HOUSE BILL REPORT
E2SSB 5254

As Passed House:
June 29, 2017

Title: An act relating to ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Brief Description: Ensuring adequacy of buildable lands and zoning in urban growth areas and providing funding for low-income housing and homelessness programs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Fain, Palumbo, Zeiger, Angel, Hobbs and Mullet).

Brief History:
Committee Activity:
None.
Third Special Session
Floor Activity:
Passed House: 6/29/17, 85-9.

Brief Summary of Engrossed Second Substitute Bill

- Extends the $40 local homeless housing and assistance surcharge to 2023.
- Allows revenue from the local real estate excise tax (REET II) to be used for homeless housing development through 2019, subject to certain conditions.
- Makes certain changes to the Growth Management Act's buildable lands program through 2030, including making Whatcom County subject to buildable lands program requirements and requiring that county buildable land reports be completed at least two years prior to scheduled comprehensive plan updates.
- Requires the Department of Commerce to contract for the development of buildable lands program guidance for use by local governments.
- Exempts certain planned actions designated by local governments that encompass areas located near transit stops from environmental impact statement requirements under the State Environmental Policy Act.

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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 Originally enacted in 1990 and 1991, the GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities, and a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, by mandate or choice, to satisfy all planning requirements of the GMA.

Jurisdictions that fully plan under the GMA must adopt comprehensive land-use plans to express the general land-use policies of the county or city, and development regulations to implement those plans. Comprehensive plans must address specified planning elements, such as a housing element, a land use element, and an economic development element, each of which is a subset of a comprehensive plan.

Counties that fully plan under the GMA must designate urban growth areas (UGAs), 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 must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period.

Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four different year classes for purposes of when the obligation to review and revise their comprehensive plans commences:

- three counties, and the cities within them, are required to review and revise their comprehensive plans no later than June 30, 2015, and every eight years thereafter;
- 10 counties, and the cities within them, are required to review and revise their comprehensive plans no later than June 30, 2016, and every eight years thereafter.
- nine counties, and the cities within them, are required to review and revise their comprehensive plans no later than June 30, 2017, and every eight years thereafter; and
- the remaining counties, and the cities within them, are required to review and revise their comprehensive plans no later than June 30, 2018, and every eight years thereafter.

Growth Management Act Buildable Lands Program.
The GMA requires King, Snohomish, Pierce, Clark, Thurston, and Kitsap counties (buildable lands counties) to establish a growth review and evaluation program known as the buildable lands program. In establishing their buildable lands program, these counties must consult with the cities within them. The stated purpose of the buildable lands program is to determine whether the counties and cities are achieving urban growth within UGAs. This determination is accomplished by comparing actual growth and development with the growth and development that was assumed or forecasted in comprehensive plans and planning policies.

The buildable lands program must also include the identification of reasonable measures, not to include the adjustment of a UGA, that the county and its cities will take to comply with GMA requirements. When a buildable lands program identifies a divergence between forecasted and experienced growth and development, the counties and cities must take measures reasonably likely to increase the consistency between the forecasted and experienced growth. Any such remedial measures to increase consistency between actual and forecasted growth must involve annual monitoring by the city or county, and must be revised or rescinded as appropriate.

To achieve the buildable lands program's purposes, buildable lands counties and their cities must collect certain data on land uses within and outside of UGAs to determine the amount and type of land suitable for development. This data collection and evaluation must include:

- a determination of whether sufficient land is available to meet projected population in a county and its cities;
- a determination of the density of housing and developed land within a UGA occurring since the last comprehensive plan update or buildable lands program evaluation; and
- a review of the commercial, residential, and industrial land needs for the remaining portion of the 20-year planning period.

Buildable lands counties and their cities must complete their buildable lands data collection and evaluation by no later than one year before their next comprehensive plan update. This completed evaluation is referred to as the buildable lands report.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS).

Cities, counties, or towns planning under the GMA may designate by ordinance or resolution certain types of developments as planned actions whose significant impacts have been adequately addressed via the EIS undertaken in conjunction with GMA comprehensive plans or other specified development plans.

Local Homeless Housing and Assistance Surcharge.

Both the state and local homeless housing programs receive funding from the local homeless housing and assistance surcharge collected by each county auditor when a document is recorded. The surcharge is $40 per recorded document, but is scheduled to change back to $10 in 2019. The surcharge is applied in addition to any authorized surcharges, as well as any administrative fees collected by the county auditor.

Both the state and the county receive a percentage of the money collected from the surcharge. Approximately 60 percent is distributed to the county, and approximately 40 percent to the state. The funds collected for the $40 local homeless housing and assistance surcharge are distributed as follows:

- 2 percent to the county for collection of the fee;
- 60 percent of the remainder to the county for its homeless housing program, up to 6 percent of which may be used for administering its homeless housing plan;
- 40 percent of the remainder to be deposited in the Home Security Fund, up to 12.5 percent of which may be used by the Department of Commerce for managing the state Homeless Housing Program, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program;
    - Of the remaining 87.5 percent of the 40 percent, at least 45 percent must be set aside for private rental housing payments; and
    - the remainder of all funds go to the Department of Commerce to be used to provide housing and shelter for homeless people and fund the homeless housing grant program.

The $40 local homeless housing and assistance surcharge applies to most recorded documents. Certain documents are exempt, including documents recording a birth, marriage, divorce, or death, and documents recording a state, county, or city lien.

Real Estate Excise Tax.
The state imposes an excise tax on the sale of real property at a rate of 1.28 percent of the selling price. Most of the revenue from the real estate excise tax (REET) is deposited into the General Fund, through 2019, certain amounts are directed to financing local public works projects and education funding. Penalties collected for delinquent payments are deposited in the state Housing Trust Fund.

In addition to the state REET, cities and counties are authorized to impose two additional excise taxes on real property sales.

REET I. The legislative body of a city or county may impose a REET not to exceed a rate of 0.25 percent of the selling price of property (REET I). Up to an additional 0.5 percent excise tax may be imposed in lieu of the city or county local sales and use tax.

Proceeds from the REET I are dedicated for financing certain capital projects and improvements, that include public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of certain types of facilities and infrastructure. Such qualifying projects include:

- streets, roads, highways, and sidewalks;
- street and road lighting systems;
- storm and sanitary sewer systems;
- recreational facilities;
- parks;
- law enforcement and fire protection facilities;
- administrative and judicial facilities; and
- river and waterway flood control projects.

REET II. Counties and cities that are required to plan under the GMA may impose an additional REET (REET II) not to exceed a rate of 0.25 percent of the selling price of property. Such an option must be voter approved in the qualifying county or city.

Counties and cities may use REET II revenue for financing capital projects specified in their comprehensive plan that include:

- streets, roads, highways, and sidewalks;
- street and road lighting systems; and
- storm and sanitary sewer systems.

A city or county may use up to $100,000 or up to 25 percent of its revenue from REET II for the maintenance of capital projects or other capital projects authorized under REET I, so long as certain conditions are met. The conditions include that the city or county:

- prepare a written report demonstrating that it has adequate funding from all revenue sources to pay for all of the capital projects in its capital facilities plan; and
- has not enacted any requirements, after June 9, 2016, on the listing or sale of real property or on landlords at the time of executing a lease to perform or provide physical improvements or modifications to real property or fixtures, unless necessary to address health and safety concerns.

Summary of Bill:

Buildable Lands.
Logistics. The buildable lands report must be completed no later than 2 years prior to a jurisdiction's next comprehensive plan update for those comprehensive plans due to updated prior to 2024, and no later than 3 years prior the scheduled comprehensive plan updates for those comprehensive plan updates scheduled to take place between 2024 and 2030.

Until 2030, and subject to legislative appropriation, Whatcom County and the cities within Whatcom County are made subject to buildable lands program requirements.

Reasonable Measures. Until 2030, and subject to legislative appropriation, the reasonable measures that must be identified by buildable lands programs are specified to be those actions necessary to reduce differences between actual development patterns and the development that was assumed or targeted in the jurisdiction's GMA comprehensive plans and polices. Counties must develop these reasonable measures as a component of their buildable lands programs, and must adopt, if necessary, these reasonable measures into their comprehensive plans and development regulations during the next comprehensive plan updates. Furthermore, during the county's next comprehensive plan update, this reasonable measures process must be used to reconcile inconsistencies. Reasonable measures adopted to address inconsistency between forecasted and experienced growth are no longer required to be monitored and adjusted annually by buildable lands counties and cities.

The analysis undertaken by buildable lands counties to accommodate growth within UGAs that is projected within the succeeding 20-year period must include the reasonable measures findings. Likewise, the housing element of comprehensive plans in buildable lands counties

and their cities must include consideration of the reasonable measures that were identified and developed during the most recent buildable lands program evaluation.

Lands Suitable for Development. The zoned capacity of land is not a sufficient standard for deeming land to be suitable for development, during the assessment of whether suitable land exists for development or redevelopment during the 20-year planning period. Under the buildable lands program, the required evaluation of suitable land must include land use or zoning regulations, environmental regulations impacting development, other regulations that might inhibit the achievement of assigned densities, and infrastructure gaps. The evaluation of suitable land must also include development of a reasonable market supply factor that identifies reductions in land suitable for development and redevelopment. Buildable lands counties and cities must also analyze growth assumptions, targets, and objectives when they fail to be achieved, and jurisdictions may not assume without rationale that the growth forecasted in the comprehensive plan and planning polies will be achieved.

Department of Commerce Guidance. The Department of Commerce must contract for guidance to be developed for local government buildable land programs. After public participation in the development process, the guidance must be completed by December 1, 2018, and must include analysis and recommendations on:

- changing the information analyzed by the evaluation program, in order to increase the accuracy of the buildable lands report during planning policy and comprehensive plan updates;
- aligning the schedule and integration of comprehensive plan and planning policy updates with the implementation of buildable lands program reasonable measures;
- various costs and development logistics, including infrastructure costs, development costs, permitting timelines, land availability in the market, the nexus between densities, economic conditions, and housing affordability, market demand for land potentially suitable for development or redevelopment;
- identifying measures to increase housing availability and affordability, and factors contributing to high housing costs;
- evaluating whether existing zoning and land use regulations promote or hinder affordable housing goals; and
- identifying strategies to encourage growth within UGAs, and to increase local government infrastructure investment capacity.

<u>State Environmental Policy Act Planned Actions</u>.
An EIS is not required to be undertaken in order for a local government planning under the GMA to designate planned actions in certain areas. In order for a planned action to be potentially exempt from EIS requirements, it must contain mixed use or residential development, and encompass an area that is either currently within one half mile of a stop on a commuter rail, fixed rail, or high-capacity transportation service line, or will be within one-half mile of such transit stops in no more than five years time. For planned actions encompassing these areas, a threshold determination is sufficient environmental analysis in order for the planned action to proceed, unless the threshold determination concludes that an EIS is appropriate.

<u>Local Homeless Housing and Assistance Surcharge</u>.

The $40 local homeless housing and assistance surcharge is extended until 2023, rather than 2019. The distribution of the 6 percent of the county portion of the local homeless housing and assistance surcharge is changed to be used for collection and distribution of the surcharge funds, in addition to administrative costs associated with the county's homeless housing plan.

Documents recording a water-sewer district lien or the satisfaction of a lien for delinquent utility payments are also exempt from the surcharge.

Real Estate Excise Tax.
A city or county may use up to $100,000 or up to 25 percent of its revenue, not to exceed $1million per year, from REET II for homeless housing development through June 30, 2019, so long as certain conditions are met. The timeline for which conditions apply is changed.

Appropriation: None.

Fiscal Note: Available.

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