SENATE BILL REPORT
ESHB 2538

As Reported by Senate Committee On:
Environment, Water & Energy, February 26, 2010

Title: An act relating to high-density urban development.

Brief Description: Regarding high-density urban development.

Sponsors: House Committee on Ecology & Parks (originally sponsored by Representatives Upthegrove, Taylor, Eddy, Pedersen, Clibborn, Chase and Springer).

Brief History: Passed House: 2/13/10, 90-5.
Committee Activity: Environment, Water & Energy: 2/23/10, 2/24/10, 2/26/10 [DPA].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: Do pass as amended.
Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Fraser, Morton, Oemig, Ranker and Sheldon.

Staff: Jan Odano (786-7486)

Background: The Growth Management Act (GMA) is the state's land-use planning guide for county and city governments and provides a framework for regional coordination. Counties required to plan under the GMA must prepare a comprehensive plan to guide future decisions such as land-use development and regulations, and capital improvements. A comprehensive plan must be internally consistent and each comprehensive plan must be consistent with other comprehensive plans of cities and counties with common borders or related regional issues. In addition, zoning and other development regulations must be consistent with the comprehensive plan. Twenty-nine of the state's 39 counties are required to plan under the GMA and all are required to plan for critical areas and natural resource lands.

The State Environmental Protection Act (SEPA) requires state and local agencies to determine the environmental impact of land-use decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, adopting regulations, policies, or plans. Agencies are required to conduct an environmental review and determine if a proposal will cause probable significant adverse impacts to the environment. An Environmental Impact Statement (EIS) is required if it is determined there will be probable

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significant adverse impacts. A determination of nonsignificance is issued to a proposal that is unlikely to cause significant adverse environmental impacts. These determinations provide agencies with information to condition projects when significant impacts are identified.

A transfer of development rights (TDR) occurs when a qualifying landowner, 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 usually from areas where a community would prefer to see less growth to areas where a community would like more development. TDRs are voluntary transactions and landowners who transfer their rights are compensated for giving up their right to develop. Local governments may adopt a TDR program to preserve natural and historic spaces and encourage infill.

The Growth Management Planning and Environmental Review Fund (PERF) is a grant program that is administered by the Department of Commerce (Commerce). Under the PERF, a grant may be awarded to a jurisdiction to assist with the costs of preparing an environmental analysis under 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, Commerce must give preference to proposals that include one or more specific elements. These elements include: financial participation by the private sector or a public/private partnering approach; furtherance of important state objectives related to economic development; the protection of areas of statewide significance; and the siting of essential public facilities.

Summary of Bill (Recommended Amendments): Cities with a population greater than 5,000 required to plan under the GMA may adopt optional subarea development elements to their existing comprehensive plan. The subareas must be located in mixed-use or urban centers in a land-use or transportation plan adopted by a regional transportation organization; or within a half mile of a major transit stop zoned with an average minimum density of 15 dwelling units or more per acre.

Cities located on the east side of the Cascade mountains within a county with a population less than 230,000 may adopt subarea development elements to its comprehensive plans that apply to mixed-used or urban centers. The optional elements must enhance pedestrian, bicycle, transit, or other nonvehicular transportation methods.

A city choosing to adopt subarea development elements must prepare a nonproject environmental impact statement to assess and disclose probable significant adverse environment impacts from the optional subarea development element and future development allowed under the plan. There must be at least one community meeting on the proposed subarea plan before the scoping notice. Notice must be provided about the nonproject EIS and the community meeting to all property owners within the subarea, to all property owners within 150 feet of the subarea boundary, and affected federally recognized tribes with ceded area within one half mile of the subarea. Additional notice provisions are specified. A city must require a supplemental EIS if a proposed development is inconsistent with the nonproject EIS or if the potential impacts are not adequately addressed in the EIS. A person meeting the requirements for standing under the GMA may appeal the adoption of a subarea or implemention of regulations.

In cities with a population over 500,000, community meeting notices must be mailed to all small businesses within the subarea, within 150 feet of the subarea, and community preservation and development authorities. The city must also analyze if the proposed subarea plan will displace or fragment businesses, existing residents, which includes people living in poverty, families with children, and intergenerational households. The analysis must be discussed at the community meeting.

Until July 1, 2018, a proposed project consistent with the comprehensive plan subarea elements or development regulations and environmentally reviewed may not be appealed for noncompliance as long as a complete development application vests within the timeframe established by the city, not to exceed ten years from the final EIS. After July 1, 2018, a vested project may not be appealed if it is within the scope of the EIS and the EIS was issued prior to July 1, 2018.

A city choosing to include optional elements into its comprehensive plan must consider establishing a TDR program in consultation with the county where the city is located that conserves county-designated agricultural and forest land of long-term commercial significance. If the city decides not to establish a TDR program, it must state in the record its reasons. A city's decision not to adopt a TDR program is not subject to appeal.

A city may apply for grant funding for the nonproject EIS for a subarea development from the PERF provided by Commerce. A city may also recover costs through private funding or by assessing a fee to subsequent developments that are within the scope of the nonproject EIS. These fees may be used to reimburse private sources for funds received. The collection of the fee is authorized within the excise taxes statute.

A city must establish an ordinance with standards for determining development fees proportionate to the impact and benefit received within the scope of the EIS. Any disagreement about the amount of the fees may not be used to delay the project permit. If the city provides for an administrative appeal of its decision on the project for which the fees are imposed, dispute of the fee assessment must be resolved in that administrative appeal process.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Amendments): Clarifies notice requirements to community preservation and development authorities, and analysis requirement of impacts to existing businesses and residents within the subarea plan; and requires notification to federally recognized tribes who have ceded areas within one half mile of a subarea boundary.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: The goal is simple to use streamlined environmental permitting processes as a way to incentivize in-fill and urban development and the public benefits that this brings. This will help to provide livable, walkable cities. This is entirely an optional tool for local governments to use, if they wish. This bill expands the use of the tool to more smaller counties and rural communities. The amendatory language creates ambiguity and difficulty for cities to comply. We will work with you to development an amendment. Notice should also be provided to tribes with ceded areas within a subarea plan.

Persons Testifying: PRO: Representative Upthegrove, prime sponsor; Chris McCabe, Association of Washington Businesses; Dawn Vyvyan, Yakama Nation/Puyallup Tribe.