

SENATE BILL REPORT

SB 6720

As Passed Senate, February 12, 2010

Title: An act relating to providing an optional tool for cities to use for programmatic environmental impact review.

Brief Description: Providing an optional tool for cities to use for programmatic environmental impact review.

Sponsors: Senators Fraser, Delvin and Kline.

Brief History:

Committee Activity: Environment, Water & Energy: 2/03/10 [DP].
Passed Senate: 2/12/10, 43-3.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: Do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Marr, Morton, Oemig, Ranker and Sheldon.

Staff: Jan Odano (786-7486)

Background: The Growth Management Act (GMA) is the state's land-use planning guide for county and city governments and provides a framework for regional coordination. Counties required to plan under the GMA must prepare a comprehensive plan to guide future decisions such as land-use development and regulations, and capital improvements. A comprehensive plan must be internally consistent and each comprehensive plan must be consistent with other comprehensive plans of cities and counties with common borders or related regional issues. In addition, zoning and other development regulations must be consistent with the comprehensive plan. Twenty-nine of the state's 39 counties are required to plan under the GMA and all are required to plan for critical areas and natural resource lands.

The State Environmental Protection Act (SEPA) requires state and local agencies to determine the environmental impact of land-use decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, adopting regulations, policies, or plans. Agencies are required to conduct an environmental review and determine if a proposal will cause probable significant adverse impacts to the environment. An

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.

Environmental Impact Statement (EIS) is required if it is determined there will be probable significant adverse impacts. A determination of non-significance is issued to a proposal that is unlikely to cause significant adverse environmental impacts. These determinations provide agencies with information to condition projects when significant impacts are identified.

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 usually from areas where a community would prefer to see less growth to areas where a community would like more development. TDRs are voluntary transactions and landowners who transfer their rights are compensated for giving up their right to develop. Local governments may adopt a TDR program to preserve natural and historic spaces and encourage infill.

The Growth Management Planning and Environmental Review Fund (PERF) is a grant program that is administered by the Department of Commerce (Commerce). Under the PERF, a grant may be awarded to a jurisdiction to assist with the costs of preparing an environmental analysis under 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, Commerce must give preference to proposals that include one or more specific elements. These elements include: financial participation by the private sector or a public/private partnering approach; furtherance of important state objectives related to economic development; the protection of areas of statewide significance; and the siting of essential public facilities.

Summary of Bill: Cities with a population greater than 5,000 required to plan under the GMA, may adopt optional subarea development elements to their existing comprehensive plan. The subareas must be located in mixed-use or urban centers in a land-use or transportation plan adopted by a regional transportation organization; or within a half mile of a major transit stop zoned with an average minimum density of 15 dwelling units or more per acre.

A city choosing to adopt subarea development elements must prepare a non-project environmental impact statement to assess and disclose probable significant adverse environment impacts from the optional subarea development element and future development allowed under the plan. There must be at least one community meeting on the proposed subarea plan before the scoping notice. Notice must be provided about the non-project EIS and the community meeting to all property owners within the subarea and to all property owners within 150 feet of the subarea boundary. Additional notice provisions are specified. A city must require a supplemental EIS if a proposed development is inconsistent with the non-project EIS or if the potential impacts are not adequately addressed in the EIS. A person meeting the requirements for standing under the GMA may appeal the adoption of a subarea or implementation of regulations.

Until July 1, 2018, a proposed project consistent with the comprehensive plan subarea elements or development regulations and environmentally reviewed, may not be appealed for noncompliance as long as a complete development application vests within the timeframe established by the city not to exceed ten years from the final EIS. After July 1, 2018, a

vested project may not be appealed if it is within the scope of the EIS and the EIS was issued prior to July 1, 2018.

A city choosing to include optional elements into its comprehensive plan must consider establishing a transfer of development rights (TDR) program in consultation with the county where the city is located, that conserves county-designated agricultural and forest land of long-term commercial significance. If the city decides not to establish a TDR program, it must state in the record its reasons. A city's decision not to adopt a TDR program is not subject to appeal.

A city may apply for grant funding for the non-project EIS for a subarea development from the PERF provided by Commerce. A city may also recover costs through private funding or by assessing a fee to subsequent developments that are within the scope of the non-project EIS. These fees may be used to reimburse private sources for funds received. The collection of the fee is authorized within the excise taxes statute.

A city must establish an ordinance with standards for determining development fees proportionate to the impact and benefit received within the scope of the EIS. Any disagreement about the amount of the fees may not be used to delay the project permit. If the city provides for an administrative appeal of its decision on the project for which the fees are imposed, dispute of the fee assessment must be resolved in that administrative appeal process.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill makes a modest change to SEPA which helps to develop sustainable compact development in urban centers and transit areas. It expedites development in designated subareas and will promote economic development and create jobs. It provides for more notice than current law and an appeal option for the adequacy of the EIS. It assists development at the project level so that each developer does not have to go through SEPA. It reduces time while providing certainty and funding for up-front analysis and ability to charge late-comers a fee to help pay for the EIS. This is voluntary for cities that choose to adopt these plans. It doesn't cost the state anything. This promotes compact, in-fill development in the right places. It will help to address sprawl, climate change, and balances business with public interest.

CON: The intentions of the bill are good; however, there are concerns that the bill guts SEPA and will not allow landowners to address specific elements of a project. Project review element of SEPA is critical and gives citizens the opportunity to comment. This bill would do away with the ability to challenge industrial development next to small landowners. The standing requirement to challenge is not clear.

OTHER: The level of review is very expensive. It is very unlikely that cities will be able to use this without additional resources.

Persons Testifying: PRO: Chris McCabe, AWB; Tayloe Washburn, Foster, Pepper, PLLC; Brendan McFarland, DOE; April Putney, Futurewise.

CON: Arthur West, citizen.

OTHER: Dave Williams, Assn. of WA Cities.