasonably related to the new development;

23 (b) Shall not exceed a proportionate share of the costs of system
24 improvements that are reasonably related to the new development; and

25 (c) Shall be used for system improvements that will reasonably
26 benefit the new development.

27 ~~((+4))~~ (5)(a) Impact fees may be collected and spent only for the
28 public facilities defined in RCW 82.02.090 which are addressed by a
29 capital facilities plan element of a comprehensive land use plan
30 adopted pursuant to the provisions of RCW 36.70A.070 or the provisions
31 for comprehensive plan adoption contained in chapter 36.70, 35.63, or
32 35A.63 RCW. After the date a county, city, or town is required to
33 adopt its development regulations under chapter 36.70A RCW, continued
34 authorization to collect and expend impact fees (~~shall be~~) is
35 contingent on the county, city, or town adopting or revising a
36 comprehensive plan in compliance with RCW 36.70A.070, and on the
37 capital facilities plan identifying:

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

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

6 ~~((c))~~ (iii) Additional public facility improvements required to
7 serve new development.

8 (b) If the capital facilities plan of the county, city, or town is
9 complete other than for the inclusion of those elements which are the
10 responsibility of a special district, the county, city, or town may
11 impose impact fees to address those public facility needs for which the
12 county, city, or town is responsible.

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

15 The comprehensive plan of a county or city that is required or
16 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
17 and descriptive text covering objectives, principles, and standards
18 used to develop the comprehensive plan. The plan shall be an
19 internally consistent document and all elements shall be consistent
20 with the future land use map. A comprehensive plan shall be adopted
21 and amended with public participation as provided in RCW 36.70A.140.

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

24 (1) A land use element designating the proposed general
25 distribution and general location and extent of the uses of land, where
26 appropriate, for agriculture, timber production, housing, commerce,
27 industry, recreation, open spaces, general aviation airports, public
28 utilities, public facilities, and other land uses. The land use
29 element shall include population densities, building intensities, and
30 estimates of future population growth. The land use element shall
31 provide for protection of the quality and quantity of groundwater used
32 for public water supplies. Wherever possible, the land use element
33 should consider utilizing urban planning approaches that promote
34 physical activity. Where applicable, the land use element shall review
35 drainage, flooding, and storm water run-off in the area and nearby
36 jurisdictions and provide guidance for corrective actions to mitigate

1 or cleanse those discharges that pollute waters of the state, including
2 Puget Sound or waters entering Puget Sound.

3 (2) A housing element ensuring the vitality and character of
4 established residential neighborhoods that: (a) Includes an inventory
5 and analysis of existing and projected housing needs that identifies
6 the number of housing units necessary to manage projected growth; (b)
7 includes a statement of goals, policies, objectives, and mandatory
8 provisions for the preservation, improvement, and development of
9 housing, including single-family residences; (c) identifies sufficient
10 land for housing, including, but not limited to, government-assisted
11 housing, housing for low-income families, manufactured housing,
12 multifamily housing, and group homes and foster care facilities; and
13 (d) makes adequate provisions for existing and projected needs of all
14 economic segments of the community.

15 (3) A capital facilities plan element consisting of: (a) An
16 inventory of existing capital facilities owned by public entities,
17 showing the locations and capacities of the capital facilities; (b) a
18 forecast of the future needs for such capital facilities; (c) the
19 proposed locations and capacities of expanded or new capital
20 facilities; (d) at least a six-year plan that will finance such capital
21 facilities within projected funding capacities and clearly identifies
22 sources of public money for such purposes; and (e) a requirement to
23 reassess the land use element if probable funding falls short of
24 meeting existing needs and to ensure that the land use element, capital
25 facilities plan element, and financing plan within the capital
26 facilities plan element are coordinated and consistent. Park and
27 recreation facilities shall be included in the capital facilities plan
28 element.

29 (4) A utilities element consisting of the general location,
30 proposed location, and capacity of all existing and proposed utilities,
31 including, but not limited to, electrical lines, telecommunication
32 lines, and natural gas lines.

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

37 (a) Growth management act goals and local circumstances. Because
38 circumstances vary from county to county, in establishing patterns of

1 rural densities and uses, a county may consider local circumstances,
2 but shall develop a written record explaining how the rural element
3 harmonizes the planning goals in RCW 36.70A.020 and meets the
4 requirements of this chapter.

5 (b) Rural development. The rural element shall permit rural
6 development, forestry, and agriculture in rural areas. The rural
7 element shall provide for a variety of rural densities, uses, essential
8 public facilities, and rural governmental services needed to serve the
9 permitted densities and uses. To achieve a variety of rural densities
10 and uses, counties may provide for clustering, density transfer, design
11 guidelines, conservation easements, and other innovative techniques
12 that will accommodate appropriate rural densities and uses that are not
13 characterized by urban growth and that are consistent with rural
14 character.

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

- 18 (i) Containing or otherwise controlling rural development;
- 19 (ii) Assuring visual compatibility of rural development with the
20 surrounding rural area;
- 21 (iii) Reducing the inappropriate conversion of undeveloped land
22 into sprawling, low-density development in the rural area;
- 23 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and
24 surface water and groundwater resources; and
- 25 (v) Protecting against conflicts with the use of agricultural,
26 forest, and mineral resource lands designated under RCW 36.70A.170.

27 (d) Limited areas of more intensive rural development. Subject to
28 the requirements of this subsection and except as otherwise
29 specifically provided in this subsection (5)(d), the rural element may
30 allow for limited areas of more intensive rural development, including
31 necessary public facilities and public services to serve the limited
32 area as follows:

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

37 (A) A commercial, industrial, residential, shoreline, or mixed-use

1 area shall be subject to the requirements of (d)(iv) of this
2 subsection, but shall not be subject to the requirements of (c)(ii) and
3 (iii) of this subsection.

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

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

13 (ii) The intensification of development on lots containing, or new
14 development of, small-scale recreational or tourist uses, including
15 commercial facilities to serve those recreational or tourist uses, that
16 rely on a rural location and setting, but that do not include new
17 residential development. A small-scale recreation or tourist use is
18 not required to be principally designed to serve the existing and
19 projected rural population. Public services and public facilities
20 shall be limited to those necessary to serve the recreation or tourist
21 use and shall be provided in a manner that does not permit low-density
22 sprawl;

23 (iii) The intensification of development on lots containing
24 isolated nonresidential uses or new development of isolated cottage
25 industries and isolated small-scale businesses that are not principally
26 designed to serve the existing and projected rural population and
27 nonresidential uses, but do provide job opportunities for rural
28 residents. Rural counties may allow the expansion of small-scale
29 businesses as long as those small-scale businesses conform with the
30 rural character of the area (~~(as defined by the local government~~
31 ~~according to RCW 36.70A.030(15))~~). Rural counties may also allow new
32 small-scale businesses to utilize a site previously occupied by an
33 existing business as long as the new small-scale business conforms to
34 the rural character of the area (~~(as defined by the local government~~
35 ~~according to RCW 36.70A.030(15))~~). Public services and public
36 facilities shall be limited to those necessary to serve the isolated
37 nonresidential use and shall be provided in a manner that does not

1 permit low-density sprawl. For the purposes of this subsection, "rural
2 character" has the same meaning as provided in RCW 36.70A.030;

3 (iv) A county shall adopt measures to minimize and contain the
4 existing areas or uses of more intensive rural development, as
5 appropriate, authorized under this subsection. Lands included in such
6 existing areas or uses shall not extend beyond the logical outer
7 boundary of the existing area or use, thereby allowing a new pattern of
8 low-density sprawl. Existing areas are those that are clearly
9 identifiable and contained and where there is a logical boundary
10 delineated predominately by the built environment, but that may also
11 include undeveloped lands if limited as provided in this subsection.
12 The county shall establish the logical outer boundary of an area of
13 more intensive rural development. In establishing the logical outer
14 boundary, the county shall address (A) the need to preserve the
15 character of existing natural neighborhoods and communities, (B)
16 physical boundaries, such as bodies of water, streets and highways, and
17 land forms and contours, (C) the prevention of abnormally irregular
18 boundaries, and (D) the ability to provide public facilities and public
19 services in a manner that does not permit low-density sprawl;

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

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

24 (B) On the date the county adopted a resolution under RCW
25 36.70A.040(2), in a county that is planning under all of the provisions
26 of this chapter under RCW 36.70A.040(2); or

27 (C) On the date the office of financial management certifies the
28 county's population as provided in RCW 36.70A.040(5), in a county that
29 is planning under all of the provisions of this chapter pursuant to RCW
30 36.70A.040(5).

31 (e) Exception. This subsection shall not be interpreted to permit
32 in the rural area a major industrial development or a master planned
33 resort unless otherwise specifically permitted under RCW 36.70A.360 and
34 36.70A.365.

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

37 (a) The transportation element shall include the following
38 subelements:

- 1 (i) Land use assumptions used in estimating travel;
- 2 (ii) Estimated traffic impacts to state-owned transportation
3 facilities resulting from land use assumptions to assist the department
4 of transportation in monitoring the performance of state facilities, to
5 plan improvements for the facilities, and to assess the impact of land-
6 use decisions on state-owned transportation facilities;
- 7 (iii) Facilities and services needs, including:
- 8 (A) An inventory of air, water, and ground transportation
9 facilities and services, including transit alignments and general
10 aviation airport facilities, to define existing capital facilities and
11 travel levels as a basis for future planning. This inventory must
12 include state-owned transportation facilities within the city or
13 county's jurisdictional boundaries;
- 14 (B) Level of service standards for all locally owned arterials and
15 transit routes to serve as a gauge to judge performance of the system.
16 These standards should be regionally coordinated;
- 17 (C) For state-owned transportation facilities, level of service
18 standards for highways, as prescribed in chapters 47.06 and 47.80 RCW,
19 to gauge the performance of the system. The purposes of reflecting
20 level of service standards for state highways in the local
21 comprehensive plan are to monitor the performance of the system, to
22 evaluate improvement strategies, and to facilitate coordination between
23 the county's or city's six-year street, road, or transit program and
24 the office of financial management's ten-year investment program. The
25 concurrency requirements of (b) of this subsection do not apply to
26 transportation facilities and services of statewide significance except
27 for counties consisting of islands whose only connection to the
28 mainland are state highways or ferry routes. In these island counties,
29 state highways and ferry route capacity must be a factor in meeting the
30 concurrency requirements in (b) of this subsection;
- 31 (D) Specific actions and requirements for bringing into compliance
32 locally owned transportation facilities or services that are below an
33 established level of service standard;
- 34 (E) Forecasts of traffic for at least ten years based on the
35 adopted land use plan to provide information on the location, timing,
36 and capacity needs of future growth;
- 37 (F) Identification of state and local system needs to meet current

1 and future demands. Identified needs on state-owned transportation
2 facilities must be consistent with the statewide multimodal
3 transportation plan required under chapter 47.06 RCW;

4 (iv) Finance, including:

5 (A) An analysis of funding capability to judge needs against
6 probable funding resources;

7 (B) A multiyear financing plan based on the needs identified in the
8 comprehensive plan, the appropriate parts of which shall serve as the
9 basis for the six-year street, road, or transit program required by RCW
10 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795
11 for public transportation systems. The multiyear financing plan should
12 be coordinated with the ten-year investment program developed by the
13 office of financial management as required by RCW 47.05.030;

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

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

21 (vi) Demand-management strategies;

22 (vii) Pedestrian and bicycle component to include collaborative
23 efforts to identify and designate planned improvements for pedestrian
24 and bicycle facilities and corridors that address and encourage
25 enhanced community access and promote healthy lifestyles.

26 (b) After adoption of the comprehensive plan by jurisdictions
27 required to plan or who choose to plan under RCW 36.70A.040, local
28 jurisdictions must adopt and enforce ordinances which prohibit
29 development approval if the development causes the level of service on
30 a locally owned transportation facility to decline below the standards
31 adopted in the transportation element of the comprehensive plan, unless
32 transportation improvements or strategies to accommodate the impacts of
33 development are made concurrent with the development. These strategies
34 may include increased public transportation service, ride sharing
35 programs, demand management, and other transportation systems
36 management strategies. For the purposes of this subsection (6),
37 "concurrent with the development" means that improvements or strategies
38 are in place at the time of development, or that a financial commitment

1 is in place to complete the improvements or strategies within six
2 years. If the collection of impact fees is delayed under RCW
3 82.02.050(3), the six-year period required by this subsection (6)(b)
4 must begin after the county or city receives full payment of all impact
5 fees due.

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

11 (7) An economic development element establishing local goals,
12 policies, objectives, and provisions for economic growth and vitality
13 and a high quality of life. The element shall include: (a) A summary
14 of the local economy such as population, employment, payroll, sectors,
15 businesses, sales, and other information as appropriate; (b) a summary
16 of the strengths and weaknesses of the local economy defined as the
17 commercial and industrial sectors and supporting factors such as land
18 use, transportation, utilities, education, workforce, housing, and
19 natural/cultural resources; and (c) an identification of policies,
20 programs, and projects to foster economic growth and development and to
21 address future needs. A city that has chosen to be a residential
22 community is exempt from the economic development element requirement
23 of this subsection.

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

31 (9) It is the intent that new or amended elements required after
32 January 1, 2002, be adopted concurrent with the scheduled update
33 provided in RCW 36.70A.130. Requirements to incorporate any such new
34 or amended elements shall be null and void until funds sufficient to
35 cover applicable local government costs are appropriated and
36 distributed by the state at least two years before local government

1 must update comprehensive plans as required in RCW 36.70A.130.

2 NEW SECTION. **Sec. 3.** This act expires July 1, 2015.

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