

# HOUSE BILL REPORT

## ESHB 1478

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### As Passed Legislature

**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.

Senate Amended.

Passed Senate: 4/4/11, 49-0.

House Refused to Concur.

Conference Committee.

Passed Senate: 4/22/11, 33-13.

Passed House: 4/22/11, 90-6.

Passed Legislature.

### 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.

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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.*

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**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) and Ethan Moreno (786-7386).

### **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 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. With limited exceptions, fully-planning jurisdictions must review and, if needed, revise their plans and development regulations every seven years according to a schedule set forth in the GMA.

The GMA includes numerous requirements relating to the use or development of land in urban and rural areas. Among other requirements, counties that fully plan under the GMA (planning counties) must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Planning counties and the cities within these counties must include within their UGAs areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period.

Each county that designates UGAs must review, at least every 10 years, its designated UGAs, and the associated permitted densities in the incorporated and unincorporated portions of each UGA. In conjunction with this county review, each city located within a UGA must review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the UGAs.

The GMA requires six western Washington counties (Clark, King, Kitsap, Pierce, Snohomish, and Thurston counties) and the cities within those counties to establish a review and evaluation "buildable lands" program. The purpose of the program is to determine whether a county and its cities are achieving urban densities, and identify reasonable

measures, subject to statutory provisions, that will be taken to comply with GMA requirements. 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 the 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, the agency has not done so.

#### Transitional Housing Operating and Rent Program.

The Transitional Housing Operating and Rent Program (THOR Program) assists individuals and families who are homeless or at risk of becoming homeless with rental assistance, housing-related case management services, and other actions. The Commerce is charged with administering the THOR Program and providing grants to organizations, including counties and cities, who serve eligible and participating persons. As directed by the Legislature, organizations that receive more than \$500,000 from the THOR Program and other specified sources must apply to the Washington State Quality Award Program once every three years for an independent assessment of its quality management, accountability, and performance systems.

#### 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 Washington State 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 Washington State Department of Transportation, 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.

Provisions for school impact fees generally authorize the funds to be expended or encumbered within 10 years of receipt.

#### Annexation Sales and Use Tax.

A city in a county with more than 600,000 persons that annexes an area may impose an annexation sales and use tax for qualifying annexations. The tax is credited against the sales tax, so it is not an additional tax to a consumer. All revenue from the tax must be used to provide, maintain, and operate municipal services for the annexation area. The revenues may not exceed the difference of that which the city deems necessary to provide services for the annexation area and the general revenue received from the annexation.

With limited exceptions, the rate of the tax is 0.1 percent for each annexed area with a population greater than 10,000, but less than 20,000, and 0.2 percent for an annexed area over 20,000 persons. Effective July 1, 2011, the maximum rate of tax a city can impose under annexation sales and use tax provisions is 0.85 percent for an annexed area in which the population is greater than 18,000. To qualify for this maximum rate, the annexed area also must have been officially designated as a potential annexation area by more than one city, one of which has a population of at least 400,000 persons.

#### Reclaimed Water and Greywater.

By December 31, 2010, and in coordination with the Department of Health 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.

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.

A master program, or a segment thereof, becomes effective when approved by the DOE. In accordance with a schedule established in the SMA, counties and cities must develop or amend master programs every seven years.

#### **Summary of Engrossed Substitute Bill:**

##### Growth Management Act.

The comprehensive plan review and revision schedule of the Growth Management Act is modified to require counties cities to take such action every eight years, rather than every seven years, and to reallocate review and revision years for some jurisdictions. An additional two years for meeting the review and requirements is granted to smaller and slow growing counties and cities. The date by which the initial review and revision requirements must be completed for the first bloc of counties and cities is June 30, 2015, rather than December 1, 2014. County reviews of designated urban growth areas must also be completed according to this schedule, and evaluation requirements for the buildable lands program must be completed by counties and cities one year before the applicable review and revision deadline.

##### Publicly Owned Vehicles and Fuel Usage.

The requirement that, to the extent determined practicable by rules adopted by the Department of Commerce (Commerce), all state agencies and local government subdivisions of the state fuel their publicly owned vehicle fleet with electricity or biofuel by June 1, 2015, is modified to grant local government subdivisions three additional years to comply with the requirement. By June 1, 2015, the Commerce must adopt rules to define practicability and clarify how local government subdivisions of the state will be evaluated to determine whether they have met associated goals.

##### Transitional Housing Operating and Rent Program.

Until 2018 counties and cities that receive more than \$500,000 from the Transitional Housing Operating and Rent Program and other specified sources are exempt from requirements otherwise obligating them to apply to the Washington State Quality Award Program once every three years.

Preservation Rating Reports.

The requirement for a city or town to inform the Washington State 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.

Annexation Sales and Use Tax.

The population threshold for cities to impose the 0.85 percent maximum annexation sales and use tax for qualifying areas is reduced from 18,000 to 16,000. The resident population of the annexed area must be determined in accordance with generally applicable methods for determination populations that are prescribed in annexation statutes.

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 must become effective on August 1, 2013.

Shoreline Management Act.

Counties and cities must review and revise their shoreline master programs according to a newly established schedule every eight years, rather than every seven years. 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 within 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.