HOUSE BILL REPORT
ESHB 2538

As Passed Legislature

Title: An act relating to high-density urban development.

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).

Brief History:
Committee Activity:
Ecology & Parks: 1/12/10, 1/19/10 [DPS].
Floor Activity:
Passed House: 2/13/10, 90-5.
Senate Amended.
Passed Senate: 3/2/10, 46-0.
House Concurred.
Passed House: 3/6/10, 91-3.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Encourages certain cities under the Growth Management Act to include compact development in their comprehensive plans.
- Requires the development of a nonproject environmental impact statement for any compact development plan included in a comprehensive plan.
- Provides for immunity of appeals for proposals that are covered by a nonproject environmental impact statement for the compact development area.
- Encourages establishment of a transfer of development rights program for cities that include compact development in their comprehensive plans.
- Provides funding incentives to assist with the cost of developing a nonproject environmental impact statement for a compact development plan included in a comprehensive plan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins and Morris.

Minority Report: Do not pass. Signed by 7 members: Representatives Rolfes, Vice Chair; Short, Ranking Minority Member; Kretz, Kristiansen, Orcutt, Shea and Taylor.

Staff: Leslie Ryan-Connelly (786-7166).

Background:

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, 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 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 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 Legislature directed the Department of Commerce 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 Legislature specified that the TDR program must encourage King, Kitsap, Pierce, and Snohomish counties, and the cities within, to participate in the development and implementation of regional frameworks and mechanisms that make TDR programs viable and successful. The Legislature further directed the Department of Commerce to 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 requirements set forth in statute. In awarding grants, the Department of Commerce must give preference to proposals that include one or more specific elements. Examples of these elements include: (1) financial participation by the private sector or a public/private partnering approach; and (2) furtherance of important state objectives related to economic development, the protection of areas of statewide significance, and the siting of essential public facilities.

Development Fees.

With some exemptions, counties, cities, towns, and other municipal corporation 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 preparing detailed statements required by the SEPA.

Summary of Engrossed Substitute Bill:

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 they meet 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 cannot 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 cannot 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 their 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The goal of the bill is to try to attract dense development in urban areas. This is an upfront SEPA analysis that would not require a project specific SEPA analysis. It provides certainty and time savings for the city and developer. All other permits are still required and appealable. This is a voluntary tool and locals will have discretion on whether to use it. Streamlining the SEPA process would be a big step forward toward urban development. It provides predictability for development by conducting the SEPA process upfront and protecting development from appeals. The city pays the upfront cost for the SEPA analysis. Developers will help pay for the upfront costs and assessment fees. The bill could also be considered a job creation bill. If there are project specific environmental issues, cities could use a supplemental EIS. Seven years is not long enough to do an EIS and apply for permits. This bill will prevent environmental degradation and speed up development.

(With concerns) We need to do more up front planning and streamline permitting but this bill is not funded. The PERF is unfunded. The assessment fee will help defray the costs. There is still an issue with how to handle disagreement over the assessment fees. There is already a similar process under planned action in the GMA. There is an issue with mixed use subareas as this might include industrial uses in some jurisdictions. There is an issue with notice to state agencies as they normally do not get involved in subarea planning. They generally only review project specific SEPA review actions. The nonproject EIS needs to be more specific on the specific development project parameters. The non-project EIS could be too vague. Someone cannot appeal something that they do not know about.

(Opposed) There is a tension between developers wanting surety and public review. The substitute bill does not include some of the elements previously negotiated with stakeholders. There remains an issue about who has standing to appeal the nonproject EIS. Under the bill, people who participate in the process would not have standing in the Puget Sound area. Other permits do not require an environmental alternatives analysis. We will lose out on the alternatives analysis at the project level.

Persons Testifying: (In support) Representative Upthegrove, prime sponsor; Chris McCabe, Association of Washington Business; Tayloe Washburn, Foster Pepper; Jeanette McKague, Washington Realtor Association; and Van Collins, Associated General Contractors of Washington.

(With concerns) Dave Williams, Association of Washington Cities; Tom Clingman, Department of Ecology; and Arthur West.

(Opposed) Mo McBroom, Washington Environmental Council; April Putney, Futurewise; and Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.