
Local Government Committee

HB 1104

Brief Description: Incentivizing up-front environmental planning and review.

Sponsors: Representatives Fitzgibbon, Upthegrove, Springer, Green, Ryu, Maxwell, Roberts, Jinkins, Morrell, Pollet and Fey.

Brief Summary of Bill

- Authorizes local governments to recover reasonable expenses incurred in the preparation of nonproject environmental impact statements (EIS) for infill actions that are categorically exempt from requirements of the State Environmental Policy Act, and for development or redevelopment actions that qualify as "planned actions."
- Establishes requirements governing recovery fee assessments and related appeals, including requiring the fees to be enacted through ordinances, and to be reasonable and proportionate to the total expenses incurred by the local government in preparation of the EIS.

Hearing Date: 1/24/13

Staff: Ethan Moreno (786-7386).

Background:

The State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state agencies and local governments to identify possible environmental impacts that may result from non-exempted government actions. The actions include 'project' actions involving decisions on specific projects, such as the issuance of a permit, and 'nonproject' actions involving decisions on policies and plans, including the adoption of land use plans and regulations. The information collected through the SEPA review process may be used to change a proposal to mitigate likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

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.

Provisions of the SEPA generally require a project applicant to complete an environmental checklist. An environmental checklist includes, in part, 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 SEPA) to determine whether the proposal is likely to have a significant adverse environmental impact. This environmental "threshold determination" is made by the lead agency and is documented in either a determination of nonsignificance or a determination of significance.

A determination of significance requires the preparation an environmental impact statement (EIS) by the lead agency. The EIS must include detailed information about the environmental impact of the project, any adverse environmental effects that cannot be avoided if the proposal is implemented. The EIS must also include 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.

Specific categorical exemptions from EIS and other requirements for actions meeting specified criteria are established in the SEPA.

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA.

The GMA directs planning jurisdictions (*i.e.*, jurisdictions that fully plan under the GMA) to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans, which are the frameworks of county and city planning actions, are implemented through locally-adopted development regulations.

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

The GMA also establishes Washington's Growth Management Planning and Environmental Review Fund (PERF). Moneys in the PERF may be used to make grants or loans to local governments for actions pertaining to: specific project review actions related to the GMA; the preparation of an EIS; or environmental analysis costs associated with the SEPA that are integrated with qualifying planning activities. Moneys in the PERF may originate from bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source.

Infill and Planned Actions.

Planning jurisdictions may categorically exempt government actions under the SEPA related to qualifying residential, mixed use, or commercial development that is proposed to fill in an urban growth area where density and intensity of use in the area is lower than what is called for in the

applicable comprehensive plan. The comprehensive plan must have been previously subjected to an environmental analysis through an EIS under the SEPA, and the categorical exemption may not exempt government action related to development that is inconsistent with the comprehensive plan or would exceed the density or intensity of use called for in the comprehensive plan. Additionally a local government adopting an exemption must consider the specific probable adverse environmental impacts of the proposed action and determine that the impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan or other regulations or laws.

Planning jurisdictions may also adopt a planned action process in accordance with requirements prescribed in the SEPA. A planned action is a type of development or redevelopment action that meets specified criteria, including having been designated as a planned action by the applicable local government, and having had the significant impacts adequately addressed in an EIS in conjunction with or to implement a comprehensive plan or subarea plan under the GMA, or other action authorized in statute.

Summary of Bill:

Recovery of Reasonable EIS Expenses - General Authorization.

Counties, cities, and towns (local governments) are authorized to recover reasonable expenses of preparation of a nonproject environmental impact statement (EIS) prepared in accordance with infill and planned action requirements in the State Environmental Policy Act (SEPA). The expense recovery may occur through the following methods:

- through access to financial assistance through Washington's Growth Management Planning and Environmental Review Fund (PERF) ;
- with funding from private sources; and
- through the assessment of fees consistent with specified requirements and limitations.

Fees - Authorization, Assessment, Appeals, and Refunds.

Local governments may assess a fee upon subsequent development that will make use of and benefit from:

- the analysis in an EIS prepared for the planned action requirements of the SEPA; or
- the reduction in environmental analysis requirements resulting from the exercise of infill exemption authority infill development established in the SEPA.

The collected fees may be used to reimburse funding received from private sources to conduct the environmental review.

General fee assessment provisions are established. For example:

- The fee amount must be reasonable and proportionate to the total expenses incurred by the local government in the preparation of the environmental impact statement; and
- The local government must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees, or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees.

Additionally, the local government, prior to the collection of fees, must enact an ordinance satisfying several specific requirements, including:

- Establishing the total amount of expenses to be recovered through fees, and providing objective standards for determining the fee amount to be imposed upon each development proposal;
- Providing a procedure by which an applicant may pay the fees under protest. If the local government provides for an administrative appeal of its decision on the project for which the fees are imposed, the ordinance must provide that any dispute about the amount of the fees be resolved in the same administrative appeals process; and
- Making information available about the amount of the expenses designated for recovery. When these expenses have been fully recovered, the local government may no longer assess a fee.

Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

If a court determines that environmental review conducted under planned action or infill exemption provisions of the SEPA was insufficient to requirements of the SEPA regarding the proposed development activity for which the fees were collected, the local government must refund the fees. Additionally, the applicant and the local government may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with the SEPA.

Excise Tax Provisions.

Excise tax provisions authorizing cities, towns, counties, and other municipal governments to collect reasonable fees from an applicant for a permit or other governmental approval to cover the costs of processing applications, inspecting and reviewing plans, or preparing detailed statements required by the SEPA, are modified to expressly allow the recovery of reasonable expenses incurred in the preparation of a nonproject EIS prepared in accordance with infill and planned action requirements in the SEPA.

Appropriation: None.

Fiscal Note: Available.

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