FINAL BILL REPORT
ESHB 1717

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Synopsis as Enacted

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

Sponsors: House Committee on Local Government (originally sponsored by Representatives Fitzgibbon, Jinkins, Liias, Maxwell, Roberts, Pollet, Upthegrove, Morrell and Springer).

House Committee on Local Government
Senate Committee on Governmental Operations

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 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 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.

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.

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 (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 otherwise subject to the requirements of the SEPA if they are related to qualifying 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 actions related to development that are inconsistent with the comprehensive plan or would exceed the allowable density or intensity of use. 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 specified planning provisions.

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 within 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 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:

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 from 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 development exemption authority 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 EIS;
- the local government may not assess fees for general comprehensive plan amendments or updates; and
- 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; 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 comply with 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 or Improvement 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 specific 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. Additionally, the owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality.

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 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.

Unless the municipality notifies the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for the water or sewer facility, if required. Additionally, connection of the water or sewer facility to the municipal system must be conditioned upon specified requirements, including:

- construction of the water or sewer facility according to plans and specifications approved by the municipality;
- inspection and approval of the water or sewer facility by the municipality; and
- payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility 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. Municipalities seeking reimbursements are also entitled to collect fees that are reasonable and proportionate to expenses incurred in complying with provisions governing contracts with real estate owners for the construction or improvement of water or sewer facilities.

Contracts between municipalities and real estate owners must provide for the pro rata 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 latecomer fees, a defined term, 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 120 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.

Provisions governing contracts with real estate owners for the construction or improvement of water or sewer facilities do not create a private right of action for damages against a municipality for failing to comply with specified requirements. A municipality, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure to comply with requirements for contracts with real estate owners for the construction or improvement of water or sewer facilities does not relieve a municipality of future compliance requirements.

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, after July 1, 2014, 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.

Votes on Final Passage:

House	98	0
Senate	48	0

Effective: July 28, 2013
July 1, 2014 (Sections 2-3)