
SENATE BILL 6461

State of Washington

63rd Legislature

2014 Regular Session

By Senators Dinsel, Hobbs, Ericksen, and Hatfield

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 effective 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 must 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 binding on all successors in title after the recordation. The covenant
16 must require payment equal to one hundred percent of the impact fee
17 applicable to the lot or unit at the rates in effect at the time the
18 building permit was issued, less a credit for any deposits paid.

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

28 (C) The seller must provide written disclosure of the covenant
29 authorized under this subsection (3)(a)(i) as required by chapter 64.06
30 RCW.

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

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

37 (b) Counties, cities, and towns may adopt local systems for the

1 collection of impact fees that differ from the requirements of this
2 subsection (3) if the payment timing provisions are consistent with
3 those of this subsection.

4 (c) A county, city, or town with an impact fee deferral process on
5 or before December 1, 2014, is exempt from the requirements of this
6 subsection (3) if the deferral process, which may be amended in a
7 manner consistent with this subsection (3), delays all impact fees and
8 remains in effect after December 1, 2014.

9 (d) In each calendar year that an applicant receives a deferral
10 under this subsection (3), the applicant may receive deferrals for no
11 less than thirty building permits per jurisdiction.

12 (4) The impact fees:

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

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

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

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

30 ~~((+a))~~ (i) Deficiencies in public facilities serving existing
31 development and the means by which existing deficiencies will be
32 eliminated within a reasonable period of time;

33 ~~((+b))~~ (ii) Additional demands placed on existing public
34 facilities by new development; and

35 ~~((+c))~~ (iii) Additional public facility improvements required to
36 serve new development.

37 (b) If the capital facilities plan of the county, city, or town is
38 complete other than for the inclusion of those elements which are the

1 responsibility of a special district, the county, city, or town may
2 impose impact fees to address those public facility needs for which the
3 county, city, or town is responsible.

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

6 The comprehensive plan of a county or city that is required or
7 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
8 and descriptive text covering objectives, principles, and standards
9 used to develop the comprehensive plan. The plan shall be an
10 internally consistent document and all elements shall be consistent
11 with the future land use map. A comprehensive plan shall be adopted
12 and amended with public participation as provided in RCW 36.70A.140.
13 Each comprehensive plan shall include a plan, scheme, or design for
14 each of the following:

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

30 (2) A housing element ensuring the vitality and character of
31 established residential neighborhoods that: (a) Includes an inventory
32 and analysis of existing and projected housing needs that identifies
33 the number of housing units necessary to manage projected growth; (b)
34 includes a statement of goals, policies, objectives, and mandatory
35 provisions for the preservation, improvement, and development of
36 housing, including single-family residences; (c) identifies sufficient
37 land for housing, including, but not limited to, government-assisted

1 housing, housing for low-income families, manufactured housing,
2 multifamily housing, and group homes and foster care facilities; and
3 (d) makes adequate provisions for existing and projected needs of all
4 economic segments of the community.

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

19 (4) A utilities element consisting of the general location,
20 proposed location, and capacity of all existing and proposed utilities,
21 including, but not limited to, electrical lines, telecommunication
22 lines, and natural gas lines.

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

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

33 (b) Rural development. The rural element shall permit rural
34 development, forestry, and agriculture in rural areas. The rural
35 element shall provide for a variety of rural densities, uses, essential
36 public facilities, and rural governmental services needed to serve the
37 permitted densities and uses. To achieve a variety of rural densities
38 and uses, counties may provide for clustering, density transfer, design

1 guidelines, conservation easements, and other innovative techniques
2 that will accommodate appropriate rural densities and uses that are not
3 characterized by urban growth and that are consistent with rural
4 character.

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

8 (i) Containing or otherwise controlling rural development;

9 (ii) Assuring visual compatibility of rural development with the
10 surrounding rural area;

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

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

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

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

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

27 (A) A commercial, industrial, residential, shoreline, or mixed-use
28 area (~~shall be~~) are subject to the requirements of (d)(iv) of this
29 subsection, but (~~shall~~) are not (~~be~~) subject to the requirements of
30 (c)(ii) and (iii) of this subsection.

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

35 (C) Any development or redevelopment in terms of building size,
36 scale, use, or intensity shall be consistent with the character of the
37 existing areas. Development and redevelopment may include changes in

1 use from vacant land or a previously existing use so long as the new
2 use conforms to the requirements of this subsection (5);

3 (ii) The intensification of development on lots containing, or new
4 development of, small-scale recreational or tourist uses, including
5 commercial facilities to serve those recreational or tourist uses, that
6 rely on a rural location and setting, but that do not include new
7 residential development. A small-scale recreation or tourist use is
8 not required to be principally designed to serve the existing and
9 projected rural population. Public services and public facilities
10 shall be limited to those necessary to serve the recreation or tourist
11 use and shall be provided in a manner that does not permit low-density
12 sprawl;

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

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

1 more intensive rural development. In establishing the logical outer
2 boundary, the county shall address (A) the need to preserve the
3 character of existing natural neighborhoods and communities, (B)
4 physical boundaries, such as bodies of water, streets and highways, and
5 land forms and contours, (C) the prevention of abnormally irregular
6 boundaries, and (D) the ability to provide public facilities and public
7 services in a manner that does not permit low-density sprawl;

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

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

12 (B) On the date the county adopted a resolution under RCW
13 36.70A.040(2), in a county that is planning under all of the provisions
14 of this chapter under RCW 36.70A.040(2); or

15 (C) On the date the office of financial management certifies the
16 county's population as provided in RCW 36.70A.040(5), in a county that
17 is planning under all of the provisions of this chapter pursuant to RCW
18 36.70A.040(5).

19 (e) Exception. This subsection shall not be interpreted to permit
20 in the rural area a major industrial development or a master planned
21 resort unless otherwise specifically permitted under RCW 36.70A.360 and
22 36.70A.365.

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

25 (a) The transportation element shall include the following
26 subelements:

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

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

33 (iii) Facilities and services needs, including:

34 (A) An inventory of air, water, and ground transportation
35 facilities and services, including transit alignments and general
36 aviation airport facilities, to define existing capital facilities and
37 travel levels as a basis for future planning. This inventory must

1 include state-owned transportation facilities within the city or
2 county's jurisdictional boundaries;

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

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

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

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

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

30 (iv) Finance, including:

31 (A) An analysis of funding capability to judge needs against
32 probable funding resources;

33 (B) A multiyear financing plan based on the needs identified in the
34 comprehensive plan, the appropriate parts of which shall serve as the
35 basis for the six-year street, road, or transit program required by RCW
36 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795
37 for public transportation systems. The multiyear financing plan should

1 be coordinated with the ten-year investment program developed by the
2 office of financial management as required by RCW 47.05.030;

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

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

10 (vi) Demand-management strategies;

11 (vii) Pedestrian and bicycle component to include collaborative
12 efforts to identify and designate planned improvements for pedestrian
13 and bicycle facilities and corridors that address and encourage
14 enhanced community access and promote healthy lifestyles.

15 (b) After adoption of the comprehensive plan by jurisdictions
16 required to plan or who choose to plan under RCW 36.70A.040, local
17 jurisdictions must adopt and enforce ordinances which prohibit
18 development approval if the development causes the level of service on
19 a locally owned transportation facility to decline below the standards
20 adopted in the transportation element of the comprehensive plan, unless
21 transportation improvements or strategies to accommodate the impacts of
22 development are made concurrent with the development. These strategies
23 may include increased public transportation service, ride sharing
24 programs, demand management, and other transportation systems
25 management strategies. For the purposes of this subsection (6),
26 "concurrent with the development" means that improvements or strategies
27 are in place at the time of development, or that a financial commitment
28 is in place to complete the improvements or strategies within six
29 years. If the collection of impact fees is delayed under RCW
30 82.02.050(3), the six-year period required by this subsection (6)(b)
31 must begin after the county or city receives full payment of all impact
32 fees due.

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

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

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

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

28 NEW SECTION. **Sec. 3.** This act takes effect December 1, 2014.

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