HOUSE BILL REPORT
HB 1717

As Reported by House Committee On:
Local Government

Title: An act relating to incentivizing up-front environmental planning, review, and infrastructure construction actions.

Brief Description: Incentivizing up-front environmental planning, review, and infrastructure construction actions.

Sponsors: Representatives Fitzgibbon, Jinkins, Liias, Maxwell, Roberts, Pollet, Upthegrove, Morrell and Springer.

Brief History:
Committee Activity:
Local Government: 2/15/13, 2/22/13 [DPS].

Brief Summary of Substitute Bill

- Authorizes local governments to recover reasonable expenses incurred in the preparation of nonproject environmental impact statements (EIS) for infill actions that are categorically exempt from requirements of the State Environmental Policy Act, and for development or redevelopment actions that qualify as "planned actions."
- Establishes requirements governing recovery fee assessments and related appeals, including requiring the fees to be enacted through ordinances, and to be reasonable and proportionate to the total expenses incurred by the local government in preparation of the EIS.
- Modifies provisions governing contracting between qualifying municipalities and real estate owners for the construction of water or sewer facilities by making the contracts mandatory, at the owner's request, and by allowing municipalities to collect associated fees.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Fitzgibbon, Vice Chair; Kochmar, Assistant Ranking Minority Member; Buys, Liias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Ranking Minority Member.

Staff: Ethan Moreno (786-7386).

Background:

The State Environmental Policy Act.
The State Environmental Policy Act (SEPA) establishes a review process for state agencies and local governments to identify possible environmental impacts that may result from nonexempted government actions. The actions include "project" actions involving decisions on specific projects, such as the issuance of a permit, and "nonproject" actions involving decisions on policies and plans, including the adoption of land use plans and regulations. The information collected through the SEPA review process may be used to change a proposal to mitigate likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

Provisions of the SEPA generally require a project applicant to complete an environmental checklist. An environmental checklist includes, in part, 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 SEPA) to determine whether the proposal is likely to have a significant adverse environmental impact. This environmental "threshold determination" is made by the lead agency and is documented in either a determination of nonsignificance or a determination of significance.

A determination of significance requires the preparation of an environmental impact statement (EIS) by the lead agency. The EIS must include detailed information about the environmental impact of the project, and any adverse environmental effects that cannot be avoided if the proposal is implemented. The EIS must also include alternatives, including mitigation, to the proposed action. Analysis of environmental considerations for an EIS may be required only for listed elements of the natural and built environment.

Specific categorical exemptions from the EIS and other requirements for actions meeting specified criteria are established in the SEPA.

Growth Management Act.
The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. 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 by mandate or choice to satisfy all planning requirements of the GMA.

The GMA directs planning jurisdictions (*i.e.*, 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, which are the frameworks of county and city planning actions, are implemented through locally-adopted development regulations.

Counties that fully plan under the GMA must designate urban growth areas, areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. These fully planning counties and each city within must include in their urban growth areas, 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.

The GMA also establishes Washington's Growth Management Planning and Environmental Review Fund (PERF). Moneys in the PERF may be used to make grants or loans to local governments for actions pertaining to: specific project review actions related to the GMA; the preparation of an EIS; or environmental analysis costs associated with the SEPA that are integrated with qualifying planning activities. Moneys in the PERF may originate from bond sales, tax revenues, budget transfers, federal appropriations, gifts, or any other lawful source.

Infill and Planned Actions.
Planning jurisdictions may categorically exempt government actions under the SEPA related to qualifying residential, mixed use, or commercial development that is proposed to fill in an urban growth area where density and intensity of use in the area is lower than what is called for in the applicable comprehensive plan. The comprehensive plan must have been previously subjected to an environmental analysis through an EIS under the SEPA, and the categorical exemption may not exempt government action related to development that is inconsistent with the comprehensive plan or would exceed the density or intensity of use called for in the comprehensive plan. Additionally a local government adopting an exemption must consider the specific probable adverse environmental impacts of the proposed action and determine that the impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan or other regulations or laws.

Planning jurisdictions may also adopt a planned action process in accordance with requirements prescribed in the SEPA. A planned action is a type of development or redevelopment action that meets specified criteria, including having been designated as a planned action by the applicable local government, and having had the significant impacts adequately addressed in an EIS in conjunction with or to implement a comprehensive plan or subarea plan under the GMA, or other action authorized in statute.

Contracts with Real Estate Owners for the Construction of Water or Sewer Facilities.
The governing body of any county, city, town, water-sewer district, or drainage district (municipality) may contract with the owners of real estate for the construction of certain water or sewer facilities to connect with public water or sewer systems to serve the affected real estate. The water or sewer facilities may be with the jurisdiction of the municipality or, except for counties, the facilities may be within 10 miles of their corporate limits. The contracts may include provisions for the owners to be reimbursed for their construction costs for 20 or fewer years through a process by which the owners of real estate who did not

contribute to the original cost of the water or sewer facilities, but who subsequently use the facilities or connect to the laterals or branches of the facilities, must pay a pro rata share of the costs. The 20-year time limit, however, may be extended if government actions prevent the making of applications or the approval of new development within the area served by the water or sewer facilities for six or more months.

If authorized by ordinance or contract, a municipality may participate with the real estate owners in financing the water or sewer facilities. Unless prohibited by ordinance or contract, a municipality that contributes to the financing of a water or sewer facility project has the same rights to reimbursement as the contributing real estate owners. Municipalities that seek reimbursements through this process may not collect any additional reimbursement, assessment, charge, or fee for the constructed infrastructure or facilities.

Summary of Substitute Bill:

Recovery of Reasonable EIS Expenses - General Authorization.
Counties, cities, and towns (local governments) are authorized to recover reasonable expenses of preparation of a nonproject environmental impact statement (EIS) prepared in accordance with infill and planned action requirements in the State Environmental Policy Act (SEPA). The expense recovery may occur through the following methods:

- through access to financial assistance through Washington's Growth Management Planning and Environmental Review Fund (PERF) ;
- with funding from private sources; and
- through the assessment of fees consistent with specified requirements and limitations.

Fees - Authorization, Assessment, Appeals, and Refunds.
Local governments may assess a fee upon subsequent development that will make use of and benefit from:

- the analysis in an EIS prepared for the planned action requirements of the SEPA; or
- the reduction in environmental analysis requirements resulting from the exercise of infill exemption authority infill development established in the SEPA.

The collected fees may be used to reimburse funding received from private sources to conduct the environmental review.

General fee assessment provisions are established. For example:

- The fee amount must be reasonable and proportionate to the total expenses incurred by the local government in the preparation of the environmental impact statement.
- The local government must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees, or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees.

Additionally, the local government, prior to the collection of fees, must enact an ordinance satisfying several specific requirements, including:

- establishing the total amount of expenses to be recovered through fees, and providing objective standards for determining the fee amount to be imposed upon each development proposal;
- providing a procedure by which an applicant may pay the fees under protest. If the local government provides for an administrative appeal of its decision on the project for which the fees are imposed, the ordinance must provide that any dispute about the amount of the fees be resolved in the same administrative appeals process; and
- making information available about the amount of the expenses designated for recovery. When these expenses have been fully recovered, the local government may no longer assess a fee.

Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

If a court determines that an environmental review conducted under planned action or infill exemption provisions of the SEPA was insufficient to requirements of the SEPA regarding the proposed development activity for which the fees were collected, the local government must refund the fees. Additionally, the applicant and the local government may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with the SEPA.

Contracts with Real Estate Owners for the Construction of Water or Sewer Facilities.
At the owner's request, the governing body of any county, city, town, or drainage district (municipality) must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at his or her own expense. An owner's request may only require a contract in locations where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development, and in locations where the proposed improvement or construction will be consistent with the comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve.

Water or sewer facilities improved or constructed through this contractually based process must be located within the municipality's corporate limits or within 10 miles of the municipality's corporate limits. Water or sewer facilities improved or constructed through the contractually based process, however, may not be located outside of the county that is a party to the contract. The contracts must be filed and recorded with the county auditor and must contain conditions required by the municipality in accordance with its adopted policies and standards.

A municipality that is a party to a contract must request comprehensive plan approval for an extension, if required. Additionally, connection of the extension to the municipal system must be conditioned upon specified requirements, including:
- construction of the extension according to plans and specifications approved by the municipality;
- inspection and approval of the extension by the municipality; and

- payment by the owner to the municipality of all of the municipality's costs associated with the extension including, but not limited to, engineering, legal, and administrative costs.

Unless provided otherwise by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved through the contractually based process are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality.

Contracts between municipalities and real estate owners must provide for the reimbursement to the owner or the owner's assigns for 20 or more years. The reimbursements must be:

- within the period of time that the contract is effective;
- for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and
- from connection charges received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

Within 90 days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

Excise Tax Provisions.
Excise tax provisions authorizing cities, towns, counties, and other municipal governments to collect reasonable fees from an applicant for a permit or other governmental approval to cover the costs of processing applications, inspecting and reviewing plans, or preparing detailed statements required by the SEPA, are modified to expressly allow: the recovery of reasonable expenses incurred in the preparation of a nonproject EIS prepared in accordance with infill and planned action requirements in the SEPA; and the collection of fees by a municipality in connection with a water or sewer facility that was constructed through a contract with a real estate owner.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- establishes definitions for provisions governing water or sewer facility improvement or construction contracts between municipalities and real estate owners (contracts) that remove "water-sewer districts" from the definition of "municipality;"
- specifies that, upon a real estate owner's request, a contract must be entered into between a qualifying municipality and the real estate owner;
- requires the contracts to be filed and recorded with the county auditor;
- establishes provisions for authorized extensions to municipal systems;
- allows the contracts to be extended beyond 20 years, restoring language stricken in the original bill;
- conditions the requirement for a municipality to contract with a requesting real estate owner upon the facilities being consistent with all applicable comprehensive plans

and development regulations of the municipalities through which the facilities will be constructed or will serve;
- modifies provisions governing the requirement for real estate owners to submit water or sewer facility cost data to municipalities, and specifies that the provided data must be the basis for determining reimbursements required of future users; and
- makes technical changes.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The new portion of this bill (which includes the provisions of House Bill 1104) relates to an existing latecomer fee option that is intended to ensure that people do not freeload on infrastructure that was previously paid for by other parties. The goal of this bill is to create more certainty and consistency in the latecomer process.

Although current law allows developers and builders to recoup infrastructure costs, it presents two challenges: the provisions are not mandatory, as local governments may enter into contracts with private parties for infrastructure construction and cost recovery, and the contract term may be up to 20 years. More specifically, the cost recovery provisions are not always used, and some jurisdictions use shorter timeframes and collect fewer reimbursement dollars. The current law creates problems for developers and builders, including Quadrant Homes. This bill will require the contracts to be used, establishes a mandatory 20-year term, and authorizes local governments to collect fees for administrative costs. The bill will incent development and will create new taxes and revenues. It will also benefit small and large developers. The SEPA provisions of the bill may need to be modified.

The bill should be moved forward as a work-in-progress. Cities play a middleman role in the latecomer process. If this bill becomes law, small and large cities will want to make sure that it is workable for them. Cities would like to continue working on the bill.

(In support with amendment) Six years ago water-sewer districts negotiated a latecomer statute for their use. They would like to continue using that statute and would like to have references to water-sewer districts removed from the bill.

(Opposed) None.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Anthony Chavez, Weyerhaeuser; Scott Hildebrand, Master Builders Association of King and Snohomish Counties; Carl Schroeder, Association of Washington Cities; and Brandon Houskeeper, Association of Washington of Washington Business.

(In support with amendment) Joe Daniels, Washington Association of Sewer and Water Districts.

Persons Signed In To Testify But Not Testifying: None.