

---

**SUBSTITUTE HOUSE BILL 1709**

---

**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Local Government (originally sponsored by Representatives Springer, Kretz, Takko, Pike, Wilcox, and Fitzgibbon)

READ FIRST TIME 02/20/15.

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

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

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

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

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

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

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

19 (2) Counties, cities, and towns that are required or choose to  
20 plan under RCW 36.70A.040 are authorized to impose impact fees on  
21 development activity as part of the financing for public facilities,

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

4 (3)(a) Counties, cities, and towns collecting impact fees must  
5 adopt a permanent system for the collection of impact fees from  
6 applicants for residential building permits issued for single-family  
7 detached or attached residential construction that includes:

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

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

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

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

33 (ii) A process by which an applicant may apply for a deferral of  
34 the impact fee payment until final inspection or certificate of  
35 occupancy, or equivalent certification. Cities utilizing the deferral  
36 process established by this subsection (3)(a)(ii) may withhold  
37 certification of final inspection, certificate of occupancy, or  
38 equivalent certification until the impact fee payment has been made  
39 in full.

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

5 (c) A county, city, or town with an impact fee deferral process  
6 on or before July 1, 2016, is exempt from the requirements of this  
7 subsection (3) if the deferral process delays all impact fees and  
8 remains in effect after July 1, 2016.

9 (d) In each calendar year that an applicant receives a deferral  
10 under this subsection (3), the applicant may receive a deferral for  
11 the first twenty single-family residential construction building  
12 permits per school district. However, a county, city, or town may, by  
13 ordinance, elect to defer more than twenty single-family residential  
14 construction building permits for an applicant as required by this  
15 subsection (3)(d) if:

16 (i) The county, city, or town collects impact fees on behalf of  
17 the jurisdiction or jurisdictions for which the collection of impact  
18 fees would be delayed; and

19 (ii) The county, city, or town and the jurisdiction or  
20 jurisdictions for which the collection of impact fees would be  
21 delayed agree to the additional deferrals.

22 (4) The impact fees:

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

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

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

29 ~~((4))~~ (5)(a) Impact fees may be collected and spent only for  
30 the public facilities defined in RCW 82.02.090 which are addressed by  
31 a capital facilities plan element of a comprehensive land use plan  
32 adopted pursuant to the provisions of RCW 36.70A.070 or the  
33 provisions for comprehensive plan adoption contained in chapter  
34 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town  
35 is required to adopt its development regulations under chapter 36.70A  
36 RCW, continued authorization to collect and expend impact fees  
37 ~~((shall be))~~ is contingent on the county, city, or town adopting or  
38 revising a comprehensive plan in compliance with RCW 36.70A.070, and  
39 on the 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  
9 is complete other than for the inclusion of those elements which are  
10 the responsibility of a special district, the county, city, or town  
11 may impose impact fees to address those public facility needs for  
12 which the 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,  
26 where appropriate, for agriculture, timber production, housing,  
27 commerce, industry, recreation, open spaces, general aviation  
28 airports, public utilities, public facilities, and other land uses.  
29 The land use element shall include population densities, building  
30 intensities, and estimates of future population growth. The land use  
31 element shall provide for protection of the quality and quantity of  
32 groundwater used for public water supplies. Wherever possible, the  
33 land use element should consider utilizing urban planning approaches  
34 that promote physical activity. Where applicable, the land use  
35 element shall review drainage, flooding, and storm water run-off in  
36 the area and nearby jurisdictions and provide guidance for corrective  
37 actions to mitigate or cleanse those discharges that pollute waters  
38 of the state, including Puget Sound or waters entering Puget Sound.

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

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

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

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

35 (a) Growth management act goals and local circumstances. Because  
36 circumstances vary from county to county, in establishing patterns of  
37 rural densities and uses, a county may consider local circumstances,  
38 but shall develop a written record explaining how the rural element  
39 harmonizes the planning goals in RCW 36.70A.020 and meets the  
40 requirements of this chapter.

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

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

14 (i) Containing or otherwise controlling rural development;

15 (ii) Assuring visual compatibility of rural development with the  
16 surrounding rural area;

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

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

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

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

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

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

38 (B) Any development or redevelopment other than an industrial  
39 area or an industrial use within a mixed-use area or an industrial

1 area under this subsection (5)(d)(i) must be principally designed to  
2 serve the existing and projected rural population.

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

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

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

34 (iv) A county shall adopt measures to minimize and contain the  
35 existing areas or uses of more intensive rural development, as  
36 appropriate, authorized under this subsection. Lands included in such  
37 existing areas or uses shall not extend beyond the logical outer  
38 boundary of the existing area or use, thereby allowing a new pattern  
39 of low-density sprawl. Existing areas are those that are clearly  
40 identifiable and contained and where there is a logical boundary

1 delineated predominately by the built environment, but that may also  
2 include undeveloped lands if limited as provided in this subsection.  
3 The county shall establish the logical outer boundary of an area of  
4 more intensive rural development. In establishing the logical outer  
5 boundary, the county shall address (A) the need to preserve the  
6 character of existing natural neighborhoods and communities, (B)  
7 physical boundaries, such as bodies of water, streets and highways,  
8 and land forms and contours, (C) the prevention of abnormally  
9 irregular boundaries, and (D) the ability to provide public  
10 facilities and public services in a manner that does not permit low-  
11 density sprawl;

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

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

16 (B) On the date the county adopted a resolution under RCW  
17 36.70A.040(2), in a county that is planning under all of the  
18 provisions of this chapter under RCW 36.70A.040(2); or

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

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

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

29 (a) The transportation element shall include the following  
30 subelements:

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

32 (ii) Estimated traffic impacts to state-owned transportation  
33 facilities resulting from land use assumptions to assist the  
34 department of transportation in monitoring the performance of state  
35 facilities, to plan improvements for the facilities, and to assess  
36 the impact of land- use decisions on state-owned transportation  
37 facilities;

38 (iii) Facilities and services needs, including:

39 (A) An inventory of air, water, and ground transportation  
40 facilities and services, including transit alignments and general

1 aviation airport facilities, to define existing capital facilities  
2 and travel levels as a basis for future planning. This inventory must  
3 include state-owned transportation facilities within the city or  
4 county's jurisdictional boundaries;

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

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

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

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

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

33 (iv) Finance, including:

34 (A) An analysis of funding capability to judge needs against  
35 probable funding resources;

36 (B) A multiyear financing plan based on the needs identified in  
37 the comprehensive plan, the appropriate parts of which shall serve as  
38 the basis for the six-year street, road, or transit program required  
39 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
40 35.58.2795 for public transportation systems. The multiyear financing

1 plan should be coordinated with the ten-year investment program  
2 developed by the office of financial management as required by RCW  
3 47.05.030;

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

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

11 (vi) Demand-management strategies;

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

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

34 (c) The transportation element described in this subsection (6),  
35 the six-year plans required by RCW 35.77.010 for cities, RCW  
36 36.81.121 for counties, and RCW 35.58.2795 for public transportation  
37 systems, and the ten-year investment program required by RCW  
38 47.05.030 for the state, must be consistent.

39 (7) An economic development element establishing local goals,  
40 policies, objectives, and provisions for economic growth and vitality

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

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

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

26 NEW SECTION. **Sec. 3.** This act takes effect September 1, 2016.

--- END ---