

HOUSE BILL REPORT

ESSB 6580

As Reported by House Committee On:

Local Government

Appropriations

Title: An act relating to mitigating the impacts of climate change through the growth management act.

Brief Description: Addressing the impacts of climate change through the growth management act.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Marr, Weinstein, Pridemore, Kauffman, Keiser, McAuliffe, Hobbs, Regala, Kline, Kohl-Welles, Fairley, Oemig, Rockefeller, Prentice and McDermott).

Brief History:

Committee Activity:

Local Government: 2/26/08, 2/29/08 [DPA];

Appropriations: 3/3/08 [DPA(APP w/o LG)].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Requires the Department of Community, Trade and Economic Development (DCTED) to develop and provide counties and cities with advisory climate change response methodologies, a computer modeling program, and estimates of greenhouse gas emission reductions resulting from specific measures.
- Establishes a local government global warming mitigation and adaptation program.
- Prohibits Growth Management Hearings Boards from hearing petitions alleging non-compliance with the mitigation and adaptation program.
- Requires the DCTED to provide a climate change report to the Governor and the Legislature by December 1, 2008.

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.

- Specifies that recommendations in the climate change report must be approved by the majority of a 24-member advisory policy committee comprised of legislators and non-legislators.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 4 members: Representatives Simpson, Chair; Takko, Vice Chair; Eddy and Nelson.

Minority Report: Do not pass. Signed by 2 members: Representatives Warnick, Ranking Minority Member; Schmick.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions. The Department of Community, Trade and Economic Development (DCTED) provides technical and financial assistance to jurisdictions that must implement the GMA.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, each of which is a subset of a comprehensive plan. Planning jurisdictions must also adopt development regulations that implement and conform with their comprehensive plan.

Comprehensive plans and development regulations are subject to continuing review and evaluation by the adopting county or city. With some exceptions, planning jurisdictions must review and, if needed, revise their comprehensive plans and development regulations according to a recurring seven-year statutory schedule. Jurisdictions that do not fully plan under the GMA generally must satisfy requirements pertaining to environmentally sensitive areas and natural resource lands according to this same schedule. Nine western Washington counties that fully plan under the GMA, and the cities within those counties, must complete their comprehensive plan and development regulation reviews, and any needed revisions, by December 1, 2011.

Growth Management Hearings Boards

The GMA establishes three regional Growth Management Hearings Boards (Boards). Each Board consists of three members satisfying residency requirements and qualified by experience or training in matters pertaining to land use planning.

Boards have limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act (SEPA) relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

Climate Change and Global Warming

The Department of Ecology (DOE or agency), describes "climate change" as the rapid changing of climates around the world. The agency indicates that climate change is partially attributable to burning fossil fuels and deforestation: actions that create a blanket of greenhouse gases (carbon dioxide, methane, chlorofluorocarbons, et. cetera) in the atmosphere that prevent the earth's solar-based heat from returning to space. This trapped atmospheric energy causes global temperatures to rise.

"Global warming," according to the DOE, refers to rising global temperatures resulting from an increased quantity of greenhouse gases in the atmosphere that are attributable to human activities. The agency indicates that rising global temperatures are causing the climate to change, and that a warmer earth will lead to different rainfall patterns, rising sea levels, and a wide range of impacts on plants, wildlife, and humans.

Summary of Amended Bill:

Climate Change Responsibilities

New climate change responsibilities are established for the DCTED. The DCTED, by December 1, 2009, must develop and provide to counties and cities a range of advisory climate change response methodologies, a computer modeling program, and estimates of greenhouse gas emission reductions resulting from specific measures. The methodologies, computer program, and estimates must reflect regional and local variations of planning jurisdictions, and must be updated every seven years according to a schedule specified in the GMA. The methodologies, computer program, estimates, and associated guidance must be consistent with recommendations developed by a climate change advisory policy committee.

In fulfilling its climate change responsibilities, the DCTED must work with the Department of Transportation on reductions of vehicle miles traveled through efforts associated with, and independent of, a process directed by E2SHB 2815 (2008).

The delineated climate change responsibilities of the DCTED expire January 1, 2011. Additionally, if specific funding for these responsibilities is not provided by June 30, 2008, in the omnibus appropriations act, the directives to the DCTED are null and void.

Local Government Global Warming Mitigation and Adaptation Program

A local government global warming mitigation and adaptation program (program) is established and must be administered by the DCTED. The program's stated purpose is to assist participating counties and cities that are addressing, and those that aspire to but lack necessary resources to address, climate change through land use and transportation planning processes. The DCTED must, through a competitive process and in accordance with specified criteria, select no more than three counties and six cities for the program.

The DCTED must provide grants and technical assistance to aid participating counties and cities in their efforts to anticipate, mitigate, and adapt to global warming and its associated problems. Grants and technical assistance must be awarded to counties and cities that are addressing climate change in their planning processes, and those that, due to a lack of resources, are not.

A report of program findings and recommendations must be prepared by the DCTED and submitted to the Governor and the appropriate committees of the House of Representatives and the Senate on or before January 1, 2011, the date provisions authorizing the program expire.

If specific funding for the program is not provided by June 30, 2008, in the omnibus appropriations act, all program requirements are null and void.

Climate Change Report

The DCTED is charged with, by December 1, 2008, submitting a climate change report (report) to the Governor and the appropriate committees of the House of Representatives and the Senate that includes:

- descriptions of actions counties and cities are taking to address climate change issues;
- recommendations of changes, if any, to the GMA and other statutes that would enable state and local governments to address climate change issues and the need to reduce dependence upon foreign oil through land use and transportation planning processes;
- descriptions of existing and potential computer modeling and other analytic and assessment tools that could be used by counties and cities to reduce greenhouse gas emissions and/or dependence upon foreign oil;
- assessments of state and local resources needed to fully implement recommendations resulting from and associated with specific provisions of the report; and
- recommendations for additional funding to implement recommendations resulting from specific provisions of the report.

In preparing the report, the DCTED must convene a 24-member climate change advisory policy committee comprised of legislators, a representative of the Governor's Office, representatives of cities and counties, and representatives of organizations meeting specified criteria. Eleven members of the policy committee serve in a non-voting ex officio capacity.

Recommendations included within the report must be approved by a majority of the advisory policy committee.

The DCTED, in preparing the report and presenting information and recommendations to the policy committee, must convene a technical support team consisting of members representing, and appointed by, the DOE, the DCTED, and the Department of Transportation (DOT). Additionally, the DCTED, in meeting report requirements associated with the technical support team, must consult with and solicit assistance from the professional staffs of counties and cities or their state associations, and regional transportation planning organizations.

Growth Management Hearings Boards

Provisions governing Growth Management Hearings Boards are modified. Boards may not hear petitions alleging that a state agency, county, or city is not in compliance with the local government global warming mitigation and adaptation program.

ESSB 5248 (2007)

The bill is not intended to affect the provisions of ESSB 5248 (2007), legislation that modified county and city requirements for critical areas, and charged the William D. Ruckelshaus Center with examining conflicts between agricultural activities and regulations adopted under the GMA to protect critical areas.

Amended Bill Compared to Engrossed Substitute Bill:

Numerous changes to the underlying engrossed substitute bill were made. Examples of changes include the following.

Climate Change Responsibilities

Specific requirements for the advisory climate change response methodologies, computer modeling programs, and estimates were deleted. References to modeling "programs" were made singular. A provision specifying that the developed methodologies, modeling programs, estimates, and guidance must be approved by a climate change advisory policy committee was added. A provision requiring the DCTED to work with the DOT on reductions of vehicle miles traveled was added. A January 1, 2011, expiration date for provisions mandating the development of the methodologies, the modeling program, and estimates was added.

Local Government Global Warming Mitigation and Adaptation Program

The number of jurisdictions that DCTED must select for the program was modified. Specific geographic and other eligibility criteria for jurisdictions that may be included in the program were deleted. Additional requirements for awarding grant and technical assistance were added.

Climate Change Report

Specific requirements for the climate change report were deleted. Requirements obligating the DCTED to convene and consult with an advisory team were deleted and replaced with provisions directing the DCTED to convene a 24-member advisory policy committee. Membership, appointment, and nomination provisions for the policy committee were added. A

provision requiring the DCTED to receive majority approval of report recommendations from the policy committee was added. Provisions pertaining to convening a technical support team that assists the DCTED were added.

Growth Management Hearings Boards

Provisions specifying that Growth Management Hearings Boards may not hear petitions alleging that a state agency, county, or city is not in compliance with the local government global warming mitigation and adaptation program were added.

Emergency Clause

An emergency clause for all provisions of the bill was added.

Intent Section

Intent language was modified.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill contains an emergency clause and takes effect immediately, except for sections 2 and 3 which are null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The bill is an object of compromise and it differs substantially from the original language of the underlying bill. The bill is supported by county associations, city associations, and planners, and incorporates provisions requested by Realtors. The bill does not create a new planning goal or element in the GMA, but it does have a pilot program and agency responsibilities. The bill is consistent with the Governor's directive charging the state to be a national leader in the field of climate change. The bill will establish minimum requirements that jurisdictions may use when they begin addressing climate change. The bill needs to be implemented now to effect the 2011 update cycle of the GMA. Funding for the bill is included in the Senate's proposed budget.

This bill is one of the four legislative priorities of the environmental community for the 2008 session. The bill is not quite what the environmental community wanted, but it does require the DCTED to develop a tool for local governments to use as they plan for climate change responses, and it does require an examination of tools that may be employed in responding to climate change.

When the House version of the bill was heard, cities expressed a variety of perspectives. The Senate bill has been scaled back and it includes an important stakeholder process. The stakeholder group is too large and the time line is too short, but the process is important. The stakeholder process needs to begin now. If the process is delayed, the results will be too late for some jurisdictions, as they will have begun their 2011 update activities. This bill does not presume that the GMA needs to be modified. The bill no longer includes mandates for

counties, but it does include options for those that want to take the first steps to respond to climate change.

The bill represents the minimum steps that must be taken for cities and counties to address global warming. The bill does not have mandatory provisions for cities or counties, but it does contain voluntary measures. The duties required of the DCTED in the bill are necessary. An examination of climate change under the GMA is made necessary by transportation issues. The number of vehicle miles traveled needs to be reduced and can be reduced through land use planning.

The bill is needed for environmental and national security reasons. States have unique abilities to respond to climate change issues and the bill will help shape our children's futures. The bill will help protect local governments from lawsuits, as climate change-related lawsuits are currently being filed under the SEPA.

(With concerns) This bill sets a path for reducing carbon dioxide emissions, but a market-based approach would be more effective than the regulatory approach in the bill. Regulatory approaches to changing lifestyles are expensive and may not work.

(Neutral) Certain provisions of the bill may duplicate requirements HB 2815 (2008). It may be appropriate to modify the advisory team provisions and to require a smaller city/county work group to work with a larger policy group.

(Opposed) Lewis County is not opposed to the goals and objectives of the bill, but it is opposed to amendments to the GMA that may develop into unfunded mandates. Provisions for addressing climate change and greenhouse gas emissions through county actions currently exist in the SEPA. Climate change guidance and regulations should be issued by the DOE: they have the appropriate expertise.

A recent study indicated that land use regulations cause very significant increases to housing costs. This bill is a 'baby step' toward additional regulations that will drive up housing costs. The GMA was intended to be a 'bottom's up' act, but Boards have significantly reduced the discretion that local governments have in implementing its provisions. Agency rules and Board decisions have become de facto regulations. The results of the pilot program in the bill will eventually become part of the GMA. The membership of the advisory team is a high priority for stakeholders. The team's membership should be expanded and less weighted toward regulators and members of government. Additionally, the team's time line should be extended, and the DCTED should be required to adopt its recommendations. The bill should be amended to prevent appeals that might result from its passage. Consistency of a climate change regulatory product is important to stakeholders. This bill is about modifying the GMA and its proponents cite its effect upon requirements of the GMA when advocating for its passage.

The bill may require a new layer of environmental mitigation requirements for cities. The bill has changed substantially from its original form because it was a poor idea from the start. The bill is a thinly-veiled attempt to limit freedoms of choice that citizens currently enjoy.

Persons Testifying: (In support) Senator Marr, prime sponsor; Cliff Traisman, Washington Environmental Council/Washington Conservation Voters; Dave Williams, Association of Washington Cities; Eric Johnson, Washington State Association of Counties; April Putney, Futurewise; Bill Laborde, Environment Washington; Miguel Perez-Gibson, Climate Solutions; and Michael Shaw, American Planners Association.

(With concerns) Todd Myers, Washington Policy Center.

(Neutral) Leonard Bauer, Department of Community, Trade, and Economic Development.

(Opposed) Bob Johnson, Lewis County; Andrew Cook, Building Industry Association of Washington; Chris McCabe, Association of Washington Business; Bill Clarke, Washington Realtors; Van Collins, Associated General Contractors; Steve Taylor, City of Spokane Valley; and Dan Wood, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Local Government. Signed by 21 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Green, Haigh, Hunt, Hunter, Kagi, Kenney, Linville, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Grant, Kessler, Kretz, McDonald, Ross, Schmick and Walsh.

Staff: Kirk Schmidt (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Local Government:

A technical correction was made to sectional null and void clauses for sections 2 and 3. In addition, an overall null and void clause was added, making the bill, including sections 2 and 3, null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately. However, the bill, including sections 2 and 3 of the bill, is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) There are no mandates for cities or counties in this bill. The Department of Community, Trade Economic Development will develop tools and computer models to assist cities and counties that choose to address climate change. Please add funding for the pilot programs; neither the House nor Senate budget provides funding for the pilot programs. This bill provides the three base components which are the building blocks for future consideration of climate change and land use planning. If pilot projects are funded, cities who signed the Kyoto Protocol are likely to volunteer to participate in the program. The estimates for the pilot projects are based on \$250,000 a year cost for each pilot program. The bill requires up to three counties and six cities participate in the pilot program.

(In support with concerns) The mandate of computer modeling in section 2 discourages innovations on behalf of cities and counties to find their own unique solution to the problem. All members of the advisory committee should be made voting members.

(Opposed) A University of Washington study found that land use regulations add up to \$200,000 to the cost of a home in Seattle; this makes homes less affordable. We are also opposed to the mandates in sections 2 and 3 of the bill. There are several concerns with the bill in its current form: (1) section 5 should be applicable to section 2 on the bill along with section 3; (2) the reports need to be balanced, consideration needs to be given to the impacts on housing; and (3) the 11 non-voting members of the advisory committee should be made voting members.

Persons Testifying: (In support) Clifford Traisman, Washington Environmental Council and Washington Conservation Voters; Eric Johnson, Washington Association of Counties; April Putney, Futurewise; and Dave Williams, Association of Washington Cities.

(In support with concerns) Stan Bowman, American Institute of Architects Washington Council.

(Opposed) Andrew Cook, Building Industry Association of Washington; and Chris McCabe, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.