
Ecology & Parks Committee

HB 2538

Brief Description: Regarding high-density urban development.

Sponsors: Representative Upthegrove.

Brief Summary of Bill

- Encourages certain planning jurisdictions under the Growth Management Act to include compact development in their comprehensive plans.
- Requires the development of an environmental impact statement for any compact development plan included in a comprehensive plan.
- Encourages establishment of a transfer of development rights program for planning jurisdictions that include compact development in their comprehensive plans.
- Provides funding incentives to assist with the cost of developing an environmental impact statement for a compact development plan included in a comprehensive plan.

Hearing Date: 1/12/10

Staff: Leslie Ryan-Connelly (786-7166).

Background:

Growth Management Act - Introduction.

The Growth Management Act (GMA) 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 planning governments obligated by mandate or choice to fully plan under the GMA (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA requires six western Washington counties (i.e., Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties) and the cities within those counties to establish a review and

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evaluation "buildable lands" program. The purpose of the program is to determine whether a county and its cities are achieving urban densities, and to identify reasonable measures, subject to statutory provisions, that will be taken to comply with the GMA's requirements.

Comprehensive Land Use Plans.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements each of which is a subset of a comprehensive plan. Comprehensive plans must be coordinated and consistent with those of other counties and cities with which the county or city has common borders or related regional issues. The implementation of comprehensive plans occurs through development regulations mandated by the GMA.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and planning 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.

Local governments and state agencies must prepare an Environmental Impact Statement (EIS) for legislation and other major actions that significantly affect the quality of the environment. The EIS must include 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.

Transfer of Development Rights.

A transfer of development rights (TDR) occurs when a qualifying land owner, through a permanent deed restriction, severs potential development rights from a property and transfers them to a recipient for use on a different property. In TDR transactions, transferred rights are generally shifted from sending areas with lower population densities to receiving areas with higher population densities. The monetary values associated with transferred rights constitute compensation to a land owner for development that may have otherwise occurred on the transferring property. Programs for transferring development rights may be used to preserve natural and historic spaces, encourage infill, and for other purposes.

The Legislature directed the Department of Commerce to fund a process to develop a regional TDR program that comports with the GMA. In addition to specifying numerous requirements for the Department of Commerce, the Legislature specified that the TDR program must encourage King, Kitsap, Pierce, and Snohomish counties, and the cities within, to participate in the development and implementation of regional frameworks and mechanisms that make TDR programs viable and successful. The Legislature further directed the Department of Commerce to work with these counties to develop an interlocal agreement for the regional TDR program.

Planning and Environmental Review Fund.

Established in 1995, the Growth Management Planning and Environmental Review Fund (PERF) is a grant program that is administered by the Department of Commerce. Under the program, a

grant may be awarded to a planning jurisdiction to assist with the costs of preparing an environmental analysis under the SEPA that is integrated with qualifying land use planning actions or activities. To qualify for a grant, a county or city must meet requirements set forth in statute. In awarding grants, the Department of Commerce must give preference to proposals that include one or more specific elements. Examples of these elements include: (1) financial participation by the private sector or a public/private partnering approach; and (2) furtherance of important state objectives related to economic development, the protection of areas of statewide significance, and the siting of essential public facilities.

Development Fees.

With some exemptions, counties, cities, towns, and other municipal corporation are prohibited from imposing any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of buildings, or on the development, subdivision, classification, or reclassification of land. This prohibition, however, does not prohibit cities, towns, counties, or other municipal corporations from collecting reasonable permit fees, inspection fees, or preparing detailed statements required by the SEPA.

Summary of Bill:

The SEPA is expanded to encourage compact development through the implementation of a nonproject EIS. To support the planning and environmental review efforts by planning governments, access to state grant funding and the ability to assess an impact fee is authorized. Along with the compact development planning, participating governments are encouraged to create a TDR program for agricultural and forest lands.

Growth Management Act - Planning Jurisdictions Affected.

All planning jurisdictions that are required to comply with the GMA, except for those cities with 5,000 people or less in a buildable lands program county, may elect to adopt compact development elements to their comprehensive plan. In addition, all planning jurisdictions required to comply with the GMA are affected.

Comprehensive Plans - Compact Development Defined.

A planning jurisdiction may adopt elements in their comprehensive plan that provides for compact residential and compact mixed-use residential development. The residential density of the compact development area must be at least 25 percent higher than average residential densities with similar zoning classifications. The compact development area must also be served by transit.

State Environmental Policy Act - Nonproject Environmental Impact Statement Required.

A planning jurisdiction that elects to include compact development elements into its comprehensive plan must prepare a nonproject EIS specifically for the compact development area. At least one community meeting must be held either before or as part of the scoping for the EIS. All property owners within the compact development area and within 150 feet must be notified of the community meeting. Once a final EIS is released, project specific development applications submitted within 10 years and within the scope of the EIS may not be appealed.

Transfer of Development Rights Encouraged.

A planning jurisdiction that elects to include compact development elements into their comprehensive plan must establish a TDR program that conserves long-term commercially significant agriculture and forest which are determined by the county. If the planning jurisdiction does not establish a TDR program, it must state the reasons in the record for not starting such a program. A planning jurisdiction's decision to not establish a TDR program may not be appealed.

Planning and Environmental Review Fund.

Grant funding for the development of a nonproject EIS for a compact development project may come from the PERF administered by the Department of Commerce.

Development Fees.

A planning jurisdiction may also recover the costs for developing an EIS for a compact development project by assessing a fee to those developments that are within its scope. The collection of the assessment fee is specifically authorized within the excise taxes law.

The standards for determining the assessment fee must be adopted in an ordinance by the planning jurisdiction. The standards must be based upon the proportion of benefits and impacts of each development project within the scope of the EIS. Any disagreement regarding the amount of the assessment fee may not delay issuance of the permit by the planning jurisdiction. If a planning jurisdiction provides for an administration appeal of the development project, the assessment fee disagreement must be resolved in the same administrative appeal.

Appropriation: None.

Fiscal Note: Requested on January 6, 2010.

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