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## Government Reform and Land Use Committee

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### BILL ANALYSIS HB 2911

**Title of the Bill:** Imposing mitigation measures under the state environmental policy act.

**What this Bill Does:** Changes procedures for imposing mitigation and impact fees.

**Sponsors:** Representatives Reams, Cairnes and Thompson.

**Hearing Date:** 1/29/98

**Fiscal Note:** Not Requested.

**Analysis Prepared By:** Caroleen Dineen, 786-7156

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#### BACKGROUND:

##### *Growth Management Act*

The Growth Management Act (GMA) requires certain counties, and cities located in those counties, to plan according to the statutory requirements. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county, and cities located in that county, plan under all of the GMA requirements.

Each jurisdiction planning under the GMA is required to adopt a comprehensive plan with specific statutory elements, including among others a land use element, housing element, and capital facilities plan element. GMA jurisdictions must also adopt urban growth areas, within which urban growth is encouraged and outside of which growth may occur only if it is not urban in nature.

Land use planning choices made in comprehensive plans and development regulations are the foundation for project review of new development. A GMA jurisdiction must incorporate certain determinations in reviewing a project's consistency with its development regulations and comprehensive plan, which are determinative of the land use, density and public facilities issues with respect to the development.

All jurisdictions must adopt critical areas regulations, regardless of whether they plan under the GMA.

### *Authority to Impose Mitigation or Impact Fees*

#### *Chapter 82.02 RCW*

Chapter 82.02 RCW provides the general framework for imposing impact fees. Impact fees upon new development are intended to impose only a proportionate share of costs for those system improvements reasonably related to the new development. The impact fees imposed are to be used for system improvements that will reasonably benefit the new development.

Local governments are precluded from imposing fees upon subdivision of property or upon development or improvement of property except as provided in RCW 82.02.050 through RCW 82.02.090. These provisions include:

- Balance of Funding Sources: In GMA jurisdictions, impact fees may be imposed on new development to finance public facilities, such as roads, parks, schools and fire protection facilities. Financing of these public improvements must be balanced between impact fees and other sources of public funds.
- Identification in Capital Facilities Plan: A jurisdiction may collect and spend impact fees only for the public facilities addressed by its comprehensive plan's capital facilities element. Among other items, the capital facilities plan element must identify existing system deficiencies and project additional system demands attributable to new development.
- Imposition by Ordinance: Impact fees must be imposed by an ordinance which includes a schedule of impact fees for each type of development activity which calculates the development's proportionate share of the system improvement. Proportionate share is to be calculated based on the cost of public facilities needed to serve new development, an adjustment to such cost based on other funding sources and the availability of other funding mechanisms, the cost of existing public facilities improvements, and financing methods.

RCW 82.02.090 expressly prohibits imposing an impact fee for system improvements upon a person required to pay a fee for the same system improvements under SEPA.

#### *State Environmental Policy Act*

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare an environmental impact statement if proposed legislation or other major action may have a probable significant, adverse impact on the environment. The responsible official has authority to make the threshold determination whether an environmental impact statement must be prepared.

If it appears that a probable significant adverse environmental impact may result, the proposal may be altered or its probable significant adverse impact mitigated. If this cannot be accomplished, an environmental impact statement must be prepared. The environmental impact statement is limited, or scoped, to address only the matters determined to have a probable significant adverse environmental impact.

SEPA provides an alternative route to address the need for system improvements attributable to

new development. Any action may be conditioned or denied pursuant to SEPA to mitigate specific adverse environmental impacts identified in the environmental documents prepared according to SEPA requirements. Any such conditions or denials must be based on policies identified and designated by the agency or local government as possible bases for the exercise of SEPA authority. Specific findings must be made in order to deny a proposal under SEPA.

A GMA jurisdiction may determine its comprehensive plan and development regulations provide adequate analysis of and mitigation for specific adverse environmental impacts of new development if certain findings are made. A jurisdiction which makes such a determination may not impose additional mitigation upon new development under SEPA.

SEPA mitigation fees cannot be imposed for system improvements for which impact fees were assessed under Chapter 82.02 RCW.

## **SUMMARY:**

The authority for imposing impact fees is revised.

### ***Growth Management Act***

The GMA is specified as the fundamental building block– for regulatory reform and integration of land use laws.

A GMA jurisdiction’s critical areas regulations are determinative of critical areas protections related to new development.

### ***Authority to Impose Mitigation or Impact Fees***

#### ***Chapter 82.02 RCW***

Chapter 82.02 RCW provides the exclusive basis for mitigating the costs of system improvements.

For GMA jurisdictions, the comprehensive plan and development regulations adopted pursuant to the GMA are determined to provide adequate analysis of and mitigation for specific adverse environmental impacts of new development. A non-GMA jurisdiction may determine its comprehensive plan, development regulations, subarea plans or other regulations provide adequate analysis of and mitigate for specific adverse environmental impacts of new development if certain findings are made.

### ***State Environmental Policy Act***

The authority to impose impact fees under SEPA is limited in two ways:

- In a GMA jurisdiction, any fee imposed pursuant to SEPA must be based on a regulation, plan or code adopted by the jurisdiction pursuant to the GMA; and
- If an impact fee for a system improvement could be imposed under chapter 82.02 RCW, a local government may not require that an environmental impact statement be prepared and may not impose a mitigation fee under SEPA.

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