
Local Government Committee

HB 1707

Brief Description: Revising environmental review provisions to improve the development approval process and enhance economic development.

Sponsors: Representatives Jarrett, Simpson, Shabro, Sullivan, Moeller, Berkey, Schindler, Linville and Anderson.

Brief Summary of Bill

- Removes the exclusion of essential public facilities from the planned action provisions.
- Specifies that a planned action is subject to potential substantive mitigation under the State Environmental Policy Act (SEPA), not environmental review and mitigation.
- Prohibits counties and cities authorized to impose Growth Management Act (GMA) impact fees from imposing SEPA mitigation fees on essential public facilities when GMA impact fees could be imposed.
- Requires the Department of Ecology (DOE) to make infill development complying with GMA comprehensive plans in designated urban growth areas categorically exempt from SEPA when existing density and intensity is lower than levels specified in GMA comprehensive plans.
- Requires (rather than allows) counties and cities planning under the major GMA requirements to determine that the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other laws satisfy SEPA's procedural requirements for a development project if certain specified requirements are satisfied.

Hearing Date: 2/17/03

Staff: Caroleen Dineen (786-7156).

Background:

Growth Management Act

The Growth Management Act (GMA) requires a county and its cities to plan under its major requirements if the county meets certain population and growth criteria. Other counties may choose to plan under the major requirements of the GMA. The counties and cities required or choosing to plan under the GMA's major requirements are referred to as "GMA jurisdictions." Currently 29 of the 39 counties and their cities are GMA jurisdictions.

All counties and cities have certain responsibilities under the GMA. The GMA jurisdictions must fulfill numerous planning requirements, such as: (1) conservation of natural resource lands with long-term commercial significance; (2) adoption of county-wide planning policies, used to create a planning framework for county and city comprehensive plans; (3) designation of urban growth areas, within which urban growth is encouraged and outside of which urban growth is prohibited; (4) adoption of comprehensive plans (including general land use policies) with certain mandatory and optional elements; and (5) adoption of development regulations implementing the comprehensive plan policies. Counties and cities that are not GMA jurisdictions must satisfy certain GMA requirements, including identifying and protecting critical areas and identifying natural resource lands.

Essential public facilities are described in the GMA as facilities typically difficult to site. The term is not defined in the GMA, but several examples of the types of facilities considered essential public facilities are provided. These include airports, transportation facilities, correctional facilities, and landfills.

State Environmental Policy Act

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

Except for development projects that are exempt from SEPA requirements by statute or rule, the SEPA statutes generally require a project applicant to submit an environmental checklist. An environmental checklist includes questions about the potential impacts of the project on the built environment (e.g., land use, transportation, and utilities) and the natural environment (water, air, habitat, and wildlife). The checklist is reviewed by the SEPA lead agency (one of the agencies with permitting authority for the project) to determine whether the project is likely to have a significant adverse environmental impact. The lead agency also will review the checklist to determine if the applicant has identified mitigation sufficient to reduce environmental impacts.

After the checklist is reviewed, the lead agency issues its threshold determination. If a lead agency determines that a project is not likely to have a significant adverse environmental impact « or if mitigation sufficient to reduce these impacts has been identified « the lead agency issues a determination of nonsignificance (DNS) or a mitigated DNS (MDNS), which includes mitigation conditions for the project. The local government must then provide notice of its threshold determination to issue the DNS or MDNS to provide an opportunity

for public and agency comments on its decision.

Alternatively, a lead agency issues a determination of significance (DS) if it determines that a project is likely to have a significant adverse environmental impact or mitigation cannot be identified to reduce these impacts. The DS triggers the requirement to prepare an EIS. The EIS is limited, or scoped, to address only the matters determined to have a probable significant adverse environmental impact. The local government provides notice of the threshold determination to issue a DS, which will be issued with a scoping notice. The scoping notice is used to solicit comments on identifying the key issues to be evaluated in an EIS.

Planned Actions

SEPA's environmental review provisions include specific provisions for planned actions. GMA jurisdictions may designate certain projects as planned actions under SEPA. A "planned action" is one or more types of project action that meets certain statutory criteria. For a project to be considered a SEPA planned action, the project must be:

- located in an urban growth area;
- designated as a planned action by a local ordinance or resolution;
- a project for which the significant adverse environmental impacts have been addressed in an EIS prepared for a comprehensive plan, subarea plan, fully contained community, master planned resort, master planned development, or a phased project;
- a "subsequent or implementing" project for one of the projects for which the EIS was prepared; and
- consistent with the GMA comprehensive plan.

A project considered an "essential public facility" under the GMA may not be designated as a SEPA planned action.

When a project is designated as a planned action, no threshold determination is required. According to the Department of Ecology's (DOE's) State Environmental Policy Act Handbook, a local government must require the applicant for a planned action to submit a SEPA environmental checklist and then verify that the:

- project meets the description of a planned action project designated in the local ordinance or resolution;
- probable significant adverse environmental impacts were adequately addressed in the previously prepared EIS for one of the proposals identified above; and
- project includes any conditions or mitigation measures outlined in the local ordinance or resolution.

If the local government determines that the project meets all of these requirements, the project qualifies as a planned action for SEPA purposes. No threshold determination is made, and no administrative SEPA appeal is available.

If the project does not meet one of these requirements, the project may not be considered a planned action. A threshold determination would be required for the project, and the

procedural SEPA process would have to be satisfied. The local government may use the previously prepared EIS to address the impacts that are included in the EIS.

Impact Fees

GMA jurisdictions may impose impact fees upon new development. Impact fees may be imposed for:

- public streets and roads;
- publicly owned parks, open space and recreation facilities;
- school facilities; and
- city fire protection facilities.

These "GMA impact fees" collect a proportionate share of costs for those system improvements identified in a GMA capital facilities plan and reasonably related to the new development. Impact fees are imposed by a local ordinance meeting statutory requirements, including a schedule of impact fees for each type of development activity, a credit for the value of land dedicated for or new construction of system improvements, and a provision for adjustment of the standard impact fee under certain circumstances.

A project may be conditioned under SEPA to mitigate specific adverse environmental impacts identified in the environmental documents prepared according to SEPA requirements.

"Conditions" may include the payment of mitigation fees for system improvements, such as roads, parks, schools, or other types of facilities. Any SEPA conditions must be based on policies identified and designated by the local government as possible bases for the exercise of SEPA authority.

GMA jurisdictions may choose whether to use GMA impact fee ordinances or SEPA mitigation fees to mitigate certain impacts of development projects. GMA jurisdictions are prohibited by statute from imposing both GMA impact fees and SEPA mitigation fees to address the same impact.

SEPA Categorical Exemptions

The DOE is required to adopt rules to implement SEPA. One rule requirement is to define "categorical exemptions," which are categories of actions not considered major actions significantly affecting the quality of the environment. For example, certain minor new construction activities, some repair, remodeling, and maintenance activities, appropriations of water less than certain amounts, water quality certifications, some enforcement and inspection activities, and certain minor land use decisions are categorically exempt from SEPA.

The DOE must specify by rule circumstances in which certain actions that potentially are categorically exempt will be subject to environmental review. Actions which are determined to be categorically exempt, however, are not subject to the environmental review or EIS requirements of SEPA.

Project Review and SEPA Compliance

GMA jurisdictions may determine that the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other laws satisfy SEPA's procedural requirements for a development project if certain requirements are satisfied. These requirements include the GMA jurisdiction's: (1) determination that the specific adverse environmental impacts of a project have been addressed by comprehensive plan or development regulation provisions or other laws; and (2) conditioning of the project on compliance with these requirements or mitigation measures. A GMA jurisdiction that determines a project's impacts have been addressed in this manner may not impose additional mitigation under SEPA.

Summary of Bill:

Planned Actions

The exclusion of essential public facilities from the planned action provisions of the State Environmental Policy Act (SEPA) is removed. A project considered an essential public facility according to the Growth Management Act (GMA) may be designated as a planned action. Further, a planned action is subject to "potential substantive mitigation" (authority to impose conditions) but not to "environmental review and mitigation" under SEPA.

Impact Fees

Counties and cities planning under the GMA's major requirements (GMA jurisdictions) must use the impact fee authority accorded to GMA jurisdictions for development of essential public facilities. GMA jurisdictions may not impose SEPA mitigation fees on essential public facilities for the types of facilities for which GMA impact fees could be imposed (i.e., roads, schools, parks, and city fire protection facilities).

SEPA Categorical Exemptions

The Department of Ecology (DOE) must include in the categorical exemption rules an exemption for infill development complying with GMA comprehensive plans in designated urban growth areas. Higher levels of density and intensity are categorically exempt from SEPA in urban growth areas when existing density and intensity are lower than levels specified in GMA comprehensive plans.

Project Review and SEPA Compliance

GMA jurisdictions must determine that the analysis, review, and mitigation of adverse environmental impacts in GMA comprehensive plans and development regulations or other specified documents satisfy SEPA's procedural requirements for a development project if statutory requirements are satisfied. GMA jurisdictions must issue determinations of nonsignificance (with or without mitigating conditions) under SEPA for projects under these circumstances.

Appropriation: None.

Fiscal Note: Requested on February 14, 2003.

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