

# SENATE BILL REPORT

## ESHB 1478

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As of March 22, 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:** Passed House: 3/04/11, 86-11.

**Committee Activity:** Government Operations, Tribal Relations & Elections: 3/17/11.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Karen Epps (786-7424)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. 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 and development regulations are subject to continuing review and evaluation by the adopting county or city. Planning jurisdictions are required to review and, if needed, revise their comprehensive plans and development regulations according to a recurring seven-year statutory schedule.

The review schedule is as follows:

- on or before December 1, 2014, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;
- on or before December 1, 2015, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

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- on or before December 1, 2016, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and
- on or before December 1, 2017, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

Six Western Washington counties (Clark, King, Kitsap, Pierce, Snohomish, and Thurston), and the cities within those counties, are required to establish a review and evaluation process known as the Buildable Lands Program. The purpose of the program is to determine whether a county and its cities are achieving appropriate urban densities within urban growth areas (UGAs) and to identify measures that will be taken to comply with the GMA.

Publicly Owned Vehicles and Fuel. By the year 2015 all state agencies and local government subdivisions of the state must satisfy 100 percent of their fuel needs for all vessels, vehicles, and construction equipment from electricity or biofuels. By June 1, 2010, the Department of Commerce (Commerce) must adopt rules to address criteria and a phase-in schedule for state agencies and local government subdivisions of the state to convert their fleet to electricity and biofuels.

Preservation Rating Reports. Beginning in the 2003-05 biennium, cities are required to submit to the Transportation Commission, or its successor entity, preservation rating information on at least 70 percent of their total city arterial network. Thereafter, the requirement to submit preservation rating information increases in 5 percent increments each biennium until 100 percent of all city arterial networks have preservation rating information completed for them.

Impact Fees. Counties, cities, and towns that are required or choose to plan under GMA may impose impact fees on development activity as part of the financing for public facilities needed to serve new growth and development. The impact fees (1) may only be imposed for system improvements that are reasonably related to the new development; (2) may not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and (3) must be used for system improvements that will reasonably benefit the new development.

System improvements are limited to those public facilities specifically designated by a county, city, or town in its capital facilities plan that are designed to serve areas within the community at large. Generally, if a jurisdiction does not spend impact fee revenue on system improvements within six years of collection, the impact fees must be refunded.

Reclaimed Water. Reclaimed water is an effluent derived from a wastewater treatment system that has been treated in order to be suitable for a beneficial use or a controlled use that otherwise would not occur.

The Department of Health (DOH) issues permits to water generators for commercial or industrial uses of reclaimed water. The Department of Ecology (DOE) issues reclaimed water permits for land applications of reclaimed water. In 2006 the Legislature required

DOE, in coordination with DOH, to adopt rules no later than December 31, 2010, for reclaimed water use.

National Pollutant Discharge Elimination System (NPDES) Permits. The federal Clean Water Act (CWA) sets effluent limitations for discharges of pollutants. DOE is delegated federal CWA authority by the U.S. Environmental Protection Agency (EPA). The federal CWA in implementing EPA storm water regulations established two phases for NPDES permits to control storm water discharges from municipalities operating municipal separate storm sewer systems.

The EPA phase II regulations went into effect in early 2003 and apply to all regulated small municipal separate storm sewer systems. On January 17, 2007, DOE issued two phase II municipal storm water permits: one for Western Washington and one for Eastern Washington with an effective date of February 16, 2007.

Shoreline Management Act (SMA). SMA governs uses of state shorelines. 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.

Local governments must conduct a review of their master programs at least once every seven years to assure that the master program is consistent with legal requirements, and to assure consistency of the master plan with GMA, if applicable, and other local requirements. Following this review, local governments are obligated, if necessary, to revise their master programs. The statutory schedule is as follows:

- on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and the cities within those counties;
- on or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties, and the cities within those counties;
- on or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties, and the cities within those counties; and
- on or before December 1, 2014, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and the cities within those counties.

**Summary of Bill:** Growth Management Act. The comprehensive plan review and revision schedule is modified to require counties and cities to take such action every ten years, instead of every seven years.

The review schedule is as follows:

- on or before June 30, 2015, and every ten years thereafter, for Clark, and King counties, and the cities within those counties;
- on or before June 30, 2016, and every ten years thereafter, for Kitsap, Pierce, Snohomish, and Thurston counties, and the cities within those counties;
- on or before June 30, 2017, and every ten years thereafter, for Clallam, Island, Jefferson, Mason, San Juan, Skagit, Spokane, and Whatcom counties, and the cities within those counties;

- on or before June 30, 2018, and every ten years thereafter, for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, and Yakima counties, and the cities within those counties; and
- on or before June 30, 2019, and every ten years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and the cities within those counties.

The Buildable Lands Program, the purpose of which is to determine whether a county and its cities are achieving appropriate urban densities within Urban Growth Areas and to identify measures that will be taken to comply with GMA, does not apply to any city with a population of 10,000 or less.

Publicly Owned Vehicles and Fuel Usage. By the year 2018 cities and counties must satisfy 100 percent of their fuel needs for all vessels, vehicles, and construction equipment from electricity or biofuels. By June 1, 2015, Commerce must adopt rules to address criteria and a phase-in schedule for cities and counties to convert their fleet to electricity and biofuels.

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 allow the jurisdiction ten years to take such action.

Reclaimed Water. DOE, in coordination with DOH, must adopt rules for reclaimed water use no earlier than June 30, 2013.

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

Shoreline Management Program. Beginning on June 30, 2020, each county, and the cities within each county, must review and revise their master programs on a ten-year cycle, rather than a seven-year cycle.

The review schedule is as follows:

- on or before June 30, 2020, and every ten years thereafter, for Clark, and King counties, and the cities within those counties;
- on or before June 30, 2021, and every ten years thereafter, for Kitsap, Pierce, Snohomish, and Thurston counties, and the cities within those counties;
- on or before June 30, 2022, and every ten years thereafter, for Clallam, Island, Jefferson, Mason, San Juan, Skagit, Spokane, and Whatcom counties, and the cities within those counties;

- on or before June 30, 2023, and every ten years thereafter, for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, and Yakima counties, and the cities within those counties; and
- on or before June 30, 2024, and every ten years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties, and the cities within those counties.

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 this performance benchmark on its website.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is an attempt to provide fiscal relief to cities and counties. They are facing the same fiscal crisis that the state is, and the state has no money to send their way. This bill is designed to lessen the burden on cities and counties from a fiscal point of view. One of the ways to do that is to allow cities and counties more time to comply with the regulations that the state passes down to the local governments. None of the regulations are eliminated, they are simply pushed out. Cities and counties will still need to do a fleet conversion, this simply gives them more time to do it. The planning processes around GMA and SMA should not be abandoned, but this will allow cities and counties more time to do it. There was contention over shoreline issues and stormwater issues. The language in the House bill is agreed to by the environmental community, the DOE, and cities and counties, except for changing the update schedules in GMA and SMA to every ten years. The aspirational language around master program updates is a request to DOE to please get the work done quickly. This bill does not change the current SMA update cycle and those updates will go forward as required under current law. There are a couple of items in the timelines and it would be preferable that these be corrected. This bill will help cities and counties with regards to their financial needs. While this bill does not provide for a financial benefit immediately, it will happen in the coming few years. GMA and SMA operate as a partnership between the state and local jurisdictions in reviewing all these plans, providing resources to do technical assistance, and then incorporating those into updates. It would be helpful to prioritize any capital budget dollars for Phase I municipal stormwater permit implementation projects since this bill extends the timelines for Phase II permits. The extension of the impact fees to ten years to give local jurisdictions more time to build the necessary infrastructure will allow local jurisdictions more time to aggregate funds to build the infrastructure and is much appreciated. Without this change, the infrastructure funding is lost as are the jobs that go with the building of new infrastructure. Counties and cities are looking for ways to reduce costs, and this bill has something for everyone. Counties would be interested in adding a provision to allow the assessor to send notices by electronic mail. The GMA and SMA updates are expensive and this bill will help cities and counties save

money. This bill will allow cities and counties to focus these resources on job creating projects and economic development. Ten year updates are more than adequate as these are 20 year plans, so a review at the half-way point is reasonable and adequate to make mid-course corrections half way through the time period. This bill is commonsense good government and will really help the cities. For the fleet conversion section of the bill, it would helpful to add fire districts so that they are treated the same as fire departments.

CON: The update schedule in GMA was pushed out three years last session. This bill makes permanent the change from seven to ten years, so even when the economy gets better, this is a forever change to ten years. This is too long. On the SMA change, previously updates were required to be done every five years and that was changed to every seven years. This changes it again. These are very important safeguards for our community. These updates help protect Puget Sound. It helps deal with issues in buildable communities. Ten years is too long. These laws are critically important for protecting the environment and quality of life in Washington State. There are consequences in changing these updates from seven to ten years in every single round after this update cycle as this is a permanent change. There will be more tinkering around where cities and counties de-designate resource land, up-zone rural areas, and expand urban growth areas most of which happens without a comprehensive analysis of their impacts on a community's job and housing balance, effects on neighboring working farms and forest lands, and plans in place for cities and counties on how they plan to pay for infrastructure needed to service these areas. Seven to ten years is too long especially for cities and counties that are growing greater than average. Shoreline updates are critical to Puget Sound recovery. The reason for these reviews is not only to consider statutory changes but also to see if the plan is consistent with the body of law. These reviews also need to consider regulatory changes including new rules that have recently been adopted. This delay would be significant for some of those jurisdictions that would be impacted.

**Persons Testifying:** PRO: Representative Springer, prime sponsor; Mark Brown, Cities of Vancouver, Lacey, Longview, Battle Ground, and Ridgefield; Dave Williams, Association of Washington Cities; Tom Clingman, DOE; Todd Mielke, Spokane County Commissioner; Steve Stuart, Clark County Commissioner; Kathy Lambert, King County Council; Doreen Marchione, Council Member, City of Kirkland; Ryan Spiller, Washington Fire Commissioners.

CON: Clifford Traisman, Washington Conservation Voters; April Putney, Futurewise; Peter Thein, Sierra Club, Cascade Chapter; Bruce Wishart, People for Puget Sound.