

HOUSE BILL REPORT

SHB 1707

As Amended by the Senate

Title: An act relating to revising environmental review provisions to improve the development approval process and enhance economic development.

Brief Description: Revising environmental review provisions to improve the development approval process and enhance economic development.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Jarrett, Simpson, Shabro, Sullivan, Moeller, Berkey, Schindler, Linville and Anderson).

Brief History:

Committee Activity:

Local Government: 2/17/03, 3/4/03 [DPS].

Floor Activity:

Passed House: 3/13/03, 96-0.

Senate Amended.

Passed Senate: 4/10/03, 44-3.

Brief Summary of Substitute Bill

- Allows local governments to make infill development complying with Growth Management Act (GMA) comprehensive plans categorically exempt from State Environmental Policy Act (SEPA) requirements under certain circumstances.
- Requires (rather than allows) counties and cities planning under the major GMA requirements to determine that the SEPA analysis and mitigation in GMA comprehensive plans and development regulations or other laws satisfy SEPA's procedural requirements for a development project if certain specified requirements are satisfied.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Romero, Chair; Uptegrove, Vice Chair; Schindler, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Ahern, Berkey, Clibborn, Ericksen, Mielke and Moeller.

Staff: Caroleen Dineen (786-7156).

Background:

Growth Management Act

The Growth Management Act (GMA) requires a county and its cities to plan under its major requirements if the county meets certain population and growth criteria. Other counties may choose to plan under the major requirements of the GMA. The counties and cities required or choosing to plan under the GMA's major requirements are referred to as "GMA jurisdictions." Currently 29 of the 39 counties and their cities are GMA jurisdictions.

All counties and cities have certain responsibilities under the GMA. GMA jurisdictions must fulfill numerous planning requirements, including adoption of county-wide planning policies and designation of urban growth areas. GMA jurisdictions also must adopt comprehensive plans with certain mandatory elements such as land use, transportation, and utilities, and must adopt implementing development regulations.

State Environmental Policy Act

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare an environmental impact statement (EIS) if proposed legislation or other major action may have a probable significant adverse impact on the environment. If it appears 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 EIS is prepared. The responsible agency official has authority to make the threshold determination whether an EIS must be prepared.

Except for development projects that are exempt from SEPA requirements by statute or rule, the SEPA statutes generally require a project applicant to submit an environmental checklist. An environmental checklist includes questions about the potential impacts of the project on the built environment (e.g., land use, transportation, and utilities) and the natural environment (water, air, habitat, and wildlife). The checklist is reviewed by the SEPA lead agency (one of the agencies with permitting authority for the project) to determine whether the project is likely to have a significant adverse environmental impact. The lead agency also will review the checklist to determine if the applicant has identified mitigation sufficient to reduce environmental impacts.

After the checklist is reviewed, the lead agency issues its threshold determination. If a lead agency determines that a project is not likely to have a significant adverse environmental impact « or if mitigation sufficient to reduce these impacts has been identified « the lead agency issues a determination of nonsignificance (DNS) or a mitigated DNS (MDNS), which includes mitigation conditions for the project.

Alternatively, a lead agency issues a determination of significance (DS) if it determines that a project is likely to have a significant adverse environmental impact or mitigation cannot be identified to reduce these impacts. The DS triggers the requirement to prepare an EIS. The EIS is scoped to address only the matters determined to have a probable significant adverse environmental impact.

SEPA Categorical Exemptions

The Department of Ecology (DOE) is required to adopt rules to implement SEPA. One rule requirement is to define "categorical exemptions," which are categories of actions not considered major actions significantly affecting the quality of the environment. Examples include certain minor new construction activities; some repair, remodeling, and maintenance activities; appropriations of water less than certain amounts; water quality certifications; some enforcement and inspection activities; and certain minor land use decisions.

The DOE must specify by rule circumstances in which certain actions that potentially are categorically exempt will be subject to environmental review. Actions determined to be categorically exempt, however, are not subject to SEPA's environmental review or EIS requirements.

Project Review and SEPA Compliance

GMA jurisdictions may determine the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other laws satisfy SEPA's procedural requirements for a development project if certain requirements are satisfied. These requirements include the GMA jurisdiction's:

- determination that the specific adverse environmental impacts of a project have been addressed by a comprehensive plan or development regulation provisions or other laws; and
- conditioning of the project on compliance with these requirements or mitigation measures.

A GMA jurisdiction that determines a project's impacts have been addressed in this manner may not impose additional mitigation under SEPA.

Summary of Substitute Bill:

SEPA Categorical Exemptions

Counties and cities planning under the major requirements of the Growth Management Act (GMA jurisdictions) may establish categorical exemptions from the requirements of

the State Environmental Policy Act (SEPA) to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology (DOE) by rule. GMA jurisdictions may adopt categorical exemptions to exempt government action related to development that is new residential or mixed-use development proposed to fill in an urban growth area when:

- current density and intensity of the use in the area is lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Any locally adopted categorical exemption is subject to the DOE's rules specifying exceptions to the use of categorical exemption.

Project Review and SEPA Compliance

GMA jurisdictions must determine the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other specified documents satisfy SEPA's procedural requirements for a development project if the statutory requirements are satisfied. GMA jurisdictions must issue determinations of nonsignificance (with or without mitigating conditions) under SEPA for projects under these circumstances. The DOE's rules regarding project specific impacts that may not have been adequately addressed apply to any such determination.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment replaces a reference in the project review provisions to voluntary measures by the project proponent to mitigate adverse impacts with a reference to mitigation measures included by changing, clarifying, or conditioning the proposed action to mitigate impacts

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The objective of this bill is to find ways to substantively improve procedures under the Growth Management Act (GMA) and State Environmental Policy Act (SEPA). The Legislature should seek continuous improvement of these laws. This

bill reduces redundancies, promotes certainty, and streamlines the process to promote economic development. This bill does not decrease environmental protection.

The planned action provisions put more weight on the substantive SEPA review conducted for the GMA comprehensive plan. The GMA impact fees should be used for essential public facilities when they are applicable. The impact fees provisions may help avoid "double dipping" when impact fees are sufficient to address impacts.

The infill development provisions make the process relatively simple and straightforward and allow small businesses to be competitive in this arena. These provisions promote urban infill. Categorical exemption provisions should be supported.

The original intent of the determination regarding analysis of the environmental review in comprehensive plans was to make determinations of nonsignificance the default when impacts had been addressed at the plan stage. Cities have been reluctant to do this because of litigation concerns.

(In support with concerns) Some essential public facilities are difficult to site. They also may cross jurisdictional boundaries, and the GMA impact fees provisions may make it harder to mitigate impacts. Conducting extensive up-front environmental review in GMA comprehensive plans is a good policy, but the cost is very high. Local governments need an adequate level of analysis to withstand challenges but do not have the resources to do extensive reviews.

Testimony Against: More experience should be gained with the planned actions statutes before applying them to essential public facilities. The term "essential public facilities" is poorly defined. Further density exemptions should not be granted. Some local governments may not have the resources to develop GMA impact fees ordinances to meet the requirements of this bill.

Testified: (In support) Representative Jarrett, prime sponsor; Kris Tefft, Building Industry Association of Washington; Larry Stout, Washington Association of Realtors; and Ron Newbry, Washington Economic Development Association.

(In support with concerns) Dave Williams, Association of Washington Cities; and Leonard Bauer, Department of Community, Trade, and Economic Development.

(Opposed) Genesee Adkins, 1000 Friends of Washington.