

# SENATE BILL REPORT

## SB 5360

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As Reported by Senate Committee On:  
Government Operations, Tribal Relations & Elections, February 15, 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:** Senators Swecker, Pridemore, Zarelli, Hatfield, Benton, Fraser, Haugen, Sheldon, Hobbs, Prentice and Shin.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 2/03/11, 2/08/11, 2/15/11 [DPS-NRMW].

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

**Majority Report:** That Substitute Senate Bill No. 5360 be substituted therefor, and the substitute bill do pass and be referred to Committee on Natural Resources & Marine Waters.

Signed by Senators Pridemore, Chair; Swecker, Ranking Minority Member; Benton, Chase and Nelson.

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

**Background:** A city is required to publish a copy of each ordinance, or a summary of each ordinance, that is adopted at least once in the official newspaper of the city or town. A summary is a brief description of the ordinance that succinctly describes the main points of the ordinance.

The Growth Management Act (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. Except as otherwise provided, planning jurisdictions must review and, if needed, revise their comprehensive plans and development regulations according to a recurring seven-year statutory schedule.

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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.*

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;
- 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 (i.e., 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.

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.

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.

Current law requires counties, in cooperation with cities within the county, to prepare a coordinated, comprehensive solid waste management plan. Each plan must be reviewed and revised, if necessary, at least every five years.

Counties, cities, and towns that are required or choose to plan under the 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 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.

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 and implementing EPA storm water regulations established two phases for National Pollutant Discharge Elimination System 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, the DOE issued two phase II municipal stormwater permits: one for Western Washington and one for Eastern Washington with an effective date of February 16, 2007.

The Shoreline Management Act 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 the 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 (Recommended Substitute):** Counties and cities must review and, if needed, revise their comprehensive plans and development regulations to ensure the plans and regulations comply with the requirements of the GMA. 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 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; and
- 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 UGAs and to identify measures that will be taken to comply with the GMA, is subject to available funds appropriated by the state.

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.

The requirement to submit preservation rating information in 5 percent increments to the Transportation Commission each biennium until 100 percent of all city arterial networks have preservation rating information completed for them is suspended until the 2013-2015 biennium.

Jurisdictions that impose impact fees must provide a process by which applicants for building permits for a subdivision, short subdivision, site development permit, or condominium if the residential development project is designed, constructed, and certified to at least the LEED Gold Standard may (1) record a lien against title to the property in lieu of paying impact fees at the time of application; or (2) apply for a deferral of the impact fee payment until final inspection or the issuance of a certificate of occupancy or equivalent certification or within 12 months of permit issuances, whichever is earlier. Sellers of a property subject to an impact fee deferral lien must make specified disclosures to a prospective purchaser regarding the lien.

If a jurisdiction does not spend impact fee revenue on system improvements within ten years of collection, the impact fees must be refunded.

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

The DOE must extend without modification the phase II municipal stormwater permits until after June 30, 2013.

Local governments must conduct a review of their master programs at least once every ten years to assure that the master program is consistent with legal requirements, and to assure consistency of the master plan with the GMA, if applicable, and other local requirements. A master program, segment of a master program, or an amendment to a master program

becomes effective when approved by DOE, or within 180 days of receipt by DOE. The 180-day period may be extended for an additional 30 days by DOE, or at the request of the local government.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute):** Removes the provisions allowing a city to either publish the text of an ordinance, or a summary of each ordinance, in the official newspaper of the city or post the text of an ordinance on the city's website and make a hard copy available at a specific location. Changes the review schedule under which counties and cities must review and revise their comprehensive plans and development regulations to have five categories of counties instead of four categories of counties. Includes clarifying changes referencing back to the review schedule in statute. Obligates jurisdictions that impose impact fees to provide a process by which applicants for building permits for a subdivision, short subdivision, site development permit, or condominium if the residential development project is designed, constructed, and certified to at least the LEED Gold Standard may (1) record a lien against title to the property in lieu of paying impact fees at the time of application; or (2) apply for a deferral of the impact fee payment until final inspection or the issuance of a certificate of occupancy or equivalent certification or within 12 months of permit issuances, whichever is earlier. Requires sellers of a property subject to an impact fee deferral lien make specified disclosures to a prospective purchaser regarding the lien. Adds phase II to the section on municipal stormwater permits for clarification purposes. Removes the requirement that counties, in cooperation with cities within the county, review and revise its solid waste management plan at least every ten years.

**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 on Original Bill:** PRO: This bill is designed to provide some fiscal relief to cities and counties who are hurting during the economic downturn. There is nothing in this bill that eliminates a mandate. There is nothing in this bill that reduces protection of environmental resources. With one exception, there is nothing in this bill that has a fiscal impact to the state. Cities and counties do not want to go backwards on the progress they have made in land use planning and establishing environmental protections. The one year delay on the phase II municipal stormwater permits is needed until a funding source for infrastructure projects is established. The fleet conversion that currently exists in the statute is cost prohibitive and cities and counties need more time to phase in this requirement. The reclaimed water draft rules create unnecessary barriers and would cause monthly sewer rates to double. Changing the local impact fee period of time that cities and counties can retain those fees to ten years puts local governments on parity with schools. The publishing of legal notice provisions in the bill only apply when the local ordinance is adopted. Notices are very costly for local governments and this is a small changes that would reduce costs.

CON: The change to publishing notices of the adoption of ordinances is a permanent removal of publishing the ordinances in the newspapers. Additionally, the change provides that failure to publish does not invalidate the ordinance is a huge change. The sections on publishing notice in newspapers are bad public policy. Citizens look for these notices in their newspapers. Many people, especially our senior citizens do not have regular dependable internet access and they rely on newspapers for these notices. Seven years for GMA updates recognizes the compromise between the five years that the environmental community wanted and ten years that the cities and counties wanted for updates. The update to the phase II municipal stormwater permits is perhaps one of the most important things to the recovery of Puget Sound and it should not be delayed. Putting this off until 2013 means there could be a new governor, a new director at DOE, and new staff at DOE and those things could cause even further delays. The delay of the phase II municipal stormwater permit is absolutely not the answer. There is not a draft permit yet and there is another legislative session between now and when the permit is scheduled to be adopted, so this could be considered next session. The delay of the phase II municipal stormwater permit will have detrimental impacts and increased clean up expenses on the aquatic lands of the state.

OTHER: Effective stormwater management and control is very important for Puget Sound and that permitting process has a high level of interest from citizens. There are concerns about making the Buildable Lands Program subject to available funds appropriated by the state. Commerce has developed some guidance about how to do this better and more cost effective.

**Persons Testifying:** PRO: Senator Swecker, prime sponsor; Dave Williams, Association of Washington Cities; Greg Cuoio, City of Lacey; Scott Merriman, Washington State Association of Counties.

CON: Frank DeVaul, DeVaul Publishing, Inc.; Roland Thompson, Allied Daily Newspapers; George LeMasurier, The Olympian Publishers; Bill Will, Washington Newspaper Publishers; April Putney, Futurewise; Bridget Moran, Department of Natural Resources; Bruce Wishart, People for Puget Sound; Mo McBroom, Washington Environmental Council; Arthur West, citizen; Bill Stauffacher, Pacific Printing and Imaging Association.

OTHER: Tom Clingman, DOE; Leonard Bauer, Department of Commerce.