

# HOUSE BILL REPORT

## HB 2911

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**As Reported By House Committee On:**  
Government Reform & Land Use

**Title:** An act relating to substantive authority and imposition of mitigation measures under the state environmental policy act.

**Brief Description:** Imposing mitigation measures under the state environmental policy act.

**Sponsors:** Representatives Reams, Cairnes and Thompson.

**Brief History:**

**Committee Activity:**

Government Reform & Land Use: 1/29/98, 2/5/98 [DPS].

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### HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

**Staff:** Caroleen Dineen (786-7156).

**Background:** *Growth Management Act*

The Growth Management Act (GMA) requires certain counties, and cities located in those counties, to plan according to statutory requirements. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county and cities in that county plan under all of the GMA requirements.

Each jurisdiction planning under the GMA is required to adopt a comprehensive plan with specific statutory elements, including among others a land use element, housing element, and capital facilities plan element. GMA jurisdictions must adopt urban growth areas, within which urban growth is encouraged and outside of which growth may occur

only if it is not urban in nature. GMA jurisdictions must also adopt development regulations to implement their comprehensive plans.

Land use planning choices made in comprehensive plans and development regulations are the foundation for project review. A GMA jurisdiction must incorporate certain determinations in reviewing a project's consistency with its development regulations and comprehensive plan. These issues are determinative of the land use, density and public facilities with respect to project review.

All jurisdictions must adopt critical areas regulations, regardless of whether they plan under the GMA.

### *Authority to Impose Mitigation or Impact Fees*

#### *Chapter 82.02 RCW*

Chapter 82.02 RCW provides the general framework for GMA jurisdictions to impose impact fees, which are intended to impose only a proportionate share of costs for system improvements reasonably related to new development and are to be used for system improvements that will reasonably benefit the new development. The chapter 82.02 RCW system improvements include roads, parks, schools and fire protection facilities and must satisfy the following requirements:

- **Balance of Funding Sources:** Financing must be balanced between impact fees and public funding sources.
- **Identification in Capital Facilities Plan:** Impact fees may be collected and spent only for the public facilities addressed by the capital facilities element in the comprehensive plan.
- **Imposition by Ordinance:** Impact fees must be imposed by an ordinance which includes a schedule of impact fees and calculates the development's proportionate share of the system improvement.

RCW 82.02.090 expressly prohibits imposing an impact fee for system improvements upon a person required to pay a fee for the same system improvements under the State Environmental Policy Act (SEPA).

#### *State Environmental Policy Act*

SEPA requires local governments and state agencies to prepare an environmental impact statement if proposed legislation or other major action may have a probable significant, adverse impact on the environment. The responsible official has authority to make the threshold determination whether an environmental impact statement must be prepared.

If it appears that a probable significant adverse environmental impact may result, the proposal may be altered or its probable significant adverse impact mitigated. If this cannot be accomplished, an environmental impact statement must be prepared. The environmental impact statement is limited, or scoped, to address only the matters determined to have a probable significant adverse environmental impact.

SEPA is an alternative route to address needs for system improvements attributable to new development. Any action may be conditioned or denied pursuant to SEPA to mitigate specific adverse environmental impacts based on policies identified and designated by the agency or local government as possible bases for the exercise of SEPA authority.

A GMA jurisdiction may determine its comprehensive plan and development regulations provide adequate analysis of, and mitigation for, specific adverse environmental impacts of a project if certain findings are made. A jurisdiction which makes such a determination may not impose additional mitigation for those impacts under SEPA.

SEPA mitigation fees cannot be imposed for system improvements for which impact fees were assessed under chapter 82.02 RCW.

**Summary of Substitute Bill:** Provisions relating to SEPA authority to impose conditions, to review specified environmental impacts and to impose mitigation fees are revised.

### ***Growth Management Act***

An intent section: makes the GMA the fundamental building block– for regulatory reform and integration of land use laws; specifies all other land use laws supplement the GMA; prohibits GMA policy decisions from being reconsidered during project review; and prohibits impact fees for specified system improvements under SEPA.

A GMA jurisdiction's critical areas regulations are deemed determinative of critical areas protections for purposes of project review. For GMA jurisdictions, comprehensive plans and development regulations adopted pursuant to the GMA are deemed to provide adequate analysis of and mitigation for specific adverse environmental impacts for project review purposes. A non-GMA jurisdiction may determine its plans and regulations and provide adequate analysis and mitigation.

SEPA may not be used to impose additional mitigation for impacts which are deemed adequately analyzed and mitigated in comprehensive plans and development regulations. SEPA may only be used to mitigate impacts not adequately analyzed and mitigated in these documents. SEPA project review is based on GMA (or other) regulations and

plans in effect on the date a complete application is filed and must be consistent with GMA plans and regulations.

***Authority to Impose Mitigation or Impact Fees***

***Chapter 82.02 RCW***

Chapter 82.02 RCW provides the exclusive basis for GMA jurisdictions to mitigate the costs of system improvements identified in that chapter.

***State Environmental Policy Act***

A GMA jurisdiction may not impose a SEPA mitigation fee for any system improvement for which it has authority to impose an impact fee pursuant to chapter 82.02 RCW.

**Substitute Bill Compared to Original Bill:** The intent section is expanded to emphasize GMA policy decisions are not to be reconsidered at the project level and to make chapter 82.02 the exclusive authority for GMA jurisdictions to impose certain impact fees. The substitute bill clarifies GMA plans and regulations are deemed to provide adequate analysis of and mitigation for adverse environmental impacts addressed in those documents. Additional mitigation may not be imposed under SEPA for impacts analyzed and mitigated in GMA plans and regulations. SEPA project review is based on regulations and plans in effect on the date a complete application is filed. A GMA jurisdiction must use GMA impact fee authority, not SEPA mitigation fees, for the system improvement impacts identified in chapter 82.02 RCW.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill completes the work the Legislature began in 1995 with HB 1724. GMA should be the integrating framework for land use law. SEPA is still being used to challenge decisions that, under current law, should be controlled by GMA comprehensive plans and development regulations. GMA will fail if people can use SEPA to challenge these GMA policy decisions during project review. Revisiting GMA policy choices at the project review stage delays projects and increases costs. Some local government departments have differing opinions about the adequacy of local development regulations, and some hearing examiners prefer to operate under SEPA. SEPA should be used only when GMA documents do not address a particular issue. GMA jurisdictions have authority to impose impact fees under GMA, and this bill will not eliminate their ability to obtain infrastructure funding.

**Testimony Against:** Most jurisdictions apply the law as amended by HB 1724 properly. An environment element– is not required in a comprehensive plan, and sufficient environmental review may not be done when comprehensive plans and development regulations are adopted. Some jurisdictions have not adopted the critical areas ordinances required by GMA. This bill will reduce SEPA protections and make it more difficult to address impacts caused by development. SEPA is still a valuable tool needed to address unanticipated conditions on a particular site. This bill fails to provide desperately needed capital facilities funding. Many GMA jurisdictions do not want to impose GMA impact fees and use SEPA mitigation fees when needed to address impacts. Local governments do not want to lose the authority to impose fees under SEPA. The Land Use Study Commission is trying to address the concerns reflected in this bill through a consolidated land use code.

**Testified:** Paul Roberts, Association of Washington Cities, city of Everett (con); Alison Moss (pro); Rick Lennon, Murray Franklyn (pro); Bob Fogarty, Master Builders, Centex Homes (pro); Jodi Walker, Building Industry Association of Washington (pro); Peter Birch, Washington Department of Fish and Wildlife (con); Tom Bjorgen, Washington Environmental Council (con); Steve Wells, Community, Trade and Economic Development (con); Scott Hazelgrove, Association of Washington Business (pro); and Paul Parker Washington Association of Counties (con).