

21-05 FINAL REPORT: Impact Fee Deferral Programs

LEGISLATIVE AUDITOR'S CONCLUSION:





Deferral use has been infrequent and concentrated in five local governments, with few adverse effects. Financial benefit of deferrals could increase if market conditions change in the future.

December 2021

Executive Summary

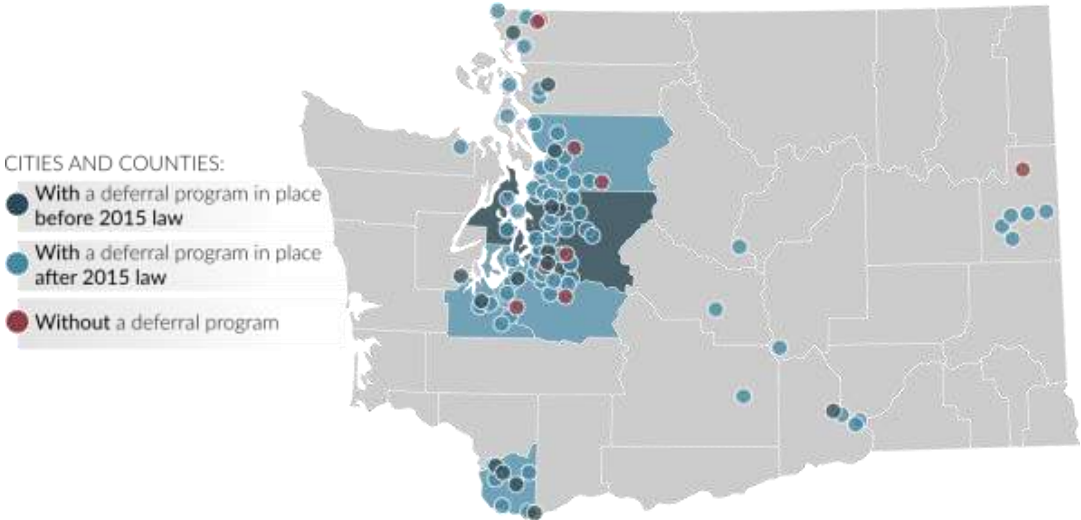
The 2015 Legislature required counties, cities, and towns that collect impact fees for new single-family residential construction to adopt a fee deferral process. The fee deferral allows builders to pay impact fees near the end of the construction process rather than at the beginning. The Legislature also required the Joint Legislative Audit and Review Committee (JLARC) to collect data on the use and cost of deferral programs and to review implementation of impact fee deferrals.

Impact fees are one-time charges that help finance public facilities:

 SCHOOL IMPACT FEES support construction of new school facilities.	 PARK IMPACT FEES fund parks, open space, and recreation facilities.	 TRANSPORTATION IMPACT FEES fund improvements to public streets and roads.	 FIRE IMPACT FEES are used for fire protection facilities.
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Impact fee deferral programs vary, as allowed by state law

JLARC staff identified 107 local governments that collect impact fees and are required to have deferral programs in place. Of those, 98 local governments implemented a deferral program and nine did not.



The law allows local governments to decide when to collect deferred impact fees, whether to charge administrative fees, and whether to limit the deferral to the first 20 building permits per builder.

Local governments implemented programs using different combinations of these three factors. As a result, deferral programs vary among local governments.

Deferral use has been infrequent and concentrated in five local governments

Builders requested and received 3,741 deferrals from 22 of the 98 local governments that offered them. Five local governments – Redmond, La Center, Ridgefield, Ferndale, and Kitsap County – issued 91% of all deferrals.

Data indicates that deferral use has been infrequent and unrelated to permit activity. Builders requested deferrals on less than 5% of the permits issued for single-family homes in cities and counties with deferral programs.

Local governments report that 99.9% of deferred fees were repaid on time

Local governments reported few issues with unpaid deferrals. In 2018 and 2019, builders deferred \$11 million out of \$323 million in impact fees. All but \$13,000 was repaid on time.

State law mandates that local governments require builders to place a lien on the property equal to the amount of deferred fees. This lien requirement was meant to protect local governments from builders defaulting, foreclosing, or failing to pay deferred fees.

Local governments have implemented other controls, such as withholding final inspection or certificate of occupancy, to ensure deferred fees are paid. Further, stakeholders report that impact fee liens add time, uncertainty, and costs to the deferral process. The five local governments with the most deferrals do not require liens, primarily due to a grandfathering provision for deferral programs that predate the 2015 law.

Deferrals were issued by 22 local governments



Builders report that several factors influence their decision to defer impact fees and indicate that deferrals may become more attractive in a less favorable economy

JLARC staff modeled the financial benefit of deferring fees in the 98 local governments with deferral programs. The model indicated that deferrals offer greater savings to builders if impact fee amounts and interest rates are high and deferral periods are long.

In today's housing market, however, interest rates are low and deferral periods are short. As a result, models estimate current cost savings of no more than \$1,500 per home. In many instances, administrative fees for deferrals cost more than the savings from the deferral.

Builders reported that other factors, including staff time, attorney costs, and the impact of liens on available financing also influence the decision to defer fees. However, builders and other stakeholders report that impact fee deferrals may be a valuable tool in the future, particularly if interest rates increase and houses do not sell as quickly.

Department of Commerce directed to monitor future use of deferrals

Statute requires the Department of Commerce (Commerce) to report the number of deferrals requested, issued, and not paid.

If the Legislature wants information about whether deferral use and costs change in the future, Commerce will need to collect information not currently required by statute. However, since deferrals are not widely used and there have been few issues for local governments, ongoing monitoring by Commerce may be unnecessary.

Legislative Auditor Recommendations

The Legislative Auditor makes three recommendations:

1. Cities without a deferral program should pass an ordinance to adopt and maintain an impact fee deferral program for single-family residential construction as required by statute.
2. The Legislature should consider whether liens are a necessary tool to ensure that deferred fees are paid.
3. The Legislature should either repeal Commerce's data collection or identify which measures Commerce should collect that would be helpful for evaluating program use.

Several cities and agencies formally responded and either concurred, partially concurred, or did not concur with the Legislative Auditor's recommendations. You can find responses, the Legislative Auditor's response to City of Everson comments, and additional information in Recommendations.

Committee Action to Distribute Report

On December 1, 2021 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with Legislative Auditor recommendations.

REPORT DETAILS

1. Deferral programs vary

Impact fee deferral programs vary, as allowed by state law

Local governments collect impact fees to finance public facilities such as road improvements, schools, and parks

Cities, counties, and towns that plan under the Growth Management Act (GMA) are authorized to collect impact fees on new development. Impact fees are one-time charges assessed by local governments to help finance public facilities that will serve the new development. Under state law (RCW 82.02.050), impact fees can be used to pay for schools, parks and open spaces, transportation (road improvements), and new fire facilities.

Local governments are authorized to impose up to four different types of impact fees. The fees vary based upon need and local conditions. For example, the city of Deer Park collects only transportation impact fees, which cost \$350 per single-family home, whereas the city of Issaquah collects all four types of impact fees, which cost a total of \$38,705 per single-family home. Appendix A shows the type and amounts of impact fees charged by each city.

Local governments must allow builders to defer impact fees on new single-family homes

In 2015, the Legislature required counties, cities, and towns that collect impact fees for new single-family residential construction to adopt a deferral program.

Key provisions of the law include:

- Deferral programs must be implemented by September 1, 2016.

Impact fees are one-time charges that help finance public facilities:



SCHOOL IMPACT FEES

support construction of new school facilities.



PARK IMPACT FEES

fund parks, open space, and recreation facilities.



TRANSPORTATION IMPACT FEES

fund improvements to public streets and roads.



FIRE IMPACT FEES

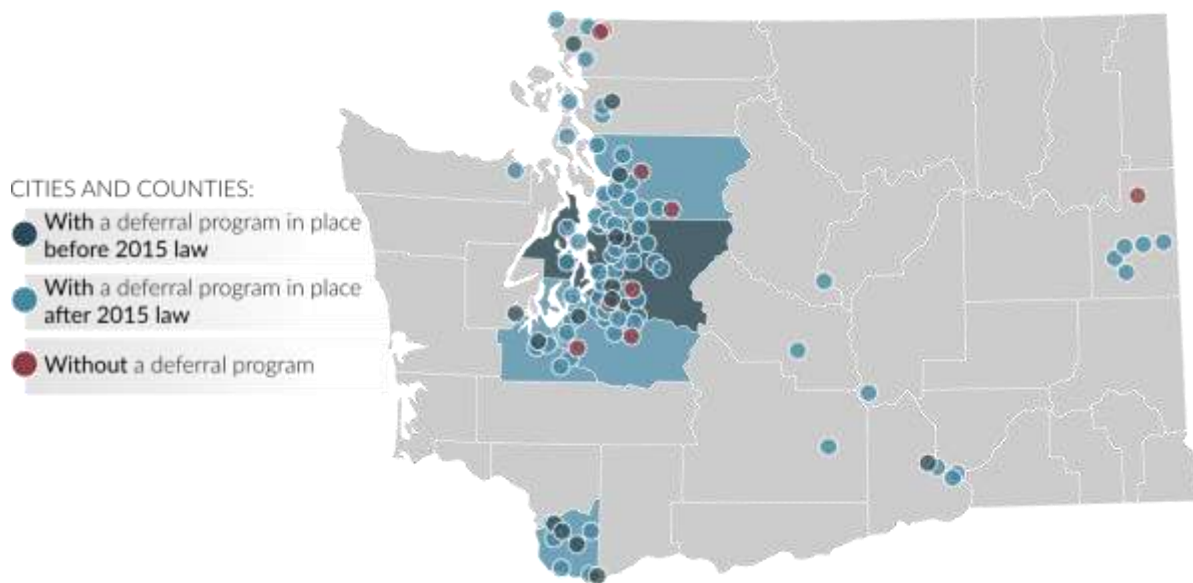
are used for fire protection facilities.

- Deferrals must be available upon request from the builder.
- Local governments can defer payments until final inspection, issuance of certificate of occupancy, or the closing of the first sale of the property. However, the deferral can be no longer than 18 months from the time the building permit is issued.
- The builder must grant and record a lien against the property in favor of the municipality equal to the amount of the deferred impact fee.
- The impact fee amount that the builder pays must reflect the fees in place when they applied for a deferral.

Local governments that had a deferral system in effect on or before April 1, 2015 are exempt from many of the law's provisions. The relevant sections of statute are in Appendix C.

98 out of 107 local governments have a deferral program as required by law

Exhibit 1.1: 98 local governments have a deferral program. Nine do not.



Source: Local government municipal codes.

JLARC staff identified 107 local governments that are required to have a deferral program in place because they collect impact fees.

- 98 of the 107 local governments have a deferral program. This includes 92 cities or towns and 6 counties (Clark, King, Kitsap, Pierce, Snohomish, Thurston).
- Of the 98, two cities have implemented partial deferral programs. Black Diamond collects school and fire impact fees, but allows deferral only for school impact fees. Pacific collects impact fees for parks and road improvements, but only road fees may be deferred.
- 18 of the 98 local governments had a deferral system in effect on or before April 1, 2015.

Nine cities have not yet implemented a deferral program

Nine cities and towns do not appear to have a deferral program.

In response to inquiries from JLARC staff:

- Deer Park confirmed it does not have a deferral program.
- Granite Falls, Maple Valley, and Everson report that they are in the process of developing programs.
- Algona, Carbonado, Gold Bar, Nooksack and Roy did not respond to inquiries about the status of their deferral programs.

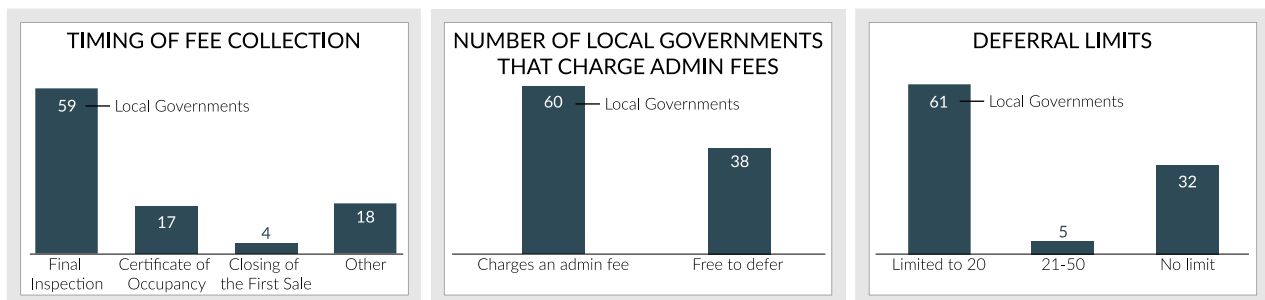
Statute provided local governments with options in developing deferral programs

The law allows local governments establishing new deferral programs to decide:

- When to collect impact fees.
- Whether to impose a reasonable administrative fee.
- Whether to limit the deferral to the first 20 building permits per builder per year.

Local governments implemented programs using different combinations of these three factors. As a result, deferral programs vary among local governments.

Exhibit 1.2: Deferral programs vary in terms of timing, fees, and limits



Source: JLARC staff analysis of local governments' deferral programs.

The cost of administrative fees also varies

Statute authorizes local governments to collect reasonable administrative fees to cover the costs associated with reviewing and processing impact fee deferrals. Statute provides local governments the discretion to determine what costs are considered reasonable.

- Sixty local governments charge administrative fees, which range from \$50 to \$1,200 per single-family home. The median fee is \$200.
- Some charge additional hourly fees for lengthy deferral applications.

In addition to administrative fees, deferral applicants also must pay a fee when they record a lien and another fee when they request release of the lien. In most counties, lien recording and release fees are \$39 each, plus more for multi-page documents.

Legislative Auditor recommendation

Cities without a deferral program should pass an ordinance to adopt and maintain an impact fee deferral program for single-family residential construction as required by statute. You can find additional information in Recommendations.

2. Deferral use has been infrequent

Deferrals account for a small portion of all single-family building permits issued. Five local governments that have similar programs issued 91% of deferrals.

Between 2018 and 2019, 22 local governments issued deferrals

Builders requested and received 3,741 deferrals from 22 local governments.

This includes:

- 1,236 park impact fee deferrals.
- 1,189 traffic impact fee deferrals.
- 1,109 school impact fee deferrals.
- 207 fire impact fee deferrals.

Local governments did not report rejecting any applications.

Among the 76 other local governments that have deferral programs, 66 reported that they did not issue any deferrals and 10 did not respond to the JLARC staff request for information.

Twenty-two local governments issued deferrals. Of these, five issued 91% of deferrals.



Five local governments issued 91% of deferrals

Ferndale, La Center, Redmond, Ridgefield, and Kitsap County issued 91% of deferrals. JLARC staff found that their deferral programs have the following in common:

1. Except for Ridgefield, the local governments established their deferral programs before passage of ESB 5923 in 2015 and were exempt from many of the law's requirements due to a grandfathering provision.
2. Local government staff believe their programs are successful because they worked with the building groups in the community.
3. The local governments do not require a lien for impact fee deferrals.
4. The local governments do not charge administrative fees for impact fee deferrals.
5. Staff integrated the deferral application into the building permit application so there are no additional steps, paperwork, or applications to complete.

Builders requested few deferrals from local governments that charge fees and require liens

Builders reported that they might avoid deferring impact fees if the process were complicated, time-consuming, or expensive. Most local governments require builders to:

- Request a deferral before the building permit is issued. Depending on the local governments, builders can request a deferral verbally, in writing, or online.
- Complete a separate deferral application form and pay an administrative fee for each single-family residence deferral.
- Sign and record a deferred impact fee lien for each single-family residence deferral before the building permit is issued.

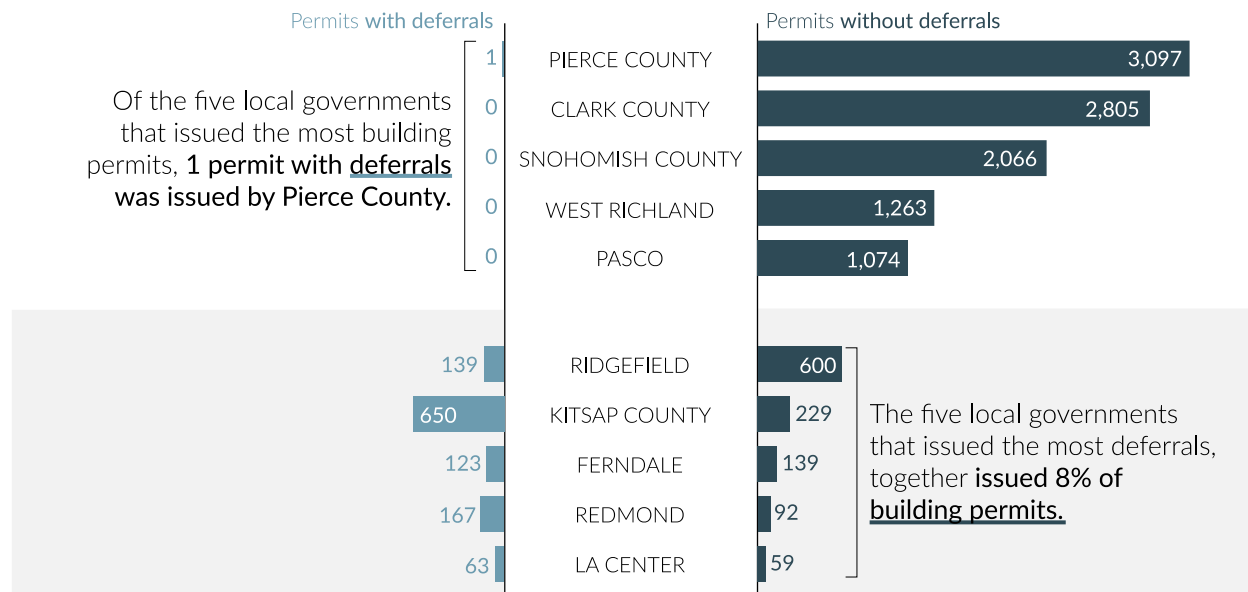
Deferral use is infrequent and appears unrelated to the amount of home construction

Data indicates that deferral use has been infrequent and unrelated to permit activity. JLARC staff estimate that builders requested deferrals on 1,284 permits¹, which is less than 5% of the estimated 26,990 permits issued for single-family homes by the 98 local governments with deferral programs. In addition:

- Of the five local governments that issued the most single-family building permits, only one issued any deferrals.
- The five local governments that issued the most deferrals issued only 8% of single-family building permits.

¹One permit could have up to four impact fees deferred (school, park, transportation, fire).

Exhibit 2.1: Permits and deferrals appear unrelated



Source: JLARC staff analysis of local government data and US Census' Building Permit Survey.

3. Deferrals repaid on time

Local governments report that 99.9% of deferrals were repaid on time and that capital improvement projects have not been affected

Local governments report that 3 out of 3,741 deferrals were not fully and timely paid

JLARC staff analyzed 2018-2019 data provided by local governments and found that:

- Three out of the 3,741 deferrals were not paid on time or in full.
- \$11 million out of approximately \$323 million in impact fees was deferred.
- \$13,000 of \$11 million in deferred fees was not paid on time or in full.

To ensure deferrals are fully and timely paid, local governments report that they have implemented controls over the tracking and collection of deferred impact fees. These include the ability to withhold final inspections and certificates of occupancy until deferred fees are paid.

Exhibit 3.1 Local governments implemented internal controls to ensure payment of deferred fees



Source: JLARC staff summary of permitting and deferral processes.

Capital improvements have not been affected

Local governments, school districts, and fire districts told JLARC staff that deferrals have not caused delays in capital improvement planning or construction.

According to statute, local governments may not rely solely on impact fees to finance public improvements and must balance impact fees with other public funds. Further, they must consider other public funding sources when establishing their impact fee schedules. Stakeholders reported that impact fees comprise a relatively small portion of overall expenditures for capital improvements. Central Kitsap School District, for example, reported that impact fees provide \$210,000 of the \$3 to \$5 million needed for capital projects each year, or 4.2% to 7%.

Local governments report that the impact to staff resources has been minimal

Local governments reported that while they did not track the costs of administering deferral programs, the impact to staff resources has been minimal. Some respondents provided reasons for this including:

- Integrating impact fee deferral tracking and collection into their regular building permit and inspection process avoided additional costs.
- Deferrals are not widely used, mitigating the time and resources needed to complete additional paperwork and reviews.
- While there were initial costs to establish deferral programs, the ongoing costs have been minimal.
- Because few deferrals were not paid on time or in full, local governments did not have to spend staff time and resources collecting delinquent payments.

Stakeholders report that the lien requirement was intended to protect their interests, but may be unnecessary or problematic

By law, local governments must require builders to record a lien against the property in the amount of the deferred impact fees. Local governments that established programs before the 2015 legislation are exempt from this requirement.

JLARC staff interviewed and corresponded with 52 stakeholders from local governments, lenders, and builders to better understand how deferral programs worked in practice.

- Eight of the 52 stakeholders either support the lien requirement or view it neutrally. The eight included lenders, cities, school districts, and builders.
- 26 stakeholders (including most of the builders, almost all of the lenders, and the five local governments that have issued the most deferrals) stated that the lien was unnecessary, an obstacle, or that it discouraged builders from pursuing deferrals.
- The remaining 18 stakeholders did not provide feedback on impact fee deferral liens.

Liens are one of many controls to protect local government interests

Stakeholders that support the liens noted that it is meant to protect local governments from builders defaulting, foreclosing, or failing to pay deferred fees. Others report that the lien is likely unnecessary because other controls (e.g., withholding final inspection or certificates of occupancy) protect the governments' interests. Furthermore, lenders require a certificate of occupancy before converting a construction loan to a traditional mortgage for the purpose of selling the house. JLARC staff learned of only one instance when the lien was used to ensure payment of deferred fees.

Stakeholders cited multiple reasons that liens may be problematic

- **The lien may deter builders from requesting a deferral.** Stakeholders reported that builders were apprehensive about recording liens against the property in favor of the city and would forgo deferring impact fees once they learned that a lien was required. Bellingham reported that builders abandoned six deferral requests because of the lien requirement.
- **The lien may require extra time and resources** to process, record, and track. Some local governments reported that they do not want to require liens because of the strain it puts on resources. For example, Ridgefield reported that its staff learned from other local governments that the lien requirement was cumbersome and time consuming. Although the city implemented its deferral program after the state directive, it did not include a lien requirement because it could cost money for both the city and the builders.

- **The lien may complicate and delay construction financing.** Most lenders said builders must meet special conditions before they will finance a project with an impact fee lien. These conditions include ensuring that the cost of the deferred fees is included in the construction budget and the builder is in good standing with the lender. Lenders also reported that banks and title companies often require additional approvals before the lien is recorded, which can delay financing.
- **The deferral lien may take priority over the mortgage lien in foreclosure proceedings.** Another condition for construction financing is that, in the case of foreclosure, the lien must have lower priority for repayment than the mortgage. However, a general rule in [property law](#)² says that the lien recorded first takes higher priority. Since the impact fee lien is often recorded before the mortgage lien, it is difficult for builders to meet this condition.
- **The lien may delay sale.** Lenders stated that liens also may delay the sale of the house. Additionally, it may take several days or weeks for a local government to release the lien after the deferred fees are paid, further delaying the sale.

Four local governments do not require liens, despite the mandate to do so

The cities of Brier, Ridgefield, Fife, and Burlington implemented a deferral program after the 2015 legislation and do not require liens as part of their deferral process. City staff report that because they are able to withhold final inspection or certificate of occupancy until the deferred fees are paid, their risk of securing payment is significantly reduced. City staff believe that the processes and internal controls they implemented as part of the deferral program eliminated the need for a lien.

Legislative Auditor recommendation

The Legislature should consider whether liens are a necessary tool to ensure that deferred fees are paid. You can find additional information in Recommendations.

²Commonly known as "first in time, first in right."

4. Financial benefit of deferrals could increase in the future

In today's housing market, models estimate cost savings of no more than \$1,500 per home. Deferrals could have greater benefit in the future.

There may be a financial benefit to builders who defer impact fees

Impact fees are collected from builders when the building permit is issued. Builders that do not defer impact fees typically finance them with a construction loan or pay them out of pocket. If they finance the fees, builders must pay interest on the loan until the house is sold. Deferring impact fees allows builders to delay paying impact fees upfront, which can save money by reducing finance costs.

Financial benefit varies depending upon market conditions and city administrative fees

There are four major factors that influence the financial benefit of deferring impact fees: amount of the impact fees, interest rates, deferral period (how long the builder defers fees), and the administrative and lien fees.

JLARC staff created a model that shows how the financial benefit changes as these variables change. In general, the model indicates that:

- If impact fee amounts, interest rates, and/or the deferral period increase, builders will likely have greater financial benefit.
- The amount of financial benefit can fall depending on the amount of the administrative and lien fees.

JLARC staff also modeled the financial benefit of deferring fees for the 98 local governments with deferral programs. The estimates created by the model use a range of interest rates and deferral periods.

The analysis suggests that builders benefit from deferring impact fees in more cities and counties when interest rates and deferral periods increase. For example, as shown in Exhibit 4.2:

Exhibit 4.1: Four factors influence the financial benefit of deferrals

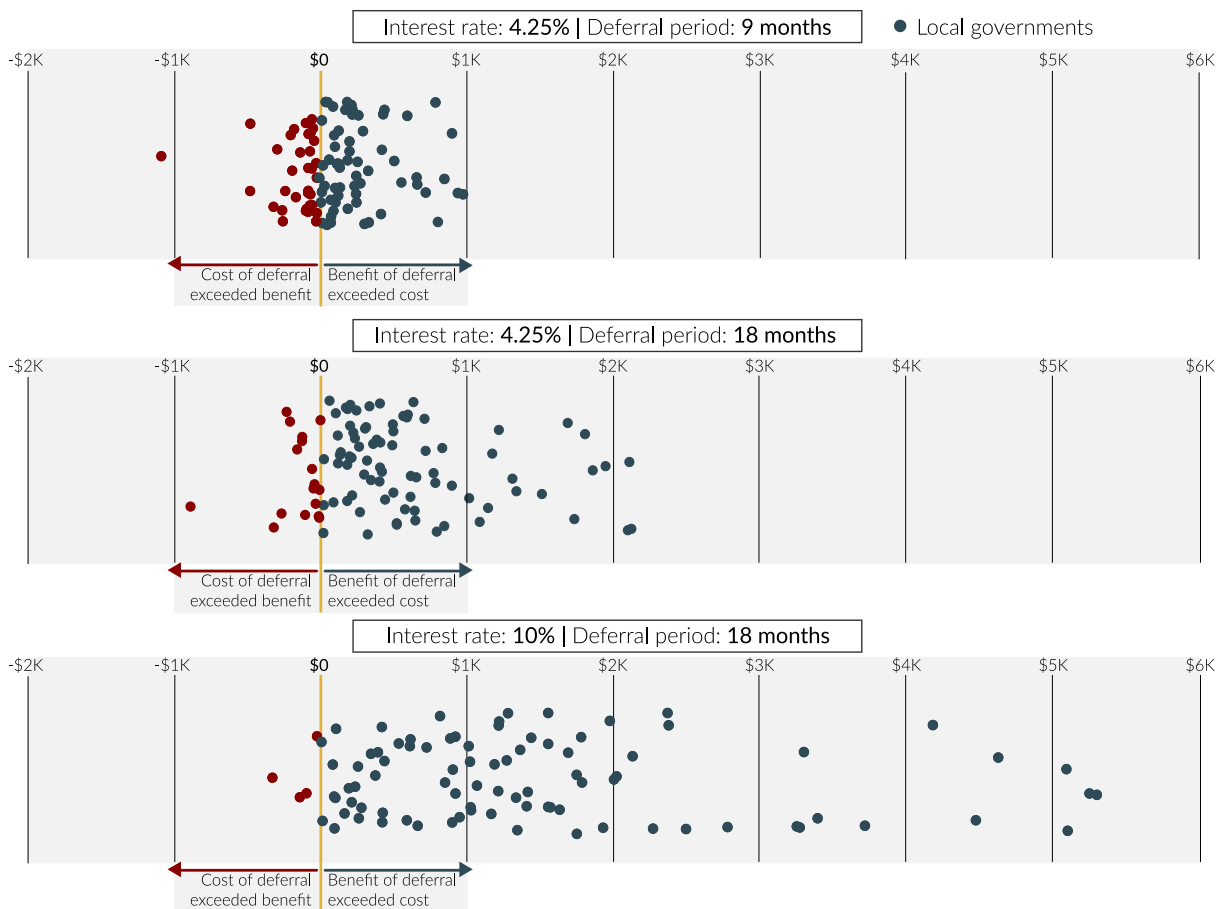
An increase in any of these factors:	Affects the financial benefit of impact fee deferral
Amount of impact fees	↑
Interest rates	↑
Deferral period	↑
Admin & lien fees	↓

Source: JLARC staff analysis impact fee deferral factors.

- Assuming a 4.25% interest rate and a 9-month deferral period, the model predicted at least some financial benefit if builders deferred fees in 63 local governments.
- Holding the interest rate at 4.25% and increasing the deferral period to 18 months, the model predicted that there would be a financial benefit to builders who deferred fees in 82 local governments.
- Assuming a 10% interest rate and an 18-month deferral period, the model predicted that there would be a financial benefit to builders who deferred fees in 94 local governments.

An interactive version of the model is available in Appendix B.

Exhibit 4.2: Builders receive greater financial benefit from deferrals in more local governments when interest rates and deferral periods increase



Source: JLARC staff analysis of the costs and benefits of deferring fees in 98 local governments.

In today's housing market, cost savings from deferrals are minimal

In today's housing market, lenders and builders report that the current interest rate on construction loans is between 4.25% and 6% and that single-family homes are built and sold

within 9 months of receiving a building permit. Using these assumptions, JLARC staff modeled the estimated savings a builder may realize from deferring the payment of impact fees:

- Assuming a 4.25% interest rate, the model estimates a maximum benefit of \$998 per home.
- If the interest rate is at 6%, the model estimates a maximum benefit of \$1,500 per home.
- For Kitsap County, which has issued the most deferrals, the model predicts a savings of between \$89 and \$181 per home.

Builders report that other factors influence their decision to defer

Builders reported additional costs that are not in the model. These costs, which could reduce or eliminate the financial benefit, include:

- Staff time and resources to complete deferral applications.
- Travel time to record liens.
- Attorney and consultant costs to review deferral and lien documents.

In addition, there are non-cost factors that may influence a builder's decision to defer:

- Construction lenders may be unwilling to finance loans in which liens are recorded against their properties.
- Obtaining a lien release may delay the sale of a house. A builder may be unwilling to risk delays for a deferral.

In interviews, several builders and lenders noted that impact fee deferrals have not been appealing because of the additional costs, time, resources, and risks to financing and sale.

Builders suggested that deferring fees may be more attractive in a less favorable economy

In the current housing market, houses are selling rapidly. The Washington Center for Real Estate Research reports that there is low housing inventory and high demand for homes.

Builders and construction lenders also report that interest rates for construction loans are low. The prime rate, which lenders use to set the interest rates for construction loans, is the lowest it has been since the law requiring deferral programs went into effect. Because financing costs are low, the savings from deferring impact fees may be negligible.

Nevertheless, builders assert that the option to defer impact fees remains valuable. Although not widely used now, deferrals may be more appealing in the future, particularly if interest rates increase and houses do not sell as quickly.

Department of Commerce directed to monitor future use of deferrals

The Legislature directed the Department of Commerce (Commerce) to collect and report information about the number of deferrals requested, issued, and not paid on time or in full.

If the Legislature wants information about whether deferral use and costs change in the future, Commerce will need to collect information not currently required by statute. This includes administrative costs, amount deferred, and the amount not paid on time or in full. However, since deferrals are not widely used and there have been few issues for local governments, ongoing monitoring by Commerce may be unnecessary.

Legislative Auditor recommendation

The Legislature should either repeal Commerce's data collection or identify which measures Commerce should collect that would be helpful for evaluating program use. You can find additional information in Recommendations.

Appendix A: Local Government Impact Fees & Deferrals

Total impact fees vary widely among local governments, from \$500 to \$38,705

The following table contains impact fee amounts and the number of deferrals issued by local governments. Data was obtained from local government municipal codes and fee schedules. In some instances, impact fees vary within a city or county depending on location or may vary depending on housing size. In those instances, JLARC staff calculated average fee amounts or assumed typical housing sizes.

JLARC staff identified 107 local governments that collect impact fees, 98 of which have established deferral programs.

Local governments reported the number of deferrals issued in 2018 and 2019 in response to JLARC staff surveys and information requests. Ten local governments did not respond to requests for information.

Click the image below to use the interactive dashboard.

Exhibit A1: Impact fees and deferrals



Appendix B: Impact Fee Savings Calculator

Financial benefit from deferral varies depending upon market conditions and city administrative fees

The following dashboard models the financial benefit of deferring impact fees in the 98 local governments with deferral programs.

There are four major factors that influence the financial benefit of deferring impact fees: administrative and lien fees, amount of the impact fees, interest rates, and deferral period (how long the builder defers fees).

Impact fee amounts and the costs to defer were collected from local government codes and fee schedules. Fees may be deferred until final inspection, certificate of occupancy, or the first sale of the house, but no longer than 18 months from the issuance of the building permit.

How to read the chart

The chart illustrates the predicted net benefit or loss from deferring fees in each of the 98 local governments.

- Each circle represents a local government with a deferral program.
- In circles to the right of the breakeven point (\$0.00), deferring fees may provide at least some benefit.
- In circles to the left of the line, the costs of using the deferral outweigh the savings gained from it.
- The model does not include additional costs incurred by builders, such as staff time or legal costs, that may reduce the financial benefit of deferring impact fees.

Click the image below to view the interactive model.

Exhibit B1: Impact fee savings calculator



Appendix C: Applicable statutes

RCW 82.02.050, RCW 44.28.812, RCW 43.31.980

Impact fees—Intent—Limitations.

RCW 82.02.050

(1) It is the intent of the legislature:

- (a) To ensure that adequate facilities are available to serve new growth and development;
- (b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and
- (c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3)(a)(i) Counties, cities, and towns collecting impact fees must, by September 1, 2016, adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction. The deferral system must include a process by which an applicant for a building permit for a single-family detached or attached residence may request a deferral of the full impact fee payment. The deferral system offered by a county, city, or town under this subsection (3) must include one or more of the following options:

- (A) Deferring collection of the impact fee payment until final inspection;
- (B) Deferring collection of the impact fee payment until certificate of occupancy or equivalent certification; or
- (C) Deferring collection of the impact fee payment until the time of closing of the first sale of the property occurring after the issuance of the applicable building permit.

(ii) Counties, cities, and towns utilizing the deferral process required by this subsection (3)(a) may withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fees have been paid in full.

(iii) The amount of impact fees that may be deferred under this subsection (3) must be determined by the fees in effect at the time the applicant applies for a deferral.

(iv) Unless an agreement to the contrary is reached between the buyer and seller, the payment of impact fees due at closing of a sale must be made from the seller's proceeds. In the absence of an agreement to the contrary, the seller bears strict liability for the payment of the impact fees.

(b) The term of an impact fee deferral under this subsection (3) may not exceed eighteen months from the date of building permit issuance.

(c) Except as may otherwise be authorized in accordance with (f) of this subsection (3), an applicant seeking a deferral under this subsection (3) must grant and record a deferred impact fee lien against the property in favor of the county, city, or town in the amount of the deferred impact fee. The deferred impact fee lien, which must include the legal description, tax account number, and address of the property, must also be:

(i) In a form approved by the county, city, or town;

(ii) Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in the county where the property is located;

(iii) Binding on all successors in title after the recordation; and

(iv) Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

(d)(i) If impact fees are not paid in accordance with a deferral authorized by this subsection (3), and in accordance with the term provisions established in (b) of this subsection (3), the county, city, or town may institute foreclosure proceedings in accordance with chapter 61.12 RCW.

(ii) If the county, city, or town does not institute foreclosure proceedings for unpaid school impact fees within forty-five days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.

(e)(i) Upon receipt of final payment of all deferred impact fees for a property, the county, city, or town must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at his or her expense, is responsible for recording the lien release.

(ii) The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

(f) A county, city, or town with an impact fee deferral process on or before April 1, 2015, is exempt from the requirements of this subsection (3) if the deferral process delays all impact fees and remains in effect after September 1, 2016.

(g)(i) Each applicant for a single-family residential construction permit, in accordance with his or her contractor registration number or other unique identification number, is entitled to annually receive deferrals under this subsection (3) for the first twenty single-family residential construction building permits per county, city, or town. A county, city, or town, however, may elect, by ordinance, to defer more than twenty single-family residential construction building permits for an applicant. If the county, city, or town collects impact fees on behalf of one or more school districts for which the collection of impact fees could be delayed, the county, city,

or town must consult with the district or districts about the additional deferrals. A county, city, or town considering additional deferrals must give substantial weight to recommendations of each applicable school district regarding the number of additional deferrals. If the county, city, or town disagrees with the recommendations of one or more school districts, the county, city, or town must provide the district or districts with a written rationale for its decision.

(ii) For purposes of this subsection (3)(g), an "applicant" includes an entity that controls the applicant, is controlled by the applicant, or is under common control with the applicant.

(h) Counties, cities, and towns may collect reasonable administrative fees to implement this subsection (3) from permit applicants who are seeking to delay the payment of impact fees under this subsection (3).

(i) In accordance with RCW 44.28.812 and 43.31.980, counties, cities, and towns must cooperate with and provide requested data, materials, and assistance to the department of commerce and the joint legislative audit and review committee.

(4) The impact fees:

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

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

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

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

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

(ii) Additional demands placed on existing public facilities by new development; and (iii) Additional public facility improvements required to serve new development.

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

[2015 c 241 § 1; 1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

NOTES:

Effective date—2015 c 241: See note following RCW 44.28.812.

Severability—1994 c 257: See note following RCW 36.70A.270.

Effective date—1993 sp.s. c 6: See note following RCW 36.70A.040.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

SEPA: RCW 43.21C.065.

Impact fee annual report.

RCW 43.31.980

(1) Beginning December 1, 2018, and each year thereafter, the department of commerce must prepare an annual report on the impact fee deferral process established in RCW 82.02.050(3). The report must include:

- (a) The number of deferrals requested of and issued by counties, cities, and towns;
- (b) the number of deferrals that were not fully and timely paid; and
- (c) other information as deemed appropriate.

(2) The report required by this section must, in accordance with RCW 43.01.036, be submitted to the appropriate committees of the house of representatives and the senate.

[2015 c 241 § 4.]

NOTES:

Effective date—2015 c 241: See note following RCW 44.28.812.

Review of impact fee deferral requirements.

RCW 44.28.812

(Expires January 1, 2022.)

(1) The joint legislative audit and review committee must review the impact fee deferral requirements of RCW 82.02.050(3). The review must consist of an examination of issued impact fee deferrals, including: (a) The number of deferrals requested of and issued by counties, cities, and towns; (b) the type of impact fee deferred; (c) the monetary amount of deferrals, by jurisdiction; (d) whether the deferral process was efficiently administered; (e) the number of deferrals that were not fully and timely paid; and (f) the costs to counties, cities, and towns for collecting timely and delinquent fees. The review must also include an evaluation of whether the impact fee deferral process required by RCW 82.02.050(3) was effective in providing a locally administered process for the deferral and full payment of impact fees.

(2) The review required by this section must, in accordance with RCW 43.01.036, be submitted to the appropriate committees of the house of representatives and the senate on or before September 1, 2021.

(3) In complying with this section, and in accordance with RCW 43.31.980, the joint legislative audit and review committee must make its collected data and associated materials available, upon request, to the department of commerce.

(4) This section expires January 1, 2022.

[2015 c 241 § 3.]

NOTES:

Effective date—2015 c 241: "This act takes effect September 1, 2016." [2015 c 241 § 5.]

RECOMMENDATIONS & RESPONSES

Legislative Auditor Recommendation

The Legislative Auditor makes three recommendations to improve efficiency and accountability of impact fee deferral programs

Recommendation #1: Legislative Auditor recommends that the cities without a deferral program should pass an ordinance to adopt and maintain deferral programs as required by statute.

Statute directed cities and counties collecting impact fees to establish a deferral process for the delayed payment of those fees by September 1, 2016.

JLARC staff found that Algona, Carbonado, Deer Park, Everson, Gold Bar, Nooksack, and Roy are collecting impact fees, but have yet to establish a deferral process for the payment of those impact fees.

While Everson, Maple Valley, and Granite Falls report that they are in the process of implementing a program, their city councils have not formally passed an ordinance and adopted a deferral program into their municipal codes.

Legislation Required: State legislation exists. Local ordinances are required.

Fiscal Impact: JLARC staff anticipate that ordinances can be passed within existing resources. There may be fiscal impacts from the deferrals.

Implementation Date: June 2022

Agency Response: Several cities and agencies formally responded and either concurred, partially concurred, or did not concur with the Legislative Auditor's recommendations. Responses can be found on the next pages. View the Legislative Auditor's response to City of Everson comments.

Recommendation #2: Legislative Auditor recommends the Legislature consider whether liens are a necessary tool to ensure that deferred fees are paid.

Stakeholders report that impact fee liens add time, uncertainty, and costs to the process. Deferral liens are likely not needed because other internal controls, like withholding final inspection of certificate of occupancy, can be built into the process.

Legislation Required: Possible, depending on Legislature's determination.

Fiscal Impact: No fiscal impact for state government.

Implementation Date: June 2022

Agency Response: Not applicable.

Recommendation #3: Legislative Auditor recommends that the Legislature either repeal Commerce's data collection requirement or identify which measures Commerce should collect for ongoing program oversight.

RCW 43.31.980 directs the Department of Commerce (Commerce) to prepare an annual report on the impact fee deferral process. Because deferrals are not widely used and very few issues with repayment and capital improvement have been reported, the Legislature should consider whether Commerce should continue collecting data on deferral use from the local governments annually.

If the Legislature wants to continue monitoring impact fee deferrals in the state, the Legislature should revise the current list of data collected by Commerce to include administrative costs, amount deferred, and the amount not paid on time or in full.

Legislation Required: Possible, depending on Legislature's determination.

Fiscal Impact: JLARC staff anticipate that Commerce could make changes as directed within existing resources.

Implementation Date: June 2022

Agency Response: AWC concurs with this recommendation. Commerce partially concurs with this recommendation.

AWC Response



October 26, 2021

Via email: keenan.konopaski@leg.wa.gov

Keenan Konopaski
Legislative Auditor
106 11th Ave SW
PO Box 40910
Olympia, WA 98504

Dear Auditor Konopaski,

Thank you for the invitation to respond to the Joint Legislative Audit and Review Committee's (JLARC) report for *Impact Fee Deferral Programs*.

As requested, we are providing our comments in the table below:

Recommendation	AWC Position	Comments
Cities without a deferral program should pass and ordinance to adopt and maintain deferral programs as required by statute.	Concur	No comment
Legislature should consider whether liens are a necessary tool to ensure that deferred fees are paid	Concur	City interest on this issue has been ensuring that deferred fees are paid. If there are models that can work as well as liens without the same downsides, they should be evaluated.
Legislature should either repeal Commerce's data collection requirement or identify which measures Commerce should collect for ongoing program oversight.	Concur	No comment

360.753.4137 • 800.562.8981 • wacities.org



1076 Franklin Street SE • Olympia, WA 98501-1346

October 26, 2021

Via email: keenan.konopaski@leg.wa.gov

Keenan Konopaski
Legislative Auditor
106 11th Ave SW
PO Box 40910
Olympia, WA 98504

Dear Auditor Konopaski,

Thank you for the invitation to respond to the Joint Legislative Audit and Review Committee's (JLARC) report for *Impact Fee Deferral Programs*.

As requested, we are providing our comments in the table below:

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Legislature should either repeal Commerce's data collection requirement or identify which measures Commerce should collect for ongoing program oversight.	Concur	No comment

360.753.4137 • 800.562.8981 • wacities.org

Commerce Response



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

October 21, 2021

Keenan Konopaski
Legislative Auditor
Joint Legislative Audit and Review Committee
106 11th Ave SW
Olympia, WA 98504

Dear Mr. Konopaski,

Thank you for inviting the Department of Commerce to formally respond to the Joint Legislative Audit and Review Committee's (JLARC) for Impact fee deferral programs. Our responses to your recommendations are:

- ☒ Commerce concurs with JLARC's recommendation that cities without a deferral program should pass an ordinance and adopt and maintain deferral programs as required by statute.
- ☒ Commerce concurs with JLARC's recommendation that the Legislature should consider whether liens are a necessary tool to ensure that deferred fees are paid.

Commerce partially concurs with JLARC's recommendation that the Legislature either repeal Commerce's data collection requirement or identify which measures Commerce should collect for ongoing program oversight.

Commerce supports the repeal of the data collection requirement. JLARC's 2021 study, on pages 2 through 7, identifies:

- ☒ 98 jurisdictions offered deferrals.
- ☒ Five of these jurisdictions accounted for 91% of the issued deferrals.
- ☒ These five jurisdictions issued only 8% of the single-family building permits.
- ☒ Less than 5% of eligible permits were issued with deferral programs.
- ☒ 99.9% of deferrals were paid on time.

This data shows the programs have limited uptake. We also see that the deferral programs have a limited impact on affordability, likely due to relatively low costs that must be carried by developers for the impact fees until project completion.

Commerce finds that the impact fee deferral program does function but has a limited impact on the construction cost of single-family housing. Commerce sees no risk in discontinuing data

Mr. Keenan Konopaski
October 21, 2021
Page 2

collection and believes staff resources currently required to perform survey requirements under this program can be better devoted elsewhere.

Sincerely,

A handwritten signature in blue ink that reads "Lisa J. Brown". The signature is written in a cursive, slightly slanted style.

Lisa Brown
Director

Cc: Eric Thomas, Audit Coordinator, JLARC
Jennifer Sulcer, Research Analyst, JLARC
Aaron Cavin, Research Analyst, JLARC
Jasmine Vasavada, Legislative Director, Commerce
Valerie Smith, Interim Deputy Managing Director, Commerce
Matthew Ojennus, Program Manager, Commerce

City of Everson Response



To: Legislative Auditor
From: Melanie Dickinson, Clerk/Treasurer
Date: October 20, 2021
Re: Impact Fee Deferral Programs

Please see below our stance regarding the proposed recommendations.

Recommendation	Agency Position	Comments
1. Cities without a deferral program should pass an ordinance to adopt and maintain an impact fee deferral program for single -family residential construction as required by statute.	Do Not Concur	We do have an ordinance adopted to allow deferrals for impact fees, but have not found this deferral program to be of use to our citizens. Our impact fees are a small portion of the overall building permit cost and therefore this program does not seem beneficial to the parties involved.

Melanie Dickinson
Clerk/Treasurer
360.966.3411 ext.1100 mdickinson@ci.everson.wa.us

City of Gold Bar Response

City of Gold Bar
EST. 1910

107 - 5th Street, Gold Bar, WA 98251



October 27, 2021

Legislative Auditor
Keenan Konopaski
106 11th Ave SW / PO Box 40910
Olympia WA 98504-0910

RE: Impact Fee Deferral Program

The City of Gold Bar does not currently have a Deferral Program for Impact Fees. I will be working with our City Clerk and Council to create an ordinance adopting and maintaining a deferral program.

In response to the Auditors conclusion, I do not concur. In the two and half years I have worked with the city, I have had no requests for a deferral. I have received no negative comments with the current requirement that the fees be paid with the building permit.

Sincerely,

A handwritten signature in black ink that reads 'Richard Norris'.

Rich Norris
Public Works Director
City of Gold Bar

City of Granite Falls Response



GRANITE FALLS

City of Granite Falls
215 S. Granite Avenue / P.O. Box 1440
Granite Falls, Washington 98252

P 360-691-6441
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www.ci.granite-falls.wa.us

October 14, 2021

JLARC – Attn Keenan Konopaski
106 11th Ave SW
PO Box 40910
Olympia, WA 98504-0910

RE: JLARC report on Impact Fee Deferral Programs

Dear Mr. Konopaski,

Please accept this letter as the City's formal response to the JLARC preliminary report for Impact fee deferral programs. The City currently has a deferral program in place for multifamily developments to help offset up front costs and related interest accrual incurred by developers related to multifamily housing projects.

RECOMMENDATION	AGENCY POSITION	COMMENTS
Cities without a deferral program should pass an ordinance to adopt and maintain deferral programs as required by statute.	Concur	N/A

Sincerely,

Brent Kirk
City Manager
City of Granite Falls

City of Nooksack Response



October 14, 2021

Legislative Auditor
Keenan Konopaski
106 11th Ave SW
P.O. Box 40910
Olympia, WA 98504-0910

Re: Impact Fee Deferral Programs

To Whom It May Concern,

In general, cities should follow the law and adopt an impact fee deferral program if it is required by statute. This is what the City of Nooksack has done.

On the other hand, it appears that an impact fee deferral program will likely be used infrequently, add unnecessary administrative costs to cities, and yield little or no benefit.

The short amount of time during which payment of impact fees is deferred does not appear to have much value to the developers in our community.

The City of Nooksack would support changing the state law to make the impact fee deferral program an option for cities to adopt, rather than being a statutory requirement.

Sincerely,

Marshall Judy
Mayor
City of Nooksack

Other Responses

The Office of Financial Management (OFM) was given an opportunity to comment on this report. OFM responded that it does not have any comments.

The Cities of Algona, Carbonado, Deer Park, Maple Valley, and Roy were also given an opportunity to comment on this report, but did not respond.

Legislative Auditor's Response to City of Everson Comments

I appreciate the response from the City of Everson, as well as the steps the city has now taken to pass an ordinance adopting an impact fee deferral program.

When our study was still underway, the city noted they were in the process of establishing a deferral program. The city has since provided an ordinance passed by the Everson City Council showing they have established a deferral program. While the city has adopted a deferral program, the program does not require builders to place a lien on the property as required under current law. I consider this recommendation to be partially implemented by the City of Everson.



Keenan Konopaski
Legislative Auditor

Current Recommendation Status

JLARC staff follow up with agencies on Legislative Auditor recommendations for 4 years. Responses from agencies on the latest status of implementing recommendations for this report will be available in 2022.

MORE ABOUT THIS REVIEW

Audit Authority

The Joint Legislative Audit and Review Committee (JLARC) works to make state government operations more efficient and effective. The Committee is comprised of an equal number of House members and Senators, Democrats and Republicans.

JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in [Chapter 44.28 RCW](#), requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

Committee Action to Distribute Report

On December 1, 2021 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with Legislative Auditor recommendations.

Study Questions

Click image to view PDF of proposed study questions.



PROPOSED STUDY QUESTIONS Impact Fee Deferral Programs

State of Washington Joint Legislative Audit and Review Committee

January 2021

The 2015 Legislature directed local governments to establish a payment deferral program for impact fees

ESB 5923 required local governments that impose impact fees to establish a payment deferral process by September 2016. The legislation was intended to promote economic recovery for the construction industry by reducing upfront costs for residential construction.

Prior to the legislation, applicants paid impact fees when their building permit was issued. Under deferral programs, local governments may collect fees at one of three other times during development:

- Final inspection.
- Issuance of the certificate of occupancy.
- The closing of the first sale of the property.

Local governments that collect impact fees are required to adopt and administer a deferral program. Developers may choose whether to defer impact fee payment or to pay upon issuance of the building permit. Developers may be subject to additional administrative costs for deferring impact fees.

JLARC and the Department of Commerce (Commerce) gather data about local government impact fee deferral programs

Statute directs JLARC and Commerce to collect data on the use and cost of deferral programs, and for Commerce to submit a report to the Legislature each December. The legislation also directed JLARC to conduct a review of the implementation of impact fee deferrals.

JLARC's evaluation will focus on the number, type, and costs of deferrals and how local governments administer programs

1. Between 2017 and 2019, how many deferrals did developers request and how many did local governments issue? How many were not fully or timely paid?
2. What approaches do local governments use to administer impact fee deferral programs?
 - a. Are these approaches efficient and effective in providing a local process for impact fee deferrals?
3. What costs do local governments and developers incur through deferral programs?

Impact fees are one-time assessments charged to new residential developments.

The fees fund new or expanded schools, roads, parks, or fire stations to support additional infrastructure demand created by the new residences. Only local governments that fully plan under the Growth Management Act may charge impact fees.

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

106 11th Ave SW, Olympia, WA 98501 | Email: JLARC@leg.wa.gov | Website: www.jlarc.leg.wa.gov
Twitter: @WALegAuditor | Phone: (360) 786-5171 | Fax: (360) 786-5180

Study Timeframe

Preliminary Report: December 2021 Proposed Final Report: January 2022

Study Team

Team Lead	Jennifer Sulcer	(360) 786-5181	jennifer.sulcer@leg.wa.gov
Research Analyst	Ashley Elliott	(360) 786-5286	ashley.elliott@leg.wa.gov
Research Analyst	Melanie Stidham	(360) 786-5183	melanie.stidham@leg.wa.gov
Project Coordinator	Eric Thomas	(360) 786-5182	eric.thomas@leg.wa.gov
Legislative Auditor	Keenan Konopaski	(360) 786-5187	keenan.konopaski@leg.wa.gov

JLARC Study Process



Methodology

The methodology JLARC staff use when conducting analyses is tailored to the scope of each study, but generally includes the following:

- **Interviews** with stakeholders, agency representatives, and other relevant organizations or individuals.
- **Site visits** to entities that are under review.
- **Document reviews**, including applicable laws and regulations, agency policies and procedures pertaining to study objectives, and published reports, audits or studies on relevant topics.
- **Data analysis**, which may include data collected by agencies and/or data compiled by JLARC staff. Data collection sometimes involves surveys or focus groups.
- **Consultation with experts** when warranted. JLARC staff consult with technical experts when necessary to plan our work, to obtain specialized analysis from experts in the field, and to verify results.

The methods used in this study were conducted in accordance with Generally Accepted Government Auditing Standards.

More details about specific methods related to individual study objectives are described in the body of the report under the report details tab or in technical appendices.

CONTACT

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