

ESHB 2538 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 03/02/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
4 encourage high-density, compact, in-fill development and redevelopment
5 within existing urban areas in order to further existing goals of
6 chapter 36.70A RCW, the growth management act, to promote the use of
7 public transit and encourage further investment in transit systems, and
8 to contribute to the reduction of greenhouse gas emissions by: (1)
9 Encouraging local governments to adopt plans and regulations that
10 authorize compact, high-density urban development as defined in section
11 2 of this act; (2) providing for the funding and preparation of
12 environmental impact statements that comprehensively examine the
13 impacts of such development at the time that the plans and regulations
14 are adopted; and (3) encouraging development that is consistent with
15 such plans and regulations by precluding appeals under chapter 43.21C
16 RCW.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C RCW
18 to read as follows:

19 (1) Cities with a population greater than five thousand, in
20 accordance with their existing comprehensive planning and development
21 regulation authority under chapter 36.70A RCW, and in accordance with
22 this section, may adopt optional elements of their comprehensive plans
23 and optional development regulations that apply within specified
24 subareas of the cities, that are either:

25 (a) Areas designated as mixed-use or urban centers in a land use or
26 transportation plan adopted by a regional transportation planning
27 organization; or

28 (b) Areas within one-half mile of a major transit stop that are

1 zoned to have an average minimum density of fifteen dwelling units or
2 more per gross acre.

3 (2) Cities located on the east side of the Cascade mountains and
4 located in a county with a population of two hundred thirty thousand or
5 less, in accordance with their existing comprehensive planning and
6 development regulation authority under chapter 36.70A RCW, and in
7 accordance with this section, may adopt optional elements of their
8 comprehensive plans and optional development regulations that apply
9 within the mixed-use or urban centers. The optional elements of their
10 comprehensive plans and optional development regulations must enhance
11 pedestrian, bicycle, transit, or other nonvehicular transportation
12 methods.

13 (3) A major transit stop is defined as:

14 (a) A stop on a high capacity transportation service funded or
15 expanded under the provisions of chapter 81.104 RCW;

16 (b) Commuter rail stops;

17 (c) Stops on rail or fixed guideway systems, including transitways;

18 (d) Stops on bus rapid transit routes or routes that run on high
19 occupancy vehicle lanes; or

20 (e) Stops for a bus or other transit mode providing fixed route
21 service at intervals of at least thirty minutes during the peak hours
22 of operation.

23 (4)(a) A city that elects to adopt such an optional comprehensive
24 plan element and optional development regulations shall prepare a
25 nonproject environmental impact statement, pursuant to RCW 43.21C.030,
26 assessing and disclosing the probable significant adverse environmental
27 impacts of the optional comprehensive plan element and development
28 regulations and of future development that is consistent with the plan
29 and regulations.

30 (b) At least one community meeting must be held on the proposed
31 subarea plan before the scoping notice for such a nonproject
32 environmental impact statement is issued. Notice of scoping for such
33 a nonproject environmental impact statement and notice of the community
34 meeting required by this section must be mailed to all property owners
35 of record within the subarea to be studied, to all property owners
36 within one hundred fifty feet of the boundaries of such a subarea, to
37 all affected federally recognized tribal governments whose ceded area

1 is within one-half mile of the boundaries of the subarea, and to
2 agencies with jurisdiction over the future development anticipated
3 within the subarea.

4 (c) In cities with over five hundred thousand residents, notice of
5 scoping for such a nonproject environmental impact statement and notice
6 of the community meeting required by this section must be mailed to all
7 small businesses as defined in RCW 19.85.020, and to all community
8 preservation and development authorities established under chapter
9 43.167 RCW, located within the subarea to be studied or within one
10 hundred fifty feet of the boundaries of such subarea. The process for
11 community involvement must have the goal of fair treatment and
12 meaningful involvement of all people with respect to the development
13 and implementation of the subarea planning process.

14 (d) The notice of the community meeting must include general
15 illustrations and descriptions of buildings generally representative of
16 the maximum building envelope that will be allowed under the proposed
17 plan and indicate that future appeals of proposed developments that are
18 consistent with the plan will be limited. Notice of the community
19 meeting must include signs located on major travel routes in the
20 subarea. If the building envelope increases during the process,
21 another notice complying with the requirements of this section must be
22 issued before the next public involvement opportunity.

23 (e) Any person that has standing to appeal the adoption of this
24 subarea plan or the implementing regulations under RCW 36.70A.280 has
25 standing to bring an appeal of the nonproject environmental impact
26 statement required by this subsection.

27 (f) Cities with over five hundred thousand residents shall prepare
28 a study that accompanies or is appended to the nonproject environmental
29 impact statement, but must not be part of that statement, that analyzes
30 the extent to which the proposed subarea plan may result in the
31 displacement or fragmentation of existing businesses, existing
32 residents, including people living with poverty, families with
33 children, and intergenerational households, or cultural groups within
34 the proposed subarea plan. The city shall also discuss the results of
35 the analysis at the community meeting.

36 (g) As an incentive for development authorized under this section,
37 a city shall consider establishing a transfer of development rights
38 program in consultation with the county where the city is located, that

1 conserves county-designated agricultural and forest land of long-term
2 commercial significance. If the city decides not to establish a
3 transfer of development rights program, the city must state in the
4 record the reasons for not adopting the program. The city's decision
5 not to establish a transfer of development rights program is not
6 subject to appeal. Nothing in this subsection (4)(g) may be used as a
7 basis to challenge the optional comprehensive plan or subarea plan
8 policies authorized under this section.

9 (5)(a) Until July 1, 2018, a proposed development that is
10 consistent with the optional comprehensive plan or subarea plan
11 policies and development regulations adopted under subsection (1) or
12 (2) of this section and that is environmentally reviewed under
13 subsection (4) of this section may not be challenged in administrative
14 or judicial appeals for noncompliance with this chapter as long as a
15 complete application for such a development that vests the application
16 or would later lead to vested status under city or state law is
17 submitted to the city within a time frame established by the city, but
18 not to exceed ten years from the date of issuance of the final
19 environmental impact statement.

20 (b) After July 1, 2018, the immunity from appeals under this
21 chapter of any application that vests or will vest under this
22 subsection or the ability to vest under this subsection is still valid,
23 provided that the final subarea environmental impact statement is
24 issued by July 1, 2018. After July 1, 2018, a city may continue to
25 collect reimbursement fees under subsection (6) of this section for the
26 proportionate share of a subarea environmental impact statement issued
27 prior to July 1, 2018.

28 (6) It is recognized that a city that prepares a nonproject
29 environmental impact statement under subsection (4) of this section
30 must endure a substantial financial burden. A city may recover its
31 reasonable expenses of preparation of a nonproject environmental impact
32 statement prepared under subsection (4) of this section through access
33 to financial assistance under RCW 36.70A.490 or funding from private
34 sources. In addition, a city is authorized to recover a portion of its
35 reasonable expenses of preparation of such a nonproject environmental
36 impact statement by the assessment of reasonable and proportionate fees
37 upon subsequent development that is consistent with the plan and
38 development regulations adopted under subsection (5) of this section,

1 as long as the development makes use of and benefits, as described in
2 subsection (5) of this section, from the nonproject environmental
3 impact statement prepared by the city. Any assessment fees collected
4 from subsequent development may be used to reimburse funding received
5 from private sources. In order to collect such fees, the city must
6 enact an ordinance that sets forth objective standards for determining
7 how the fees to be imposed upon each development will be proportionate
8 to the impacts of each development and to the benefits accruing to each
9 development from the nonproject environmental impact statement. Any
10 disagreement about the reasonableness or amount of the fees imposed
11 upon a development may not be the basis for delay in issuance of a
12 project permit for that development. The fee assessed by the city may
13 be paid with the written stipulation "paid under protest" and if the
14 city provides for an administrative appeal of its decision on the
15 project for which the fees are imposed, any dispute about the amount of
16 the fees must be resolved in the same administrative appeal process.

17 (7) If a proposed development is inconsistent with the optional
18 comprehensive plan or subarea plan policies and development regulations
19 adopted under subsection (1) of this section, the city shall require
20 additional environmental review in accordance with this chapter.

21 **Sec. 3.** RCW 82.02.020 and 2009 c 535 s 1103 are each amended to
22 read as follows:

23 Except only as expressly provided in chapters 67.28, 81.104, and
24 82.14 RCW, the state preempts the field of imposing retail sales and
25 use taxes and taxes upon parimutuel wagering authorized pursuant to RCW
26 67.16.060, conveyances, and cigarettes, and no county, town, or other
27 municipal subdivision shall have the right to impose taxes of that
28 nature. Except as provided in RCW 64.34.440 and 82.02.050 through
29 82.02.090, no county, city, town, or other municipal corporation shall
30 impose any tax, fee, or charge, either direct or indirect, on the
31 construction or reconstruction of residential buildings, commercial
32 buildings, industrial buildings, or on any other building or building
33 space or appurtenance thereto, or on the development, subdivision,
34 classification, or reclassification of land. However, this section
35 does not preclude dedications of land or easements within the proposed
36 development or plat which the county, city, town, or other municipal

1 corporation can demonstrate are reasonably necessary as a direct result
2 of the proposed development or plat to which the dedication of land or
3 easement is to apply.

4 This section does not prohibit voluntary agreements with counties,
5 cities, towns, or other municipal corporations that allow a payment in
6 lieu of a dedication of land or to mitigate a direct impact that has
7 been identified as a consequence of a proposed development,
8 subdivision, or plat. A local government shall not use such voluntary
9 agreements for local off-site transportation improvements within the
10 geographic boundaries of the area or areas covered by an adopted
11 transportation program authorized by chapter 39.92 RCW. Any such
12 voluntary agreement is subject to the following provisions:

13 (1) The payment shall be held in a reserve account and may only be
14 expended to fund a capital improvement agreed upon by the parties to
15 mitigate the identified, direct impact;

16 (2) The payment shall be expended in all cases within five years of
17 collection; and

18 (3) Any payment not so expended shall be refunded with interest to
19 be calculated from the original date the deposit was received by the
20 county and at the same rate applied to tax refunds pursuant to RCW
21 84.69.100; however, if the payment is not expended within five years
22 due to delay attributable to the developer, the payment shall be
23 refunded without interest.

24 No county, city, town, or other municipal corporation shall require
25 any payment as part of such a voluntary agreement which the county,
26 city, town, or other municipal corporation cannot establish is
27 reasonably necessary as a direct result of the proposed development or
28 plat.

29 Nothing in this section prohibits cities, towns, counties, or other
30 municipal corporations from collecting reasonable fees from an
31 applicant for a permit or other governmental approval to cover the cost
32 to the city, town, county, or other municipal corporation of processing
33 applications, inspecting and reviewing plans, or preparing detailed
34 statements required by chapter 43.21C RCW, including reasonable fees
35 that are consistent with section 2(6) of this act.

36 This section does not limit the existing authority of any county,
37 city, town, or other municipal corporation to impose special

1 assessments on property specifically benefitted thereby in the manner
2 prescribed by law.

3 Nothing in this section prohibits counties, cities, or towns from
4 imposing or permits counties, cities, or towns to impose water, sewer,
5 natural gas, drainage utility, and drainage system charges. However,
6 no such charge shall exceed the proportionate share of such utility or
7 system's capital costs which the county, city, or town can demonstrate
8 are attributable to the property being charged. Furthermore, these
9 provisions may not be interpreted to expand or contract any existing
10 authority of counties, cities, or towns to impose such charges.

11 Nothing in this section prohibits a transportation benefit district
12 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
13 the legislative authority of a county, city, or town from approving the
14 imposition of such fees within a transportation benefit district.

15 Nothing in this section prohibits counties, cities, or towns from
16 imposing transportation impact fees authorized pursuant to chapter
17 39.92 RCW.

18 Nothing in this section prohibits counties, cities, or towns from
19 requiring property owners to provide relocation assistance to tenants
20 under RCW 59.18.440 and 59.18.450.

21 Nothing in this section limits the authority of counties, cities,
22 or towns to implement programs consistent with RCW 36.70A.540, nor to
23 enforce agreements made pursuant to such programs.

24 This section does not apply to special purpose districts formed and
25 acting pursuant to Title 54, 57, or 87 RCW, nor is the authority
26 conferred by these titles affected."

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27 On page 1, line 1 of the title, after "development;" strike the
28 remainder of the title and insert "amending RCW 82.02.020; adding a new
29 section to chapter 43.21C RCW; and creating a new section."

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