

HOUSE BILL REPORT

HB 1740

As Reported by House Committee On:

Environment
Appropriations

Title: An act relating to using the state environmental policy act to encourage development that is consistent with forward-looking growth plans.

Brief Description: Using the state environmental policy act to encourage development that is consistent with forward-looking growth plans.

Sponsors: Representatives McBride, Fey and Jinkins.

Brief History:

Committee Activity:

Environment: 2/2/17, 2/9/17 [DPS];

Appropriations: 1/15/18, 1/17/18, 1/18/18 [DP2S(w/o sub ENVI)].

Brief Summary of Second Substitute Bill

- Extends until 2028, the termination of an option that allows a city to adopt an element of its comprehensive plan that allows certain developments consistent with the optional elements to be exempt from appeal under the State Environmental Policy Act (SEPA).
- Requires that at least 10 percent of dwelling units in a project completed under a city's optional comprehensive plan element adopted after the SEPA's effective date must be set aside for affordable housing in order for the project to be exempt from appeal under the SEPA.
- Provides that certain exemptions from administrative and judicial appeals under the SEPA do not apply to a city with a population greater than 700,000.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

Staff: Jacob Lipson (786-7196).

Background:

The State Environmental Policy Act Review.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from government decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that are identified as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

State Environmental Policy Act Appeals.

Government decisions can be appealed under the SEPA on procedural grounds related to a threshold determination of significance, or on substantive grounds related to an agency's decision to deny or condition a project approval upon the completion of mitigation. Depending on the applicable rules or ordinances related to SEPA appeals that have been adopted by a lead agency, a SEPA appeals process may either begin in an administrative appeals forum or may directly proceed to a judicial review.

Optional Subarea Element Adoption and State Environmental Policy Act Appeal Exemptions.

Cities and counties that plan under the Growth Management Act (GMA) must adopt comprehensive land use plans that are implemented through locally adopted development regulations. Cities and counties must include certain elements in their plans, such as land use, housing, and transportation. Cities and counties may also adopt a variety of optional elements for inclusion in their comprehensive plan.

In 2010 the Legislature established a process that authorizes a city to adopt an optional element of their GMA comprehensive plan and associated development regulations that allow projects consistent with the optional element to be exempt from appeal under the SEPA. Depending on the size and location of the city, the optional element may only apply to certain subareas of the city:

- In cities of over 5,000, the optional element may only apply to areas designated as mixed-use or urban centers by a regional transportation planning organization, or that are within half of a mile of certain types of major transit stops and zoned for at least 15 dwelling units per acre.

- In cities east of the Cascades that are located in counties with less than 230,000, the optional element must be located within designated mixed-use or urban centers, and must enhance non-vehicle transportation methods.

In order to adopt an optional subarea element that exempts qualifying projects from SEPA appeals, the city must complete an upfront environmental review and public participation processes during the adoption of the optional element. All cities adopting an optional subarea element must prepare an EIS that addresses the probable significant adverse environmental impacts associated with the optional element and the associated anticipated future development. The city must hold a community meeting on the proposed subarea plan, and must mail notice of the optional subarea element proposal and the planned scope of the associated EIS to local property owners and other agencies with development jurisdiction within the subarea. In addition, cities of over 500,000 must prepare a study analyzing whether the optional subarea element may result in the displacement or fragmentation of existing businesses, residences, people living with poverty, families with children, intergenerational households, or cultural groups.

Cities may enact an ordinance that allows them to recover reasonable expenses associated with the preparation of the EIS from fees charged to subsequent development that is consistent with the optional element. Cities adopting an optional subarea element are also encouraged to establish programs to allow for the transfer of development rights.

Projects in a subarea that have vested or have begun the vesting process within 10 years of the city's adoption of the EIS are exempt from SEPA appeals. The process by which cities can adopt an optional subarea element expires on July 1, 2018, although development permits that have vested or will vest prior to that date retain the SEPA appeal exemption for a period of up to 10 years after the city's adoption of the EIS.

The Growth Management Planning and Environmental Review Fund.

Money in the Growth Management Planning and Environmental Review Fund (Fund) may be used for grants or loans to local governments to perform certain GMA planning actions and SEPA environmental reviews. The Fund has not received Legislative appropriations since the late 1990s.

Summary of Substitute Bill:

The expiring authority that allows a city to adopt an optional subarea element that limits State Environmental Policy Act (SEPA) appeals of qualifying projects is extended until 2028. If a city's optional subarea element was adopted prior to 2017, the city may allow projects consistent with the optional element to remain exempt from SEPA appeals for up to 18 years after the completion of the environmental impact statements (EIS) for the optional element. Projects under optional elements adopted by a city beginning after the act's 2017 effective date must vest or begin the vesting process within 10 years of the city's subarea EIS adoption in order to be exempt from SEPA appeals.

In order to be exempt from SEPA appeals, projects consistent with an optional subarea element adopted by a city after the effective date of the act must set aside at least 10 percent of dwelling units for sale or rental to low-income households at prices considered affordable by the city's housing programs, or a greater percentage as determined by city development regulations.

Expenditures from the Growth Management Planning and Environmental Review Fund (Fund) may be used for grants or loans to local governments to adopt optional subarea elements. A city may recover costs or prospectively apply for a grant or loan from the Fund to cover costs associated with the adoption of an optional subarea element.

Substitute Bill Compared to Original Bill:

The substitute bill makes providing affordable housing a criteria for projects' exemption from appeals under State Environmental Protection Act (SEPA) only for those developments taking place under subarea elements that are adopted by a city after the act's effective date. The amount of affordable housing that a development must provide is reduced from 20 percent of the development's dwelling units to the either 10 percent of the development's dwelling units or a greater percentage as determined by city development regulations.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill encourages affordable housing, and provides certainty for developers by requiring appeals under the State Environmental Policy Act (SEPA) to be based on up-front plans, rather than at the project level. The SEPA tool that is extended and amended by this bill has been successfully used by the City of Tacoma, and the up-front planning is beginning to bear fruit in the form of development siting. This SEPA tool requires an extensive up-front public process. The developments it encourages help facilitate transit-oriented development. A grant program to support local government planning would help encourage more cities to use this SEPA planning tool.

(Opposed) None.

(Other) The 18-year timeline for developments to go in while being exempt from SEPA is too long; environmental impacts of the proposed developments should be re-assessed after eight years.

Persons Testifying: (In support) Representative McBride, prime sponsor; and Randall Lewis, City of Tacoma.

(Other) Cody Arledge, Futurewise.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 17 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

Staff: Meghan Morris (786-7119).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment:

The second substitute bill provides that certain exemptions from administrative and judicial appeals under the State Environmental Policy Act do not apply to a city with a population greater than 700,000.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is an economic development bill to help cities and developers with programmatic environmental impact statements (EIS). The EIS process is a lot of work and can cost around \$250,000 for a small city and over \$1 million for a big city. Appeals can come in after city centers and transit hubs complete EIS and comprehensive plan changes. The city goes through all of the planning, expenses, and public hearings; and then suddenly there is an appeal. Proposed Second Substitute House Bill 1740 is a way to continue expanded public involvement, include affordable housing and help smaller communities use programmatic EIS to expand economic development and growth. Most cities using these exemptions already set affordable housing at 20 percent because it is within transit-oriented development. The exemptions will sunset this year unless this bill is passed. Additionally,

much of this work is dependent on a grant, but the funding was swept after one year of existence, which the Legislature should consider refunding.

(Opposed) None.

Persons Testifying: Representative McBride, prime sponsor; and Randall Lewis, City of Tacoma.

Persons Signed In To Testify But Not Testifying: None.