Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Local Government Committee

HB 2585

Brief Description: Creating a collaborative design pilot program.

Sponsors: Representatives Jarrett, Dunshee, Shabro, Clibborn, Anderson, B. Sullivan, Tom, Linville, Nixon, Upthegrove, Morrell, Moeller and Kilmer.

Brief Summary of Bill

- Requires the Office of Regulatory Assistance (ORA) to conduct a collaborative design pilot program that expires December 31, 2009.
- Specifies eligibility criteria for jurisdictions that may participate in the program.
- Requires the ORA, the Department of Community, Trade, and Economic Development, and the Department of Ecology to develop guidelines and criteria for the program, and provide technical assistance to participating jurisdictions.
- Allows participating jurisdictions to vary the application of regulations adopted under the Growth Management Act and the Shoreline Management Act for collaborative design projects if environmental analysis, protection, and mitigation requirements are met.
- Allows participating jurisdictions to exempt collaborative design projects from the State Environmental Policy Act if specific criteria are met.
- Includes a null and void clause.

Hearing Date: 1/18/06

Staff: Ethan Moreno (786-7386).

Background:

I. OFFICE OF REGULATORY ASSISTANCE

The Office of Regulatory Assistance (ORA), a subset of the Office of Financial Management, is charged with assisting citizens, businesses, and project applicants in matters pertaining to permits. The ORA does not have authority to approve permit requests.

The ORA must, in part, provide its assistance by maintaining and furnishing information through:

- compiling and periodically updating permitting handbooks;
- establishing and providing notice of a point of contact for obtaining information; and
- developing a call center and Web site.

At the request of a project applicant, the ORA must assist an applicant in determining what regulatory requirements and permits apply to a proposed project. Additionally, upon the satisfaction of specified criteria, the ORA may coordinate the processing of permits required for a project.

II. GROWTH MANAGEMENT ACT (GMA)

Policy

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. The GMA specifies numerous provisions for jurisdictions fully planning under the Act (planning jurisdictions) and establishes a reduced number of compliance requirements for all local governments.

Requirements

The GMA establishes 13 planning goals, which are not listed in an order of priority, to be used by planning jurisdictions in fulfilling the requirements of the Act. One planning goal specifically pertains to permits and provides that applications for state and local government permits should be processed in a timely and fair manner to ensure predictability.

Among numerous planning requirements, planning jurisdictions must adopt internally consistent comprehensive land use plans (comprehensive plans), which are generalized, coordinated land use policy statements of the governing body.

Planning jurisdictions must adopt development regulations that control development or land use activities. These development regulations must be consistent with and implement the comprehensive plan of the adopting jurisdiction.

The Department of Community, Trade, and Economic Development (DCTED) is charged with providing technical and financial assistance to jurisdictions implementing the GMA.

Permits

The GMA includes both policy guidance and specific provisions for permitting issues. Regarding policy, as noted above, a permit-related planning goal is included in the Act. Although the GMA does not generally establish detailed permit-related requirements (specific development regulations/land use controls are adopted and enforced at the local level), the Act includes several provisions addressing permitting issues. Examples include:

- mandating that all plats, short plats, development permits, and building permits issued by local governments for development activities on or within 500 feet of designated resource lands must contain a notice that the applicable property may be subjected to activities incompatible with residential development;
- specifying vesting provisions for permit applications in the event all or part of a comprehensive plan or development regulation is determined by a Growth Management Hearings Board to be invalid; and
- establishing grant distribution criteria and provisions for jurisdictions preparing a qualifying environmental analysis that is integrated with other requirements of the GMA.

III. SHORELINE MANAGEMENT ACT (SMA)

Policy

The Shoreline Management Act (SMA) governs uses of state shorelines. The SMA enunciates state policy to provide for shoreline management by planning for and fostering all reasonable and appropriate uses. The SMA prioritizes public shoreline access and creates preference criteria listed in order of priority that must be used by state and local governments in regulating shoreline uses.

The SMA governs "shorelines of the state." These "shorelines of the state" are defined in the SMA to include both "shorelines" and "shorelines of statewide significance" as those terms are defined by statute.

Requirements

The SMA involves a cooperative regulatory approach between local governments and the state. The Department of Ecology (DOE) and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, the SMA regulations are developed in local shoreline master programs (master programs) containing provisions for specific planning elements. A master program, or a segment thereof, becomes effective when approved by the DOE.

All counties and cities with shorelines of the state are required to adopt master programs that regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted shoreline master programs.

Permits

The SMA requires a property owner or developer to obtain a substantial development permit for qualifying developments within shorelines areas. "Substantial developments" are defined to include both developments with total cost or fair market value exceeding $5,000 and developments materially interfering with normal public shoreline use.

Certain exemptions to the substantial development permit requirement are specified in statute. These include, in part:

- normal maintenance or repair of existing structures;
- construction of protective bulkheads for single-family residences; and
- emergency construction to prevent property damage.

Local master programs must allow for variances and conditional use permits to avoid creating unnecessary hardships or thwarting policies of the SMA. Variances and conditional uses must be based on extraordinary circumstances, may not substantially impair the public interest, and must be approved by the DOE.

Each local government must establish a program for the administration and enforcement of a permit system. While the SMA specifies standards for local governments to review and approve permit applications, the administration of the permit system is performed exclusively by the local government. Local governments are also required to notify the DOE of all permit decisions under the SMA.

IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)

Policy

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, including the issuance of permits or the adoption of or amendment to land use plans and regulations. Any governmental action may be conditioned or denied pursuant to the SEPA, provided the conditions or denials are based upon policies identified by the appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

The SEPA requires all branches of Washington's government, including state agencies, municipal and public corporations, and counties, to fulfill specific requirements, including:

- utilizing a systematic, interdisciplinary approach in planning and decision making;
- identifying and developing methods and procedures which will insure that environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations; and
- including in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed environmental impact statement.

Requirements

The SEPA provisions generally require a project applicant to complete an environmental checklist. An environmental checklist includes questions about the potential environmental impacts of the proposal. 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 whether the proposal is likely to have a significant adverse environmental impact. The determination is made in a determination of significance (DS), a determination of nonsignificance (DNS), or a mitigated DNS (MDNS), which includes mitigation conditions for the project. A DS requires an environmental impact statement (EIS).

Local governments and state agencies must prepare an EIS for legislation and other major actions having a probable significant, adverse environmental impact. The EIS includes detailed information about the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action. Analysis of environmental considerations for an EIS may be required only for listed "elements" of the natural and built environment.

Categorical exemptions from the EIS and other requirements for actions meeting specified criteria are provided in the SEPA. Categories of government actions that are not considered as potential major actions significantly affecting the quality of the environment are also defined in administrative rules.

The DOE is required to adopt and amend rules for implementing and interpreting the SEPA. All state agencies, public and municipal corporations, political subdivisions, and counties are required to adopt rules pertaining to the integration of the SEPA policies and procedures into the various programs under their jurisdiction.

Summary of Bill:

Collaborative Design Pilot Program

The ORA must conduct a collaborative design pilot program (pilot program or program). The pilot program must, at a minimum, establish a mechanism for convening collaborative design teams and evaluate the effectiveness of collaborative design pilot projects. The ORA must report findings and recommendations regarding the feasibility of applying collaborative design practices statewide to the appropriate committees of the House of Representative and the Senate by December 31, 2009, the date the program authorization expires.

To be eligible for consideration as a pilot program jurisdiction, a county or city must fully plan under the GMA, and must provide the ORA with a written participation request signed by a majority of the jurisdiction's legislative authority.

The ORA, the DCTED, and the DOE must provide technical assistance to jurisdictions participating in the pilot program. These agencies also must develop operational guidelines and criteria for the program. The guidelines and criteria must satisfy prescribed requirements, including, providing for:

- establishing collaborative design teams comprised of local government officials with project design and permitting expertise, and public or private sector project applicants;
- using collaborative design practices in the design and realization of comprehensive or phased projects;
- varying the application of development and use regulations adopted under the GMA and the SMA;
- exempting qualifying collaborative design projects from the SEPA; and
- expediting county and city processing of permit applications and project approval requests by using hearings examiner systems.

Subject to the availability of amounts appropriated for the act, the DCTED must provide grants to jurisdictions participating in the pilot program. The grants must be for reimbursing jurisdictions for local government personnel costs attributable to participating in a collaborative design project.

Permits and approvals issued pursuant to collaborative design pilot projects must provide a level of environmental analysis, protection, and mitigation that is at least equal to the jurisdiction's applicable:

- comprehensive plan and development regulations under the GMA; and
- master program and use regulations adopted under the SMA.

Application to Existing Regulatory Frameworks - GMA, SMA, SEPA

A jurisdiction participating in pilot program may allow variances in the application of development regulations adopted under the GMA for collaborative design projects. The GMA variances may be allowed only if:

- the project and associated permits and approvals provide a level of environmental analysis, protection, and mitigation that is at least equal to the level required by the jurisdiction's comprehensive plan and development regulations; and
- the variances are authorized by ordinance or resolution.

Participating jurisdictions may adopt, by ordinance or resolution, program variances in the application of use regulations of the master program adopted under the SMA for qualifying

projects. Variance or conditional use permits that are requested of a jurisdiction participating in the program must be approved or disapproved by the jurisdiction.

Applying a comparable scheme and criteria, participating jurisdictions also may, by ordinance or resolution, establish categorical exemptions from the requirements of the SEPA for collaborative design projects. An exemption may be adopted if:

- the project and associated permits and approvals satisfy specified analysis, protection, and mitigation requirements; and
- the comprehensive plan and, if applicable, master program were subjected to environmental analysis through an EIS under the SEPA prior to adoption.

Qualifying locally-adopted exemptions to the SEPA requirements apply even if they differ from the categorical exemptions adopted by rule of the DOE.

Null and Void Clause

If specific funding for the purposes of the act is not provided by June 30, 2006, in the omnibus appropriations act, the act is null and void.

Appropriation: None.

Fiscal Note: Requested on January 16, 2006.

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