SENATE BILL REPORT
ESHB 1717

As Reported by Senate Committee On:
Governmental Operations, April 1, 2013

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

Brief History: Passed House: 3/08/13, 98-0.
Committee Activity: Governmental Operations: 3/25/13, 4/01/13 [DP, w/oRec].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass.
Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Braun, Conway and Fraser.

Minority Report: That it be referred without recommendation.
Signed by Senator Rivers.

Staff: Karen Epps (786-7424)

Background: The State Environmental Policy Act (SEPA) applies to decisions made by state and local agencies, including counties, cities, ports, and special districts. It provides a framework to consider the environmental consequences of a proposed project prior to taking action on the proposal.

The SEPA process begins with a permit application or initiation of an agency proposal. The environmental review process involves a project applicant completing an environmental checklist to identify and evaluate probable environmental impacts, and to develop mitigation measures that will reduce adverse environmental impacts. This checklist is then reviewed by the lead agency to determine whether the proposal is likely to have a significant adverse environmental impact. For most proposals, one agency is designated as the lead agency. An

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environmental threshold determination is made by the lead agency and is documented in either a determination of nonsignificance or a determination of significance.

A proposal that is likely to have significant adverse environmental impacts requires an environmental impact statement (EIS). The lead agency prepares the EIS to provide an impartial review of significant environmental impacts, reasonable alternatives, and mitigation activities that would avoid or minimize the adverse impacts. 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. Specific categorical exemptions from the EIS and other requirements for actions meeting specified criteria are established in SEPA.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. GMA directs jurisdictions that fully plan under the act (planning jurisdictions) to adopt internally consistent comprehensive land use plans, which 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. GMA also includes numerous requirements relating to the use or development of land in urban and rural areas. Planning jurisdictions must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature.

Planning jurisdictions may categorically exempt government actions under SEPA related to qualifying residential, mixed-use, or commercial development that is proposed to fill in an UGA 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 review through an EIS under 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.

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

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

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 ten 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.

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 Bill: Counties, cities, and towns may recover reasonable expenses of preparation of a nonproject EIS prepared in accordance with infill and planned action requirements in SEPA. The expense recovery may occur through the following methods:

- access to financial assistance through PERF;
- with funding from private sources; and
- the assessment of fees consistent with specified requirements and limitations.

Counties, cities, and towns 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 SEPA; or
- the reduction in environmental review requirements resulting from the exercise of infill exemption authority development established in SEPA.

The collected fees may be used to reimburse funding received from private sources to conduct the environmental review. The fee amount must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the EIS. The county, city, or town may not assess fees for general comprehensive plan amendments or updates. The county, city, or town 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.

A county, city, or town, prior to the collection of fees, must enact an ordinance that:

- establishes the total amount of expenses to be recovered through fees, and provides objective standards for determining the fee amount imposed upon each development proposal;
- provides 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
- makes information available about the amount of the expenses designated for recovery. When these expenses are fully recovered, the county, city, or town 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 SEPA was insufficient to satisfy the requirements of SEPA regarding the proposed development activity for which the fees were collected, the county, city, or town must refund the fees. Additionally, the applicant and the local jurisdiction may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with SEPA.

At the owner's request, a 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 the owner's own expense. An owner's request may only require a contract in certain locations, including the following:
- where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development;
- 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; and
- within the municipality's corporate limits or within ten miles of the municipality's corporate limits.

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. 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. Connection of the water or sewer facility to the municipal system must be conditioned upon specified requirements:
- 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;
- be for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and
- be from latecomer fees 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.

The 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 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 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 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 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The SEPA portion of this bill builds on a stakeholder process that has been going on over the last couple of years. This bill makes sure

that there are incentives for local governments to do upfront SEPA work that benefits both the local government, developers, and business. This bill allows local governments to recover costs associated with that work. Another aspect of this bill removes barriers to allow for owners of real estate making upfront costs on water and sewer construction to recoup those costs through latecomer fees in a timely manner. The SEPA portion of this bill allows cities to do upfront work so that builders and developers do not need to do it and then recover the costs for that work. When this work is done upfront, it can provide off-the-shelf permitting for project. For example one project received permits in one month when it used to take three or four months. The utility/latecomer piece of the bill addresses a fairness issue for the owners who put in these projects while others benefit from them. This bill will provide certainty for builders who make upfront investments. This bill will encourage infrastructure to accommodate growth.

Persons Testifying: PRO: Brandon Houskeeper, Assn. of WA Business; Carl Schroeder, Assn. of WA Cities; Anthony Chavez, Weyerhaeuser; Scott Hildebrand, Sno-King Master Builders Assn.