HOUSE BILL REPORT
HB 1360

As Reported by House Committee On:
Local Government & Housing

Title: An act relating to funding for residential infrastructure development.

Brief Description: Concerning funding for residential infrastructure development.

Sponsors: Representatives Ormsby, Orcutt, Simpson, Smith, Dunshee, Springer, Liias, Upthegrove, Eddy, Takko, Chase, Morrell, Moeller and Sullivan.

Brief History:
Committee Activity:
Local Government & Housing: 1/29/09, 2/5/09 [DPS].

Brief Summary of Substitute Bill

- Creates the residential infrastructure program (program) and related administrative requirements for the Department of Community, Trade and Economic Development.
- Specifies that the program is to provide loans and grants to eligible entities for public infrastructure that supports increased capacity for dense, affordable residential development in areas within certain distances of high capacity transit stations or major transit stops.
- Specifies eligibility requirements for qualifying jurisdictions and nonprofit organizations that may participate in the program.
- Creates a Residential Infrastructure Account in the State Treasury that is to be populated, in part, with the monies from the General Fund or proceeds from the state real estate excise tax.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

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 3 members: Representatives Angel, Ranking Minority Member; Cox and Short.

Staff: Ethan Moreno (786-7386)

Background:

Affordable Housing Programs.

The Housing Division of the Department of Community, Trade and Economic Development (DCTED) administers programs to create, preserve, and support affordable housing. These programs award funds for the construction, acquisition, and rehabilitation of affordable housing, but, with limited exceptions, do not fund infrastructure required to support housing development.

Real Estate Excise Tax.

A real estate excise tax (REET) is imposed by the state upon the sale of real property at the rate of 1.028 percent of the selling price. Of the amount collected, 6.1 percent of the proceeds are deposited into the Public Works Assistance Account, and 0.6 percent of the proceeds are deposited into the City-County Assistance Account.

Budget Stabilization Account.

Each fiscal year, 1 percent of general state revenues are deposited to the Budget Stabilization Account (Stabilization Account), an account known as the state's "Rainy Day Fund." The Stabilization Account is managed and invested by the State Investment Board. Net investment earnings are retained by the Stabilization Account. Employment forecasts and revenue estimates for the Stabilization Account are made by the Economic and Revenue Forecast Council.

Growth Management Act.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act and a reduced number of directives for all other counties and cities.

Among other requirements, counties that fully plan under the GMA (planning counties) must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period.

Washington State Quality Award Program.

The Washington State Quality Award (WSQA) is a nonprofit organization that evaluates performance standards for organizations who apply for review. After an intensive screening process, the WSQA provides feedback to these organizations regarding how to improve quality performance and recognizes those that have achieved performance excellence.

Summary of Substitute Bill:

Program Creation.

The residential infrastructure program (program) is created in the DCTED to provide loans to eligible jurisdictions and grants to nonprofit organizations for public infrastructure that supports increased capacity for dense, affordable residential development in transit-proximate areas. "*Transit-proximate*" is defined to mean within one-half mile walking distance of a high capacity transit station or within one-quarter mile of a major transit stop.

Funds appropriated through the program must be used to pay for the cost of qualifying public infrastructure projects, and may be used for the planning, construction, repair, reconstruction, replacement, rehabilitation, or improvement of sidewalks, streets and roads, bridges, publicly owned utilities, drinking water systems, and storm and sanitary sewage systems. Program funds may also be used for the acquisition of real property when the acquisition is directly related to the development of qualifying public infrastructure.

Program Eligibility and Administration.

Eligible jurisdictions seeking funding from the program must satisfy various requirements, including:

- designating a project area within its UGA, and demonstrating that overall development within the project area will increase the supply of dense, affordable residential development units;
- demonstrating that the project area will meet proximity and minimum density requirements;
- demonstrating that the infrastructure projects are contained in official planning documents and will increase existing system capacity to accommodate projected population growth in a manner that supports infill and redevelopment of existing urban areas; and
- committing to paying prevailing wages for each infrastructure project.

Eligible jurisdictions also must include a plan to construct or pay for the construction of comparable replacement housing within the jurisdiction when housing units are lost as a direct result of a project funded by the program. A residential unit lost as a result of a project funded by the program must be replaced one-for-one with a unit at an equal or better affordability rate, and relocation assistance must be paid to any displaced households.

Nonprofit organizations seeking funding from the program must satisfy several requirements, including:

- demonstrating that the funding will support public infrastructure projects or the acquisition of property related to the development of infrastructure projects subject to specified requirements;
- demonstrating that a project area is within a UGA and that overall development within the project area will increase the supply of dense, affordable residential development; and
- complying with requirements related to the provision of comparable replacement housing, relocation standards and requirements, and prevailing wage requirements.

The DCTED must determine each year the total amount of funding available in loans and grants and must establish the total amount of financial assistance to be appropriated to applicants based on:

- the total amount of money appropriated to the program;
- the quality of applications received; and
- the best available projections of total revenue likely to be available for the program for the subsequent three years.

The total amount of financial assistance allocated may not exceed $10 million per project for eligible jurisdictions and $1 million per project for nonprofit organizations. These funding limits must be adjusted for inflation. Additionally, loan interest rates may not exceed 0.5 percent a year.

The DCTED must establish policies, priorities, and procedures by which all or part of a loan may be forgiven if an eligible jurisdiction:

- creates a significantly greater number of affordable residential housing units within the project area than the number agreed to during loan contract negotiations;
- creates a significant number of residential units that are available and affordable to households of income levels significantly below the maximum income levels allowable under the program; or
- significantly exceeds program expectations in other ways to be identified by the DCTED.

The DCTED must establish and use a competitive application process for loan and grant awards and must review and prioritize proposals in consultation with the Public Works Board and the Transportation Improvement Board or their respective designees.

Priority must be awarded to projects that include plans meeting certain requirements, including:

- maximizing capacity to accommodate growth;
- maximizing residential density; and
- demonstrating readiness to proceed.

Additionally, the DCTED must give additional consideration to jurisdictions that have completed a WSQA program assessment of management systems, and jurisdictions that demonstrate a commitment to creating receiving areas for transferred development rights from rural and resource lands.

If an infrastructure project funded by the program is not completed by the agreed upon date or varies substantially from the approved proposal in a way that will result in the creation of less affordable residential development than that agreed to, the applicable jurisdiction or nonprofit organization must either make necessary project adjustments as determined by the DCTED or refund all or a portion of the loan or grant amount.

If an eligible jurisdiction rescinds its commitment to promoting affordable residential development within the designated project area by changing adopted policies and ordinances or failing to implement these policies and ordinances, the jurisdiction may be required to refund all or a portion of the principal loan amount plus compounded interest. Similarly, if a nonprofit organization fails to produce the agreed upon number of affordable residential units within its designated project, the nonprofit organization may be required to refund all or a portion of its grant amount plus compounded interest.

The DCTED may grant a partial or total exemption from the repayment requirements if it determines that a project is substantially complete or that the property has been substantially used in keeping with the original affordable residential housing purpose of the loan or grant.

Reporting and Assessment Requirements.

Eligible jurisdictions and nonprofit organizations that receive support from the program must report to the DCTED annually by December 31 of each year following the date of the receipt of the loan or grant until 10 years after the completion of the infrastructure project.

Jurisdictions and nonprofit organizations that receive more than $250,000 in total loans or grants in a calendar year from the program or other housing-related funding sources must apply to the WSQA for an assessment of management systems. Jurisdictions and nonprofit organizations that receive more than $250,000 in total loans or grants from qualifying sources for three or more consecutive calendar years must apply to the WSQA every three years.

Residential Infrastructure Account - Creation and Funding.

The Residential Infrastructure Account (Account) is established in the State Treasury. All receipts from transfers described below, repayments of program loans or grants, Account interest, and other sources identified by the Legislature must be deposited into the Account. Monies in the Account may be spent only after appropriation. Expenditures from the Account may be used only for the program.

On or before August 31, 2010, and by August 31 of each subsequent year, the State Treasurer (Treasurer) must transfer from the General Fund into the Account the lesser of $50 million or the excess real estate excise tax (REET) growth amount. A formula for determining the excess REET growth amount is specified in the bill. Additional administrative requirements pertaining to the Account are specified for the Treasurer. Additionally, the transfer of REET monies to the Account does not reduce general state revenues for the purposes of calculations in determining the amount that must be annually transferred into the Stabilization Account.

Real Estate Excise Tax.

Provisions governing the state imposed REET are modified. Of the amount collected, 6.1 percent of the proceeds must be deposited into the Public Works Assistance Account, and 0.6 percent of the proceeds must be deposited into the City-County Assistance Account. An express provision specifies the remainder of the REET proceeds must be deposited in the General Fund.

Definitions.

Numerous definitions associated with the program, including definitions for "*affordable residential development,*" "*eligible jurisdictions,*" and "*residential development*" are established in the bill.

Substitute Bill Compared to Original Bill:

Numerous changes to the underlying bill were incorporated into the substitute bill version, including:

- modifying the definitions of "affordable residential development" or "affordable housing," "high capacity transit station," and "transit supportive density;"
- deleting a definition of "high-cost area:"
- establishing definitions for "transfer of development rights" or "rural resource land transfer of development rights," and "transfer of development rights receiving site;"
- modifying program requirements and related administrative duties of the DCTED;
- specifying that the transfer of REET monies does not reduce the general state revenues for the purposes of calculations in determining the amount that must be annually transferred into the Stabilization Account; and
- establishing new management assessment requirements for qualifying jurisdictions and nonprofit organizations.

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) Interest in the issues of this bill are linked to the capital budget, affordable housing, and the environment. Stakeholders have coalesced around the issues of responsible development and the creation of walkable communities. The GMA does a good job of preventing growth in the areas where we do not want it, but it does not effectively incentivize growth in the areas where we do want growth.

This bill is an effective method of providing funds for infrastructure. The bill allocates a portion of REET funds to infrastructure, but only when excess funds are available. Jurisdictions across the state would be eligible for funding through this bill. Current law restricts the use of some funds to infrastructure that are on the footprint of a development site. This bill will enable jurisdictions to construct other infrastructure. Growth should pay for growth and this bill will allow that to happen. The provisions of Senate Bill 5377 should be incorporated into the bill. The REET is an extremely volatile source of funding and it should be used for one-time expenses. Local governments need additional money for infrastructure and this bill will help. The bill does not raise the REET rate, but it is a request to use the REET monies strategically.

Infrastructure investments in the urban growth areas are very important to affordable housing and promoting compact development. Infrastructure uncertainties can be a deterrent for developers and can increase the costs of projects and housing units. This bill will help jurisdictions meet requirements of the GMA and retain local control. This bill is a creative solution and its benefits are evident in the composition of the coalition supporting it. The eligibility requirements of this bill differ from those of House Bill 1490, as this bill is intended to have broad applicability. Certain density levels are necessary to encourage people to leave their cars and use other methods of transportation.

While cities support infrastructure funding efforts and some cities are strongly supportive of the bill, others have concerns. This bill applies to 17 counties, as others do not have transit services that would qualify them for program funding. Grants for infrastructure in UGAs should be considered.

This bill is an innovative approach to enhancing capacity and has minimal budget impacts. The bill is an incentive-based proposal, not a mandate. Affordable housing and conservation can be complimentary rather than conflicting. This bill encourages the use of transfer of development rights programs.

(In support with amendments) Technical amendments should be made to modify the service threshold and eligibility requirements of the bill.

(Opposed to original bill) None.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; Bill McSherry and Eric Schinfeld, Puget Sound Regional Council; Terri Jeffries, Washington Association of Realtors; Velma Veloria, Homesight; Nick Federici, Washington Low-Income Housing Alliance; April Putney, Futurewise; Ashley Probart, Association of Washington Cities; Rick Slunaker, Associated General Contractors; and Megan Lynch, Cascade Land Conservancy.

(In support with amendments) Tim Gugerty, City of Seattle.

Persons Signed In To Testify But Not Testifying: None.