

HOUSE BILL REPORT

HB 2066

As Reported by House Committee On:
Environment & Energy

Title: An act relating to exemptions for infill development under the state environmental policy act.

Brief Description: Concerning exemptions for infill development under the state environmental policy act.

Sponsors: Representatives Barkis, Klicker, Dufault, Gilday, Sutherland, Eslick and Dent.

Brief History:

Committee Activity:

Environment & Energy: 2/1/22, 2/3/22 [DPS].

Brief Summary of Substitute Bill

- Requires certain cities planning fully under the Growth Management Act to consider how to maximize the use of the infill development categorical exemption under the State Environmental Policy Act (SEPA), consistent with maintaining environmental protections, in order to minimize the duplication of environmental review.
- Provides that a SEPA infill development categorical exemption adopted by a city or county must provide a means for collaboration and coordination with any federally recognized tribe or tribes whose ceded lands, usual and accustomed areas, or areas protected by executive order or federal statute are affected by the infill development.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

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

Minority Report: Do not pass. Signed by 2 members: Representatives Abbarno and Boehnke.

Minority Report: Without recommendation. Signed by 3 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Goehner.

Staff: Robert Hatfield (786-7117).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes said to be "fully planning" under the GMA.

Counties that fully plan under the GMA must include a plan, scheme, or design for different types of land use areas, including Urban Growth Areas (UGAs) 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. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

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.

Until 2030, the review and evaluation program must develop reasonable measures to use in reducing the differences between growth and development assumptions and targets contained in the countywide planning policies and county and city comprehensive plans, with the actual development patterns. After 2030, the review and evaluation program is no longer required to adopt reasonable measures, but instead, the program must provide for the amendment of countywide policies and county and city comprehensive plans as needed to

remedy an inconsistency identified through the review and evaluation program.

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). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

State Environmental Policy Act—Categorical Exemptions.

Under SEPA, certain nonproject actions are categorically exempted from the requirements of SEPA. Examples of categorically exempt nonproject actions include certain amendments to development regulations and certain amendments to technical codes.

State Environmental Policy Act—Categorical Exemptions—Infill Development.

Counties and cities planning fully under the GMA may establish categorical exemptions from the requirements of SEPA to accommodate infill development. Locally authorized categorical exemptions may differ from the categorical exemptions established by the Department of Ecology by rule. Under the infill development categorical exemption, cities and counties may adopt categorical exemptions to exempt government action related to development that is new residential development, mixed-use development, or commercial development up to 65,000 square feet, proposed to fill in a UGA when:

- current density and intensity of the use in the area is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan;
- the action would not clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan;
- the local government considers the specific probable adverse environmental impact of the proposed action and determines that those specific impacts are adequately addressed by other applicable regulations, comprehensive plans, ordinances, or other local, state, and federal laws and rules; and
- the applicable comprehensive plan was previously subjected to environmental analysis through an EIS according to SEPA.

Summary of Substitute Bill:

The criteria that must be satisfied in order for a city or county planning fully under the Growth Management Act to establish a categorical exemption from the requirements of the

State Environmental Policy Act (SEPA) related to infill development are amended to require that the Environmental Impact Statement used to review the applicable comprehensive plan must be no more than 7 years old.

A buildable lands city must consider how to maximize the use of the SEPA infill development exemption, consistent with maintaining environmental protections, in order to minimize the duplication of environmental review.

If a city or county adopts a SEPA infill development categorical exemption, the exemption must provide a means for collaboration and coordination with any federally recognized tribe or tribes whose ceded lands, usual and accustomed areas, or areas protected by executive order or federal statute are affected by the infill development that is the subject of the exemption. The collaboration and coordination must ensure that the cultural resource concerns of any such tribe or tribes are addressed before any development or ground disturbance may occur at the location of the infill development.

Substitute Bill Compared to Original Bill:

The State Environmental Policy Act (SEPA) infill development categorical exemption remains optional, rather than becoming mandatory. Buildable lands cities are required to consider how to maximize the use of the exemption, consistent with maintaining environmental protections, in order to minimize the duplication of environmental review.

A requirement is added to the exemption to provide that the exemption may be adopted only when the applicable comprehensive plan has been analyzed by an Environmental Impact Statement within the previous 7 years.

A requirement is added that, if a city or county adopts a SEPA infill development categorical exemption, the exemption must provide a means for collaboration and coordination with any federally recognized tribe or tribes whose ceded lands, usual and accustomed areas, or areas protected by executive order or federal statute are affected by the infill development that is the subject of the exemption. The collaboration and coordination must ensure that the cultural resource concerns of any such tribe or tribes are addressed before any development or ground disturbance may occur at the location of the infill development.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 3, 2022.

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 state needs to stop doing some forms of environmental analysis two and three times. Barriers are created when multiple layers of review are required. Time is the enemy when it comes to developing a project; it increases the cost of projects, sometimes by 20 percent to 30 percent. Under the bill, when the county has done all the environmental studies, and the development matches up with the planning that has already been done by the county, there does not have to be another layer of redundant review. The county can still require elements under the State Environmental Policy Act (SEPA) if it does not think the environmental impacts have quite been addressed. This bill will help get more housing supply online more quickly.

This bill transforms an existing exemption in SEPA from being an opt-in to being an opt-out. The default would be that the exemption would exist. The bill still allows SEPA to apply if the local government determines that environmental impacts have not been adequately addressed. Currently, the SEPA process is sometimes duplicative.

The state has a multitude of environmental laws that protect the environment and that are good and needed. There is no point in allowing multiple appeals on projects where the local government in its comprehensive plan has already said that it wants the project.

There is support for the general idea contained in this bill. One key component is that this exemption is allowed only if the local jurisdiction has done an Environmental Impact Statement. There are some concerns with the implementation of this bill. There needs to be a conversation with cities to make sure this is a valuable tool and implementable.

(Opposed) There is support for the goals and theme of the exemption authority in this bill. The primary concern with the bill is with the retroactive application of the exemption, and the conversion from an option to a mandate. The exemption should be looked at prospectively, rather than retroactively. The state should consider adding this to the buildable lands process under the Growth Management Act.

(Other) There is concern with clarity in the bill. The bill takes a permissive law that currently provides an option, and makes it mandatory and an obligation for local governments. The prospect of switching to a mandate raises the question of what a city's obligation under the bill would actually be. Also, the bill does not address the timing of when a city would need to take action.

There are possible unintended consequences in the bill. There is concern regarding the ability to determine transportation impacts under the bill. The bill removes requirements that lead agencies look at certain impacts, such as transportation. There should still be a mechanism to look at transportation impacts.

Persons Testifying: (In support) Representative Andrew Barkis, prime sponsor; Scott

Hazlegrove, Master Builders Association of King and Snohomish Counties; Jan Himebaugh, Building Industry Association of Washington; and Bryce Yadon, Futurewise.

(Opposed) Carl Schroeder, Association of Washington Cities.

(Other) Ahmer Nizam, Department of Transportation; and Tim Gates, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.