

HOUSE BILL REPORT

ESHB 2984

As Passed House:
February 13, 2006

Title: An act relating to affordable housing incentive programs.

Brief Description: Authorizing cities, towns, and counties to implement affordable housing incentive programs.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Springer, Jarrett, Simpson, Clibborn, B. Sullivan, Hasegawa, Sells, P. Sullivan, Moeller, Santos and Green).

Brief History:

Committee Activity:

Local Government: 1/26/06, 2/2/06 [DPS].

Floor Activity:

Passed House: 2/13/06, 60-38.

Brief Summary of Engrossed Substitute Bill

- Authorizes jurisdictions fully planning under the Growth Management Act (GMA) to enact or expand affordable housing incentive programs (incentive programs) through development regulations.
- Establishes requirements for incentive programs enacted or expanded pursuant to certain provisions.
- Specifies that excise tax preemption provisions do not limit the authority of jurisdictions to implement qualifying incentive programs or to enforce agreements made pursuant to these programs.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Simpson, Chair; Clibborn, Vice Chair; B. Sullivan and Takko.

Minority Report: Do not pass. Signed by 3 members: Representatives Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member and Woods.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act

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.

Among other requirements, planning jurisdictions must adopt internally consistent comprehensive land use plans, which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must satisfy requirements for specified planning elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that are consistent with and implement the comprehensive plan.

The GMA includes planning requirements relating to the use or development of land in urban and rural areas. Among other obligations, counties that comply with the major requirements of the GMA 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. "Urban growth" is defined by the GMA, in part, as a reference to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for specified agricultural, mineral resource, and rural purposes.

Excise Taxes

Excise taxes are taxes imposed on certain types of real or tangible personal property in lieu of property taxes. Excise taxes generally refer to a specific type of transaction or privilege and are determined by the selling price or some other measure of sales. The retail sales tax is the largest excise tax levied in the state.

The state preempts the imposition of specific excises taxes, including taxes pertaining to parimutuel wagering and cigarettes. Additionally, local governments may not impose direct or indirect taxes, fees, or charges on certain construction, development, and land division activities. However, statute includes numerous provisions specifying that local governments are not prohibited by preemption requirements from authorizing certain locally-imposed fees and charges, including:

- impact fees;
- permit processing fees;
- utility system charges; and
- transportation benefit district fees or charges on building construction or land development.

Summary of Engrossed Substitute Bill:

Affordable Housing Incentive Programs - General Provisions

Jurisdictions fully planning under the GMA may enact or expand affordable housing incentive programs (incentive programs) providing for the development of low-income housing units through development regulations. Incentive programs may include, but are not limited to, provisions pertaining to:

- density bonuses within the UGA;
- height bonuses;
- fee waivers or exemptions;
- parking reductions; or
- expedited permitting, conditioned on the provision of low-income housing units.

Jurisdictions may enact or expand incentive programs whether or not the programs impose a tax, fee, or charge on the development or construction of property. Jurisdictions may not condition, deny, or delay the issuance of a permit or development approval based on the provisions included within the GMA due to the absence of participation in an adopted incentive program.

Enacted or expanded incentive programs must satisfy numerous requirements, including:

- mandating that incentives or bonuses must provide for the construction of low-income housing units;
- obligating jurisdictions to establish standards for low-income renter or owner occupancy housing, including guidelines that are consistent with local needs, to assist qualifying low-income households;
- requiring jurisdictions to establish, and allowing jurisdictions to adjust, a maximum rent level or sales price, consistent with specified criteria, for each low-income housing unit developed under an incentive program;
- requiring low-income housing units to be provided in a range of sizes and to conform to more general provisions pertaining to numbers of bedrooms, distributions of units throughout buildings, and non-luxury equipment and amenities;
- requiring low-income housing units developed under an incentive program to be committed to continuing affordability for at least 50 years; and
- requiring measures to enforce continuing affordability and income standards applicable to low-income units constructed under an incentive program.

Other requirements for enacted or expanded incentive programs are specified. Incentive programs may apply to all or part of a jurisdiction, and differing standards may be applied within a jurisdiction. Jurisdictions may modify incentive programs to meet local needs and may include provisions or requirements not expressly authorized, subject to certain requirements. Additionally, jurisdictions may accept payments in lieu of continuing affordability.

Required low-income housing units are encouraged to be located within market-rate housing developments for which a bonus or incentive is provided. Incentive programs may allow units to be located in adjacent buildings and may allow payments of money or property in lieu of

providing low-income housing units if the payment equals the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Jurisdictions may use these funds or property to support the development of low-income housing, including support through loans or grants to public or private owners or housing developers.

Application of Incentive Programs

Enacted or expanded incentive programs may be applied within jurisdictions to address the need for increased residential development. Incentive program application must be consistent with local growth management and housing policies, and must comply with specific requirements obligating jurisdictions to:

- identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;
- provide increased residential development capacity through zoning changes, bonus densities, height increases, parking reductions, or other regulatory changes or other incentives; and
- determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to the consideration of other regulatory controls on development.

Additionally, jurisdictions may establish a minimum amount of affordable housing that must be provided by all residential developments constructed under revised regulations, subject to incentive program requirements.

Income Requirements

Low-income households are defined for renter and owner occupancy incentive program purposes as follows:

- rental housing units to be developed must be affordable to and occupied by households with an income of no more than 50 percent of the county median family income, adjusted for family size; and
- owner occupancy housing units must be affordable to and occupied by households with an income of no more than 80 percent of the county median family income, adjusted for family size.

The legislative body of a jurisdiction may establish higher or lower income levels, subject to public hearing and other requirements. These legislatively-established higher income levels must be considered "low-income" for the purposes of incentive program provisions.

Excise Taxes

Nothing in specified excise tax preemption provisions limits the authority of counties, cities, or towns to implement qualifying incentive programs, nor to enforce agreements made pursuant to these programs.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The housing affordability gap is growing. Local governments need additional options to provide affordable housing, and this bill is another tool. This bill establishes provisions for optional incentive programs: jurisdictions will not be subject to a mandate. This bill will grant local governments greater flexibility to better meet low-income housing needs. The bill is an attempt to definitively establish that local governments have the authority to enact incentive programs. Diversity of housing types is beneficial for communities. This bill provides needed options to cities and developers. This bill will provide badly needed statutory guidance pertaining to incentive programs. Many density bonus incentive programs have been successful in developing affordable housing. The fee in-lieu provisions should be modified. This bill is designed to produce the maximum number of housing units in the shortest possible time.

(With concerns) The provisions of HB 2324 are a preferable alternative: the two bills should be merged. This bill appears to allow cities to permit inclusionary zoning. A good incentive program should be local and voluntary for builders, and should not mix subsidies from different sources.

Testimony Against: The bill could appear to require cities to develop low-income housing. Similar programs have not worked elsewhere. Affordable housing units at less than market-rate will diminish the value of owning a home. The need for a density bonus is unclear; cities should be allowed to accept density without constraints.

Persons Testifying: (In support) Representative Springer, prime sponsor; Rick Hooper, City of Seattle, Office of Housing; Carla Okigwe, Housing Development Consortium; Ben Gitenstein, Washington Low Income Housing Alliance; and Kurt Creager, Vancouver Housing Authority.

(With concerns) Elbert Esparza, Washington Realtors; and Michael Luis, Housing Partnership.

(Opposed) Timothy Harris, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: Dave Williams, Association of Washington Cities; and Eric Johnson, Washington Association of Counties.