

# SENATE BILL REPORT

## SB 5687

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As of March 5, 2009

**Title:** An act relating to reducing greenhouse gas emissions through land use and transportation requirements.

**Brief Description:** Reducing greenhouse gas emissions through land use and transportation requirements.

**Sponsors:** Senators Marr, Pridemore, McDermott, Regala, Franklin, Kohl-Welles, Murray, Fairley, Jacobsen, Kauffman, McAuliffe and Kline.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/19/09.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Staff:** Sharon Swanson (786-7447)

**Background:** Growth Management Act – Introduction. 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 (CTED) provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

Comprehensive Land Use Plans, Development Regulations, and Selected Elements. 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, including housing and transportation, each of which is a subset of a comprehensive plan. Comprehensive plans must be coordinated and consistent with those of other counties and cities with which the county or city has common borders or related regional issues. The implementation of comprehensive plans occurs through development regulations mandated by the GMA.

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The housing element of a comprehensive plan must ensure the vitality and character of established residential neighborhoods. Housing elements must include an inventory and analysis of existing and projected needs that identifies the number of housing units needed to manage projected growth, and a statement of goals, policies, and provisions for the preservation, improvement, and development of housing. Housing elements must also include provisions for existing and projected housing needs for all economic segments of the community.

The transportation element of a comprehensive plan must include sub-elements that address transportation mandates for forecasting, finance, coordination, and facilities and services needs. A provision of the sub-element for facilities and services needs requires planning jurisdictions to adopt level of service (LOS) standards for all locally-owned arterials and transit routes.

Planning jurisdictions must adopt and enforce ordinances prohibiting development approval if the proposed development will cause the LOS on a locally-owned transportation facility to decline below standards adopted in the transportation element. Exemptions to this "concurrency" prohibition may be made if improvements or strategies to accommodate development impacts are made concurrent with the development. These strategies may include:

- increased public transportation service;
- ride sharing programs;
- demand management; and
- other transportation systems management strategies.

"Concurrent with the development" means improvements or strategies that are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

Transportation elements may also include, in addition to improvements or strategies to accommodate the impacts of development authorized under the GMA, multimodal transportation improvements or strategies that are made concurrent with the development.

Planning Goals. The GMA establishes planning goals in a nonprioritized list that must be used exclusively for guiding the development and adoption of comprehensive plans and development regulations. Examples of planning goals include the following:

- *Urban growth* – encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- *Transportation* – encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans;
- *Housing* – encourage the availability of affordable housing to all economic segments of the population, promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock; and
- *Environment* – protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

Countywide Planning Policies. The legislative authority of each county that fully plans under the GMA must adopt a countywide planning policy (CPP) in cooperation with the cities located wholly or partially within the county. A CPP is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted.

Countywide planning policies must include specified planning provisions. Examples include policies:

- to implement requirements for urban growth areas designated under the GMA;
- for countywide transportation facilities and strategies; and
- that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution.

The Governor may impose sanctions upon a planning jurisdiction that fails to adopt CPPs in conformity with the GMA.

Climate Change and the GMA. Legislation adopted in 2008 (i.e., ESSB 6580, enacted as ch. 289, Laws of 2008) charged the CTED with submitting a climate change report to the Governor and the appropriate committees of the House of Representatives and the Senate by December 1, 2008. Among other requirements, the report was required to include:

- descriptions of actions counties and cities are taking to address climate change issues, and
- recommendations of changes, if any, to the GMA and other statutes that would enable state and local governments to address climate change issues and foreign oil dependence through land use and transportation planning processes.

The legislation directed CTED to convene a 25-member climate change advisory policy committee comprised of legislators, a representative of the Governor's Office, elected representatives of counties and cities, and representatives of organizations meeting specified criteria. In accordance with ESSB 6580, the Land Use and Climate Change Advisory Committee completed their efforts in 2008.

Regional Transportation Planning Organizations. Legislation enacted in 1990 authorized the creation of regional transportation planning organizations (RTPOs). The RTPOs are formed through the voluntary association of local governments within a county or within geographically contiguous counties. The RTPOs have duties prescribed in statute, including preparing and updating regional transportation strategies, and certifying that transportation elements of comprehensive plans conform with specified requirements.

The RTPOs must also prepare and update a regional transportation plan (plan) that is consistent with certain provisions of the GMA. The plan must be developed in cooperation with the Department of Transportation, transportation providers, local governments, and other specified entities. All transportation projects, programs, and demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and have adopted regional growth and transportation strategies.

State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify possible environmental impacts

that may result from governmental decisions, including the issuance of permits or the adoption of or amendment to land use plans and regulations. Any governmental action may be conditioned or denied pursuant to the SEPA provided the conditions or denials are based upon policies identified by the appropriate governmental authority and incorporated into formally designated regulations, plans, or codes.

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 procedural requirements of the SEPA) to determine whether the proposal is likely to have a significant adverse environmental impact. This process is referred to as making a threshold determination. The determination is made in a determination of significance (DS), a determination of nonsignificance (DNS), or a mitigated DNS (MDNS), which includes mitigation conditions for the project. A DS requires an environmental impact statement (EIS).

Local governments and state agencies must prepare an EIS for legislation and other major actions that significantly affect the quality of the environment. The EIS must include detailed information about the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided if the proposal is implemented, and alternatives, including mitigation, to the proposed action.

Categorical exemptions from the EIS and other requirements for actions meeting specified criteria are provided in the SEPA. Categories of government actions that are not considered as potential major actions significantly affecting the quality of the environment are also defined in administrative rules.

Other exemptions to the SEPA requirements are provided in law. A "planned action" in a planning jurisdiction does not require a threshold determination or the preparation of an EIS. These actions, however, are subject to certain environmental review and mitigation measures provided in the SEPA.

A planned action is defined to mean one or more types of project action that meet certain criteria, including:

- being designated as planned actions by an adopted ordinance or resolution of a planning jurisdiction;
- having had the significant impacts adequately addressed in an EIS prepared in conjunction with a comprehensive plan or subarea plan adopted under the GMA; or a fully-contained community, a master-planned resort, a master-planned development, or a phased project; and
- being consistent with a comprehensive plan adopted under the GMA.

Planning jurisdictions must limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the local government. These jurisdictions may limit a planned action to a time period identified in the EIS or the ordinance or resolution, subject to statutory requirements.

Greenhouse Gas Emission Reduction Requirements/Benchmarks for Vehicle Miles Traveled. For purposes of Washington State regulations of greenhouse gas emissions, "greenhouse gas and gasses" include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Legislation adopted in 2008 (i.e., E2SHB 2815, enacted as ch. 14, Laws of 2008) established the following greenhouse gas emissions limitations for the state:

- by 2020, reduce overall greenhouse gases emissions in the state to 1990 levels;
- by 2035, reduce overall greenhouse gases emissions in the state to 25 percent below 1990 levels; and
- by 2050, the state will do its part to reach global climate stabilization levels by reducing overall emissions to 50 percent below 1990 levels, or 70 percent below the state's expected emissions that year.

E2SHB 2815 also established the following statewide benchmarks relating to the number of annual vehicle miles traveled (VMT) in the state:

- decrease the annual per capita VMT by 18 percent by 2020;
- decrease the annual per capita VMT by 30 percent by 2035; and
- decrease the annual per capita VMT by 50 percent by 2050.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** The GMA is amended to include numerous provisions pertaining to reducing greenhouse gas emissions.

Planning Goals. The environment goal of the GMA is amended to specify that part of the goal is to establish land use and transportation patterns that, at a minimum, achieve and support state and federal greenhouse gas emissions reductions requirements.

Comprehensive Plans – Housing and Transportation Elements. Locally adopted housing elements of counties and cities must include incentives and requirements to provide housing required by the housing element of the GMA. Locally adopted housing elements must also designate sufficient land for and encourage housing within walking, bicycling, or transit distance of employment concentrations that is affordable to persons employed within such concentrations. This land must be designated at densities that support transit services.

The LOS standards that are included within locally-adopted transportation elements for locally-owned arterials and transit routes must, in meeting regional transportation demands, consider all transportation modes. In adopting LOS standards, jurisdictions must also consider adopting such standards for bicycle and pedestrian routes.

Concurrency provisions for locally-adopted transportation elements are modified. Ordinances prohibiting development approval if the proposed development will cause the LOS on a locally-owned transportation facility to decline below adopted standards must consider multimodal improvements or strategies. Additionally, the list of multimodal transportation improvements or strategies that may be made concurrent with the development is expanded to include transit-oriented development or other compact development strategies.

Compact development is defined as an area designated for mixed-use, higher density development patterns that encourage walking, bicycling, and plans for a multimodal network that may include transit services and facilities. Transit-oriented development is defined as a type of compact development that provides compact, walkable communities with densities that support transit service and have convenient access to transit systems with frequent peak travel period service.

Comprehensive Plans and Development Regulations – Transit Oriented Development. Numerous comprehensive plan and development regulations pertaining to transit-oriented development are established. With some exceptions, comprehensive plans and development regulations must authorize transit-oriented development within one-half mile of a major transit station, a term defined in the bill. The allowed net density for these transit-oriented development areas must be 50 dwelling units per acre.

The adopted plans and regulations also must satisfy other requirements, such as:

- incorporating standards for streets, sidewalks, and buildings that encourage walking and bicycling, and a process to ensure that these standards are met;
- providing for a net gain in housing units that are affordable to low and moderate-income households;
- requiring one-for-one replacement of demolished or converted housing units that meet specified criteria;
- requiring affordability and location requirements for new housing or mixed-use developments;
- authorizing the waiving of minimum parking space requirements for any land use; and
- requiring developers to provide notice and relocation assistance to qualifying renters who will be displaced by development.

Counties and cities must report the number of affordable housing units created in accordance with comprehensive plan and development regulations pertaining to transit-oriented development to the CTED and the appropriate committees of the Legislature by January 1, 2015. Subsequent reports to CTED and the Legislature must be completed according to a specified recurring schedule.

Comprehensive Plans – Consistency with Regional Transportation Plans. Comprehensive plan consistency requirements are modified. Comprehensive plans of cities and counties must be consistent with the regional transportation plans adopted by regional transportation planning organizations for the region within which the county or city is located.

Countywide Planning Policies. New requirements for CPPs are specified. Adopted CPPs must include the following:

- policies for reducing greenhouse gas emissions that, at a minimum, support and achieve state greenhouse gas emissions limitations, per capita VMT reductions specified in state benchmarks, and applicable federal emission reduction requirements; and
- policies for reducing dependence on foreign oil.

State Environmental Policy Act. New provisions in the SEPA are established. A project action that is consistent with the applicable comprehensive plan and development regulations may not be challenged for noncompliance under SEPA with greenhouse gas emissions requirement if:

- the county, city, or town in which the project action is located has prepared an EIS for the area covered by the comprehensive plan or subarea plan that includes a greenhouse gas emissions analysis;
- the county, city, or town in which the project action is located has adopted a comprehensive plan or subarea plan and development regulations that meet certain requirements;
- the comprehensive plan and development regulations will reduce greenhouse gas emissions and per capita VMT;
- the project action complies with the definition of compact development; and
- the project action is located in an urban growth area and a center designated by the county, city, or town comprehensive plan.

New environmental fee provisions in SEPA are established. Cities and towns authorizing compact development in designated centers or participating in a qualifying regional transfer of development rights program may impose environmental fees on development activity as part of the financing for environmental review under SEPA.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on December 1, 2011.

**Staff Summary of Public Testimony:** PRO: Nine of the 13 sections in the bill are directly related to the Land Use and Climate Change Workgroup. The bill focuses on the largest counties. The legislation acknowledges the existing land use framework in place, the GMA. Can we really afford to continue to grow as a state in the fashion we have been growing? We can't support our highways or the infrastructure so we really need to make some changes. The city of Seattle is very supportive of creating transit-oriented communities. There are concerns about affordability thresholds and there is more work to be done, but the bill has come quite a long way and the dialogue continues. Local governments need more flexibility under the bill and continue to work with the proponents. This bill is urgently needed. The public needs this desperately because of global warming and the impacts that are coming as a result. This bill builds on an existing policy framework and we need it now.

CON: This bill is bad government. If a county or city government put this into the comprehensive plan it would be a full two year SEPA comprehensive plan update. This bill will create additional litigation for county prosecutors for years to come. This bill clearly violates local discretion. The bill is premature and it's bad law. Section 8 is a mandate to local governments to create certain density housing. It's not the developer you need to be concerned about, it's the back lash that occurs when communities are forced to deal with mandates such as those in this bill. The GMA is not the place to address climate changes.

The Association of Washington Cities (AWC) is adamantly opposed to Section 8 of the bill, but there is much more to this bill than just that section. The AWC continues to work with the proponents. This is not a bill that reflects the recommendations from the group that met over the summer; the bill contains some of the recommendations but goes much further. Section 1 of the bill is very controversial. Should the GMA be amended to add a new goal?

OTHER: The GMA has been around for nearly 20 years and according to CTED there has not been a comprehensive review of the goals that were established with GMA. There have been studies but not a third party independent review. How can you amend the GMA when there has never been a study to determine if the existing goals of the GMA are working? To add to the complexity of the issue before you, there have been over 1,000 decisions by GMA hearings boards across the state. The policy changes in the bill before the committee would remove local review. The policy in this bill to reduce the distance Washingtonians drive is in direct conflict with the revenue source that the state receives from the gas tax.

**Persons Testifying:** PRO: Senator Marr, prime sponsor; Tim Gugerty, city of Seattle; Cliff Traisman, Washington Conservation Voters; Bill LaBorde, Transportation Choices Coalition; Sara Nickolic, Futurewise; Robert Freeman, Sustainable Edmonds; Eric Teegarden, Sierra Club; Jeanette Petersen, The Institute for Justice; Rebecca Wolfe, Sierra Club, Futurewise.

CON: Dave Williams, Association of Washington Cities; Chris McCabe, Association of Washington Businesses; Jeff Sax, Former Snohomish County Commissioner; Van Collins, Associated General Contractors.

OTHER: Brandon Housekeeper, Washington Policy Center.