

HOUSE BILL REPORT

HB 1622

As Reported by House Committee On:
Local Government

Title: An act relating to the authorization of a sustainable development alternative for managing residential development in rural areas using transferable development rights.

Brief Description: Authorizing rural conservation development demonstration projects.

Sponsors: Representatives Dunshee and Hope.

Brief History:

Committee Activity:

Local Government: 2/8/11, 2/16/11 [DP].

Brief Summary of Bill

- Authorizes qualifying counties to designate rural conservation development demonstration projects (Demonstration Projects) for residential development in rural areas.
- Authorizes Demonstration Projects to be processed as "planned actions" under the state Environmental Policy Act.
- Establishes numerous provisions governing the siting and establishment of Demonstration Projects.
- Authorizes community facilities districts to include land within a Demonstration Project and to purchase transferable development rights.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 5 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Fitzgibbon, Rodne, Smith and Upthegrove.

Staff: Ethan Moreno (786-7386).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally-adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

Under the GMA, lands are generally classified in one of three categories:

- *Urban Growth Areas:* Urban Growth Areas (UGAs), which are designated by counties that fully plan under the GMA, are areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Fully planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period;
- *Natural Resource Lands:* This category includes agricultural, forest, and mineral resource lands of long-term commercial significance; or
- *Rural Lands or Areas:* This category includes all non-resource lands that are not within an UGA.

While limited development outside of UGAs and natural resource lands is permitted under the GMA, comprehensive plans must include provisions that protect the rural character of the rural area and contain or otherwise control rural development. "Rural development," as the term is defined in the GMA, can consist of a variety of uses and residential densities, including clustered residential development at levels that are consistent with the preservation of rural character and other applicable requirements.

Qualifying development is expressly permitted under the GMA in rural areas if prescribed requirements are met. For example, counties may permit Limited Areas of More Intensive Rural Development (LAMIRDs) providing for the following:

- *Rural development:* allowing the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas.
- *Recreational and tourist uses:* allowing intensification of development on lots containing, or new development of, small-scale recreational or tourist uses.
- *Nonresidential/cottage industry:* allowing intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.

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.

State Environmental Policy Act.

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

Provisions in the SEPA generally require a project applicant to complete an environmental checklist that includes questions about the potential environmental impacts of the proposal. This checklist is then reviewed by the lead agency (one agency identified as such and responsible for compliance with the procedural requirements of the act) to determine, via a threshold determination, whether the proposal is likely to have a significant adverse environmental impact.

Local governments and state agencies must prepare an environmental impact statement (EIS) for legislation and other major actions having a probable significant, adverse environmental impact. The EIS includes, in part, detailed information about the environmental impact of the project, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action.

Specific categorical exemptions from the EIS and other requirements for actions meeting specified criteria are specified in the SEPA. For example, planned actions, specific development project actions that are within an UGA and have had significant impacts addressed in an EIS prepared in conjunction with a comprehensive plan or subarea plan, do not require a threshold determination or an EIS. Planned actions, however, are still subject to environmental review and mitigation under the SEPA.

Community Facilities Districts.

Legislation adopted in 2010 (i.e., Engrossed Substitute House Bill 6241, enacted as chapter 7, Laws of 2007) authorized the creation of community facilities districts (CFDs or districts), independent special purpose districts that may finance community facilities and local, subregional, and regional infrastructure. A CFD may only be created by a landowner petition

that must be approved by the county, city, or town in which the district is located, and a CFD may only include land located within an UGA designated under the GMA.

A CFD, which is governed by a board of supervisors, may acquire, purchase, hold, lease, finance, and sell real and personal property, either inside or outside the boundaries of the district. A CFD may impose special assessments on privately owned real property within the district to finance facilities and improvements provided by the district. Examples of expenses and facilities that may be financed include:

- the cost of the purchase, lease, construction, improvement, or rehabilitation of any facility with an estimated life of five years or longer;
- sanitary sewage systems;
- highways, streets, roadways, and parking facilities;
- traffic control systems and devices; and
- library, educational, and cultural facilities.

Summary of Bill:

Eligibility and General Establishment Provisions.

Counties that fully plan under the GMA, are located in the Puget Sound basin, and have between 500,000 and 750,000 persons are authorized to designate one rural conservation development demonstration project (Demonstration Project or Project). "Rural conservation development demonstration project" is defined to mean a compact rural development created using a transfer of development rights, in accordance with Demonstration Project requirements, and as established by the county's comprehensive plan policies and development regulations. Demonstration Projects meeting prescribed requirements are an expressly authorized form of rural development and do not constitute urban growth.

Location Requirements.

Provisions for siting Demonstration Projects are specified. For example, Demonstration Projects must be located in the rural area and must be designed to co-exist with traditional rural land uses such as farming and forestry. Demonstration Projects may be located on sites of 750 or more contiguous acres in the rural area that are outside of established LAMIRDs, and a portion of the Project must be within three miles of a state or federal highway. Demonstration Projects may not be located on designated agricultural, forest, or mineral lands of long-term commercial significance, and counties are prohibited from simultaneously processing a request to de-designate these natural resource lands and a proposal to consider these same lands for a Demonstration Project.

General Provisions.

Numerous provisions and requirements governing the establishment and character of Demonstration Projects are established. The following illustrates examples of these provisions and requirements:

- *Residential development:* Demonstration Projects may include a combination single-family detached housing, single-family attached housing, multifamily housing, and accessory dwelling units. A maximum of 1,600 dwelling units may be authorized in a Project.
- *Transfer of development rights:* A county authorizing a Demonstration Project must identify rural-zoned lands or lands designated as natural resource lands of long-term commercial significance that are eligible as sending sites. Demonstration Projects must be authorized receiving areas of rights from certified sending sites.
- *Process:* A county establishing a Demonstration Project must adopt comprehensive plan policies and development regulations to effect and implement the Project. Demonstration Projects must comply with all relevant development regulations, however, Project provisions control over conflicting provisions of the GMA.
- *External boundaries:* Clear external boundaries, meeting specified requirements, must be delineated for each Demonstration Project and may not be expanded. A permanently conserved perimeter buffer that must generally be at least 200 feet in width must also be established within the boundaries of the Project and permanently conserved.
- *Public services and facilities:* A county establishing a Demonstration Project must address how new or improved infrastructure necessary to serve the Project will be provided.
- *Open space:* A minimum of 70 percent of the gross site area of a Demonstration Project must be set aside as designated open space.
- *Native vegetation:* Development regulations or agreements authorizing a Demonstration Project must include provisions to minimize and mitigate for the clearing of native vegetation within a Project.

Environmental Review/State Environmental Policy Act.

A county's review and approval of a Demonstration Project must address and provide for environmental protection, consistent with the SEPA. Counties are given express authority to process a Demonstration Project as a "planned action" under the SEPA, and the SEPA definition of "planned action" is amended to authorize this authority.

Growth Management Act.

The GMA definition of "rural development" is amended to specify that a Demonstration Project is a permitted form of rural development. Legislative findings in the GMA pertaining to rural lands are amended to specify that Demonstration Projects will promote sustainable residential development as a means of managing rural residential growth and protecting designated resource lands of long-term commercial significance.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Land use is a sticky wicket. In the past, sprawl has been permitted in rural areas, but this development is the most expensive to service. This proposal attempts to cluster development, create open space, and provide government services more efficiently. With clustering, you will have more development in the rural area, but it will be subject to environmental review and mitigation.

This bill will allow Snohomish County to do a Demonstration Project for a rural village. This Project will allow the county to take a series of vested developments and add to it, but those additional lots will be permitted in conjunction with preserving other rural areas. This development will not increase rural density, but will include road improvements. Under this bill, the permitted development will have a smaller footprint, will not use septic tanks, and will be subject to environmental mitigation. The bill is the result of a three-year process that engaged the public and developers. It is innovative and is supported by diverse interests. The bill will allow the county to make development decisions in accordance with parameters established by the Legislature.

Cascade Land Conservancy has intensively studied rural and resource lands, lands that will disappear in 50 years. While the idea of moving all sprawl into cities is desirable, it is not economically possible. This bill provides a needed and elegant alternative solution to a challenging issue. This bill will better manage existing resources.

(In support with concerns) The Washington State Department of Transportation (DOT) supports transfer of development rights processes when they do not shift a capacity problem from one area to another. The DOT is encouraged by provisions in the bill, but the agency would like to work the bill's language to ensure that there is capacity for state transportation facilities.

(Opposed) The bill contains many "shoulds" but the experimental development authorized by it will not require an environmental impact statement. The proponents of the bill do not live in the area affected by its provisions. The bill will replace local authority under the GMA with state-mandated actions. The bill should be tabled so that representative government can continue. The bill will create significant traffic impacts on a two-lane road in the Smokey Point area. Flooding in the area will further limit transportation options. Original proposals for rural areas included a promise to preserve rural lands and lifestyles, but this bill will violate that promise. This bill will allow a new bedroom community, with up to 1,600 homes, to be authorized in the rural area of Snohomish County. Authorizing additional units in the rural area is not a solution to development concerns. The bill does not require the creation of new jobs in the development area, and the area will not have urban amenities, even if they are expected. This bill will allow a new exemption to provisions in the GMA that currently prohibit development in rural areas.

Persons Testifying: (In support) Representative Dunshee, prime sponsor; Dave Somers, Snohomish County; D.J. Wilson, Lake Goodwin Associates Joint Venture; Brian Holzclaw, The McNaughton Group; and Gene Duvernoy, Cascade Land Conservancy.

(In support with concerns) Elizabeth Robbins, Washington State Department of Transportation.

(Opposed) Michelle Liburdy, Harlan Jackson, and Wayne Taylor, 7 Lakes; and April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.