

HOUSE BILL REPORT

ESHB 1265

As Passed House:
March 3, 2011

Title: An act relating to land use planning in qualifying unincorporated portions of urban growth areas.

Brief Description: Addressing land use planning in qualifying unincorporated portions of urban growth areas.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Kagi, Ryu, Rodne, Liias, Takko, Roberts, Smith and Upthegrove).

Brief History:

Committee Activity:

Local Government: 2/11/11, 2/16/11 [DPS].

Floor Activity:

Passed House: 3/3/11, 63-35.

Brief Summary of Engrossed Substitute Bill

- Requires counties, cities, and towns (local governments) to jointly divide lead agency responsibilities under the State Environmental Policy Act (SEPA) if a proposed project action in a qualifying portion of an unincorporated urban growth area significantly impacts two or more local governments.
- Requires the Director of the Department of Ecology to designate the division of lead agency responsibilities under the SEPA if the local governments are unable to agree on the division.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Fitzgibbon, Rodne, Smith, Springer and Upthegrove.

Staff: Ethan Moreno (786-7386).

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.

Background:

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. Any governmental action, including actions related to specific development proposals (project actions) and planning and policy actions that are not associated with a specific development proposal (non-project actions), may be conditioned or denied pursuant to the SEPA if the conditions or denials are based upon policies identified by the appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

Provisions in the SEPA generally require a project applicant to complete an environmental checklist that includes questions about the potential environmental impacts of the proposed action. This checklist is then reviewed by the lead agency (one agency identified as such and responsible for compliance with the procedural requirements of the act) to determine, via a threshold determination, whether the proposed action is likely to have a significant adverse environmental impact.

The state or local government that receives the first application for a proposal is responsible for determining who the lead agency is and for notifying that entity of the proposal. Administrative rules adopted by the Department of Ecology (DOE) for the implementation of the SEPA allow the DOE to determine lead agency status if it is petitioned to do so by a qualifying agency.

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated to satisfy all planning requirements of the GMA.

Among other requirements, counties that fully plan under the GMA must designate urban growth areas (UGAs), areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Fully planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period.

Summary of Engrossed Substitute Bill:

If a proposed project action significantly impacts two or more agencies, a term defined to mean counties, cities, or towns (*i.e.*, local governments), the local governments must jointly divide all lead agency duties required under the SEPA. A local government that would be

significantly impacted by a proposed project action may elect to forgo or transfer lead agency responsibilities if certain requirements are met.

If the local governments are unable to agree on the division of lead agency responsibilities, the Director of the DOE (Director), within 15 days of receiving a request to do so by a local government, must designate the division. Determinations made by the Director must identify the lead agency for each segment of the proposed project action based on a determination of which local government's facilities and residents will receive the majority of the applicable impacts.

The lead agency division requirements and provisions apply only to proposed project actions in or affecting unincorporated portions of UGAs that: border Puget Sound; are surrounded on the landward side entirely by one or more cities; are one or more miles from any other portion of a UGA that is in unincorporated territory; and are at least 50 acres in size.

Appropriation: None.

Fiscal Note: Not requested.

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) Last May, Snohomish County designated the Point Wells area an urban center. This designation allows the county to site a maximum of 3,500 units in the area, but the development impacts will fall upon the City of Shoreline. This bill is an attempt to ensure that urban governmental services and transportation impacts are addressed. The bill addresses an important issue to the people and council of Shoreline. Point Wells is a 61-acre site that can only be accessed through a two-lane road in Shoreline. Without this bill, Shoreline will be required to absorb all of the impacts of the development, but it will have no ability to control development on the site. Shoreline has a long-term interest in annexing the area. The goals of the GMA call for conflicts between jurisdictions to be resolved.

Woodway is a small town of 1,200 people to the north of Point Wells. Woodway has long-expected development in Point Wells, but Woodway and Shoreline, even though they have attempted to work with the county, have been told that their influence on development in Point Wells will be minimal. Although local members have tried to engage in the development process, the county is not required to listen to city and town voices. If, as proposed by the developer, 3,000 850-square foot units are developed, Woodway may not be interested in annexing the area, so Shoreline might have to conduct an annexation. Richmond Beach residents have tried the good neighbor approach with the county, but it has not worked. It is appropriate to require the city and town to expeditiously annex the area.

(Opposed) The bill extends the jurisdiction of Shoreline and Woodway into the county; there is no precedent for this extension and the state Constitution is clear that counties have authority within their own jurisdictions. The bill creates regulation without representation, creates uncertainty for the developer, and would probably kill the proposed project. The

county is planning a mixed-use development on a brownfield and is very interested in an interlocal agreement with Shoreline and Woodway.

A local process, that can and should be used, is available to address issues associated with Point Wells. State involvement in Point Wells matters is not warranted. The local process includes provisions for the development of urban centers. A dialog between supporters and opponents of the bill is ongoing.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Representative Ryu; Scott Maccoll, Keith McGlashan, and Joe Tovar, City of Shoreline; Elizabeth Mitchell, Town of Woodway; and D.J. Wilson, City of Edmonds.

(Opposed) Briahna Taylor, Snohomish County; and Dave Somers, Snohomish County Council.

Persons Signed In To Testify But Not Testifying: None.