# FINAL BILL REPORT
# ESHB 2538

**C 153 L 10**
Synopsis as Enacted

**Brief Description**: Regarding high-density urban development.

**Sponsors**: House Committee on Ecology & Parks (originally sponsored by Representatives Upthegrove, Taylor, Eddy, Pedersen, Clibborn, Chase and Springer).

**House Committee on Ecology & Parks**
**Senate Committee on Government Operations & Elections**
**Senate Committee on Environment, Water & Energy**

**Background**:

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. The GMA establishes numerous requirements for planning governments obligated by mandate or choice to fully plan under the GMA (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements each of which is a subset of a comprehensive plan. Comprehensive plans must be coordinated and be consistent with those of other counties and cities with which the county or city has common borders or related regional issues. The implementation of comprehensive plans occurs through development regulations mandated by the GMA.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify possible environmental impacts that may result from governmental decisions, including the issuance of permits or the adoption of or amendment to land use plans and regulations. Any governmental action may be conditioned or denied pursuant to the SEPA, provided the conditions or denials are based upon policies identified by the

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appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

Local governments and state agencies must prepare an Environmental Impact Statement (EIS) for legislation and other major actions that significantly affect the quality of the environment. The EIS must include detailed information about the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action.

Transfer of Development Rights.

A transfer of development rights (TDR) occurs when a qualifying land owner, through a permanent deed restriction, severs potential development rights from a property and transfers them to a recipient for use on a different property. In TDR transactions, transferred rights are generally shifted from sending areas with lower population densities to receiving areas with higher population densities. The monetary values associated with transferred rights constitute compensation to a land owner for development that may have otherwise occurred on the transferring property. Programs for transferring development rights may be used to preserve natural and historic spaces, encourage infill, and for other purposes.

The Department of Commerce has been directed to fund a process to develop a regional TDR program that comports with the GMA. In addition to specifying numerous requirements for the Department of Commerce, the TDR program must encourage King, Kitsap, Pierce, and Snohomish counties, and the cities within these counties, to participate in the development and implementation of regional frameworks and mechanisms that make TDR programs viable and successful. The Department of Commerce must also work with these counties to develop an interlocal agreement for the regional TDR program.

Planning and Environmental Review Fund.

Established in 1995, the Growth Management Planning and Environmental Review Fund (PERF) is a grant program that is administered by the Department of Commerce. Under the PERF, a grant may be awarded to a jurisdiction to assist with the costs of preparing an environmental analysis under the SEPA that is integrated with qualifying land use planning actions or activities. To qualify for a grant, a county or city must meet certain requirements. In awarding grants, the Department of Commerce must give preference to proposals that include one or more specific elements.

Development Fees.

With some exemptions, counties, cities, towns, and other municipal corporations are prohibited from imposing any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of buildings, or on the development, subdivision, classification, or reclassification of land. This prohibition, however, does not prohibit cities, towns, counties, or other municipal corporations from collecting reasonable permit fees, inspection fees, or fees to prepare detailed statements required by the SEPA.

**Summary**:

Growth Management Act.

A city with a population greater than 5,000 that is required to comply with the GMA may elect to adopt subarea development elements to its comprehensive plan. The subarea must be located in either: (1) a mixed-use or urban center designated in a land use or transportation plan adopted by a regional transportation planning organization; or (2) within one-half mile of a major transit stop that is zoned to have an average minimum density of 15 dwelling units or more per acre.

A city of any size that is required to comply with the GMA and is located on the east side of the Cascade mountains in a county with a population of 230,000 or less may elect to adopt subarea development elements to its comprehensive plan. The subarea plan must be located within a mixed-use or urban center.

State Environmental Policy Act.

A city that elects to include subarea development elements into its comprehensive plan must prepare a nonproject EIS specifically for the subarea. At least one community meeting must be held before the scoping of the EIS. All property owners within the subarea and within 150 feet of the subarea must be notified of the community meeting. Federally recognized native American tribes whose ceded area is within one-half mile of the subarea must also be notified. Additional notice provisions are specified. A person may appeal the adoption of the subarea or the implementing regulations if he or she meets the requirements for standing provided in the GMA.

In a city with over 5,000 residents (large city), community meeting notices must be mailed to all small businesses and community development and preservation authorities within the subarea and within 150 feet of the subarea. A large city must also analyze whether the subarea plan will result in the displacement or fragmentation of businesses, existing residents, or cultural groups. The analysis must be discussed at the community meeting and amended into the nonproject EIS, but it is not a part of the EIS.

Until July 1, 2018, project specific developments may not be appealed as long as they are within the scope of the EIS and the development application is vested within a timeframe established by the city not to exceed 10 years from the adoption of the final EIS. After July 1, 2018, project specific developments may not be appealed as long as they are within the scope of the EIS, the final EIS is issued by July 1, 2018, and the development application is vested. If a project specific development is inconsistent with the subarea plan development regulations, then additional environmental review is required.

Transfer of Development Rights.

A city that elects to include subarea development elements into its comprehensive plan must establish a TDR program, in consultation with the county, that conserves long-term commercially significant agriculture and forest land as determined by the county. If the city does not establish a TDR program, it must state the reasons in the record for not starting such a program. A city's decision to not establish a TDR program may not be appealed.

Cost Recovery.

A city may apply for grant funding for the nonproject EIS for a subarea development from the PERF administered by the Department of Commerce. A city may also recover costs through private funding and by assessing a fee to those developments that are within the scope of the nonproject EIS. The collection of the assessment fee is specifically authorized within the excise taxes law.

Standards for determining the assessment fee must be adopted in an ordinance by the city. The standards must be based upon the proportion of benefits and impacts of each development project within the scope of the nonproject EIS. Any disagreement regarding the amount of the assessment fee may not delay issuance of the permit by the city. If a city provides for an administration appeal of the development project, the assessment fee disagreement must be resolved in the same administrative appeal process.

**Votes on Final Passage:**

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| House | 90 | 5 | |
| Senate | 46 | 0 | (Senate amended) |
| House | 91 | 3 | (House concurred) |

**Effective:** June 10, 2010