HOUSE BILL REPORT
ESHB 1478

As Passed House:
March 4, 2011

Title: An act relating to fiscal relief for cities and counties during periods of economic downturn by delaying or modifying certain regulatory and statutory requirements.

Brief Description: Delaying or modifying certain regulatory and statutory requirements affecting cities and counties.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Springer, Asay, Takko, Orcutt, Haler, Rivers, Eddy, Hunt, Klippert, Sullivan, Goodman, Clibborn, Armstrong, Probst, Jacks, Johnson and Kenney).

Brief History:
Committee Activity:
Local Government: 2/4/11, 2/9/11 [DPS].
Floor Activity:
Passed House: 3/4/11, 86-11.

Brief Summary of Engrossed Substitute Bill

- Extends timeframes within which local government entities are required to act to comply with: (1) countywide planning policy and comprehensive plan review and revision requirements under the Growth Management Act; (2) alternative energy requirements pertaining to publicly owned fleet vehicles; (3) pavement rating reporting requirements; (4) the expending and encumbrance of impact fees; (5) permitting renewal for National Pollutant Discharge Elimination permits; and (6) master plan amendment requirements under the Shoreline Management Act (SMA).
- Modifies the SMA to require the Department of Ecology to strive to achieve final action on a submitted master program within 180 days of receipt and to post an annual assessment of its own performance related to this benchmark.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Tharinger, Vice Chair; Angel, Ranking Minority Member; Asay, Assistant Ranking Minority Member; Rodne, Smith and Springer.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon and Upthegrove.

Staff: Heather Emery (786-7136).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a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 those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements. According to a schedule set forth in the GMA, fully-planning jurisdictions must review and, if needed, revise their plans and development regulations every seven years.

Additionally, counties west of the Cascades that had a population of greater than 150,000 inhabitants as of 1995, and the cities within those counties, are obligated to adopt countywide planning policies to establish a review and evaluation program designed to determine whether the jurisdiction is achieving urban densities within urban growth areas, and to identify reasonable measures that will be taken to comply with the requirements of the GMA. Evaluations must be completed every five years.

Publicly Owned Vehicles and Fuel Usage.

By June 1, 2015, to the extent determined practical by rules adopted by the Department of Commerce (Commerce), all state agencies and local government subdivisions of the state must satisfy 100 percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. Although Commerce was required to adopt rules by June 1, 2010, to define practicability and clarify how state agencies and local governments would be evaluated in determining whether they had met this objective, it has not yet done so.

Preservation Rating Reports.

In 2003, finding that the state's investment in its transportation infrastructure represented public assets worth over $100 billion but that many of these facilities were in poor condition,

the Legislature adopted Senate Bill (SB) 5248, intended to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for transportation facilities. Among other mandates, for the 2003-2005 biennium, SB 5248 required cities and towns to provide to the Transportation Commission preservation rating information on at least 70 percent of the total city and town arterial network. After the 2003-2005 biennium, the preservation rating reporting requirement increased at a rate of 5 percent per biennium. According to the Department of Transportation, at this time the requirement is for 85 percent of the total city and town arterial network.

Impact Fees.

Counties, cities, and towns that fully plan under the GMA may impose impact fees on development activity as part of the financing for public facilities. Impact fees:

- may be imposed only for system improvements that are reasonably related to the new development;
- may not exceed a proportionate share of the system improvements; and
- must be used for system improvements that will reasonably benefit the new development.

Impact fees must be expended or encumbered within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held for a longer period of time. If, absent such a reason, the county or city fails to expend or encumber the impact fees within six years, the current owner of property on which an impact fee has been paid may receive a refund.

Reclaimed Water and Greywater.

By December 31, 2010, and in coordination with the Department of Health (DOH) and an advisory committee composed of stakeholders that utilize or are potentially impacted by the use of reclaimed water, the Department of Ecology (DOE) must adopt rules addressing all aspects of reclaimed water use, including the following:

- commercial and industrial uses;
- land applications;
- direct groundwater recharge;
- wetland discharge;
- surface percolation;
- constructed wetlands; and
- streamflow or surface water augmentation.

National Pollutant Discharge Elimination System Permits.

The federal Clean Water Act (CWA) sets effluent limitations for discharges of pollutants. "Pollutant" is defined in the CWA to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods.

The DOE is the delegated federal CWA authority by the United States Environmental Protection Agency (EPA). The DOE also is the agency authorized by state law to implement state water quality programs.

The CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernable, discrete, and confined conveyances from which pollutant discharges can or do occur. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. The NPDES permits also are required for storm water discharges from certain industries, construction sites of specified sizes, and municipalities operating municipal separate storm sewer systems that meet specified criteria.

The federal CWA and implementing EPA storm water regulations established two phases for the NPDES permits to control storm water discharges from certain industries and construction sites, and from municipalities operating municipal separate storm sewer systems.

Currently, the DOE rules limit the terms of the NPDES permits to five years. A permit holder must apply for a replacement permit at least 180 days prior to the expiration of its existing permit.

Shoreline Management Program.

The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The DOE and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs that regulate land use activities in shoreline areas of the state. Counties and cities are also required to enforce their master programs within their jurisdictions. All 39 counties and more than 200 cities have enacted shoreline master programs.

Master programs have certain mandatory elements as appropriate, and local governments may include other elements necessary to implement the SMA requirements. Mandatory elements include:

- an *economic development* element for locating and designing water-dependent industrial projects and other commercial activities;
- a *public access* element to provide for public access to public areas;
- a *recreational* element to preserve and enhance shoreline recreational opportunities;
- a *circulation* element to locate transportation and other public facilities for shoreline use;
- a *use* element addressing the location and extent of shoreline use for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public facilities, and other uses;
- a *conservation* element to preserve natural resources in shoreline areas;
- a *historic, cultural, scientific, and educational* element to protect buildings, sites, and areas with such values; and
- an element considering statewide interests in preventing and minimizing *flood damage*.

A master program, or a segment thereof, becomes effective when approved by the DOE. Local governments are required to complete master plan amendments every seven years.

Summary of Engrossed Substitute Bill:

Growth Management Act.

The comprehensive plan review and revision schedule set forth in the Growth Management Act is modified to require counties to take such action every 10 years, rather than every seven years, and to reallocate reporting years for some counties. Additionally, the requirement for certain counties to adopt countywide planning policies is made subject to the amounts of public funds appropriated, or private funds received by the Department of Commerce (Commerce), for that purpose.

Publicly Owned Vehicles and Fuel Usage.

The requirement that, to the extent determined practicable by rules adopted by Commerce, all state agencies and all local government subdivisions of the state fuel their publicly owned fleet with electricity or biofuel by June 1, 2015, is modified to allow counties and cities until June 1, 2018, to comply with the requirement. By June 1, 2015, Commerce must adopt rules to define practicability and clarify how the cities and counties will be evaluated to determine whether they have met the goal.

Preservation Rating Reports.

The requirement for a city or town to inform the Transportation Commission of the preservation rating of at least 70 percent of its arterial network is reset to the 2013-2015 biennium. After the close of that biennium, the preservation rating reporting requirement increases in 5 percent increments in subsequent biennia, but it is capped at 80 percent.

Impact Fees.

The requirement for a county or city to expend or encumber impact fees within six years of receipt is modified to require expenditure or encumbrance within 10 years of receipt.

Reclaimed Water and Greywater.

The requirements for the Department of Ecology (DOE) to adopt rules relating to reclaimed water use by December 31, 2010, are modified to prohibit adoption of such rules prior to June 30, 2013.

By July 31, 2012, the DOE is required to extend for a term of one year and without modification any National Pollutant Discharge Elimination System municipal storm water general permit first issued on January 17, 2007. Additionally, the DOE must issue an updated permit for any such permit, and the update permit will become effective on August 1, 2013.

Shoreline Management Act.

Beginning on June 30, 2020, each county, and the cities within each county, must review and revise their master programs on a 10-year cycle, rather than a seven-year cycle. The DOE is required to strive to achieve final action on a submitted master program within 180 days of receipt and to post an annual assessment of its own performance on its website.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) In this economic climate, cities and counties are struggling to maintain basic services. While this bill does not eliminate any requirements, it extends compliance dates of some to give time for local budgets to recover. Allowing the posting of legal notices on city websites would provide immediate fiscal relief. While cities are serious about transparency in government, newspaper publication is expensive. In some counties, there is no competitive process. Funds spent on publication could be better spent elsewhere. For the most populous counties around Puget Sound, allowing updates under the Growth Management Act (GMA) on a 10-year cycle, rather than a seven-year cycle, would correspond with the release of federal census data, when the best data is available for updates. Delaying reissuance of the National Pollutant Discharge Elimination System (NPDES) general permits would give extra compliance time and postpone possible increased monitoring and enforcement requirements. Additionally, at a time when cities are reducing services and eliminating positions, delaying in requirements to convert fleets to 100 percent green-fuel usage could save a single city millions of dollars and prevent constituent concern that the city is wasting still-viable assets.

(With concerns) Sections pertaining to the GMA and the Shoreline Management Act (SMA) are inconsistent. The requirement that the Department of Ecology (DOE) reviews shoreline master plan updates should be eliminated. It gives the DOE the opportunity to second-guess counties that have conducted hearings and are knowledgeable about local environmental impact. Storm water management is crucial to waterway protection, and the DOE will work with local partners on the cost of the permitting process.

(Opposed) Most citizens rely on public notices to know what their government is doing. Publication of legal notices ensures transparency and an archive that cannot be corrupted. Public involvement is more important during difficult economic times, when there are tough choices to be made. Some cities do not maintain a website, do not have a reliable website, or do not routinely update the website. People without computer access should not face limited access to information about government affairs. Legal notices are a crucial piece of business for many newspapers, particularly in small, rural communities, where they also have deep market penetration. If newspapers are forced out of business, newspaper-related jobs will

suffer, leading to increased unemployment costs and decreased revenue. Legal notices should be accessible and verifiable, and are important for litigation purposes.

Although the environmental community has agreed to temporary extensions of GMA updates in the past, it cannot support a permanent extension of the GMA, SMA and NPDES permit cycles. This bill effectively provides for automatic approval of master plan updates under the SMA if the DOE does not act with 180 days. The NPDES permits are the most important element of Puget Sound recovery, and the federal Clean Water Act requires a five-year renewal cycle. Cleaning up storm water is expensive; preventing it is less so. Updated permits allow for the use of the best, most cost-effective technology to address the consequences of a growing population. Delaying issuance also delays identification of source contamination and cheaper prevention actions, thereby increasing the costs of clean-up.

Persons Testifying: (In support) Representative Springer, prime sponsor; Paul Roberts, Association of Washington Cities; Bob Gregory, City of Longview; Linda Ring-Erickson, Association of Counties; and Nathan Gorton, Washington Realtors.

(With concerns) Leonard Bauer, Department of Commerce; Scott Hildebrand, Master Builders Association of King and Snohomish Counties; and Tom Clingman, Department of Ecology.

(Opposed) Scott Wilson, Port Townsend and Jefferson County Leader; Chuck Allen, Quincy Valley Post Register; Phil Brown, Seattle Daily Journal; Leif Nesheim, The Vidette; Douglas Crist, Sound Publishing; Paul Archipley, Beacon Publishing; Bill Forhan, NCW Media, Inc.; Stephen McFadden, Ritzville Adams County Journal; April Putney, Futurewise; Bruce Wishart, People for Puget Sound; Mo McBrown, Washington Environmental Council; Rowland Thompson, Allied Daily Newspapers; and Naki Stevens, Department of Natural Resources.

Persons Signed In To Testify But Not Testifying: None.