

New Washington State Senate Bill Requires Local Jurisdictions to Provide Option to Defer Payment of Impact Fees

The Washington State Legislature passed Engrossed Senate Bill 5923 (ESB 5923) during the 2015 Legislative Session. The Governor signed ESB 5923 into law on May 11, 2015. ESB 5923 requires local jurisdictions to provide developers with an option to defer payment of impact fees, including school impact fees, for single family detached and attached residential construction. Subject to the recording of a binding lien on the property, developers must have the option to defer payment of impact fees to at least one of the following points:

- (1) Final inspection;
- (2) Issuance of a certificate of occupancy or equivalent certification; or
- (3) Closing of a sale of the newly constructed home.

In any case, the impact fees must be paid within 18 months from the date of building permit issuance. The impact fee due is set at the rate in effect at the time an applicant applies for a deferral.

The local jurisdiction may institute foreclosure proceedings to collect any unpaid impact fees. If a local jurisdiction fails to initiate foreclosure proceedings for unpaid school impact fees, the school district may begin foreclosure proceedings.

ESB 5923 presents uncertainty and obstacles for school districts in their efforts to provide adequate school capacity to serve the students generated from new residential development.

- The local community may be required to front fund the capacity improvements attributable to new development. Deferring the collection of school impact fees does not defer the timing of needed capacity improvements.
- Each local jurisdiction and the school district will be burdened with establishing new administrative systems to track outstanding fees. Further complicating matters, school districts may face different deferral programs within each jurisdiction that collects fees on behalf of the district. For example, the county may require payment of fees no later than final inspection, city A may require fees no later than certificate of occupancy, and city B may require fees no later than closing of a new home. School districts will need to anticipate, track, and plan around the various dates of delayed fee collection.
- School districts will need to monitor lien enforcement by local jurisdictions and be prepared to commence foreclosure activities. It is likely that some local jurisdictions will decline enforcement rather than incurring legal costs to enforce the lien on behalf of the school district.

While ESB 5923 has a delayed effective date of September 1, 2016, we anticipate that some jurisdictions may plan for early implementation. Pacifica Law Group's Education and School Districts Group assists school districts with all aspects of development and implementation of school impact fee programs. Please contact Denise Stiffarm at 206.602.1203 or denise.stiffarm@pacificalawgroup.com for assistance.