

SENATE BILL REPORT

SB 5360

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 15, 2011
Natural Resources & Marine Waters, February 21, 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].
Natural Resources & Marine Waters: 2/17/11, 2/21/11 [DP2S].

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)

SENATE COMMITTEE ON NATURAL RESOURCES & MARINE WATERS

Majority Report: That Second Substitute Senate Bill No. 5360 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Morton, Ranking Minority Member; Fraser, Hargrove, Stevens and Swecker.

Staff: Sherry McNamara (786-7402)

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.

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;
- 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.

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 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. 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 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 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 storm water permits: one for Western Washington and one for Eastern Washington with an effective date of February 16, 2007.

Shoreline Management Act. 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 Second Substitute): 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 the GMA, is subject to available funds appropriated by the state.

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 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.

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.

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.

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

National Pollutant Discharge Elimination System Permits. DOE must report to the Legislature by November 30, 2011, on the progress of reissuing the NPDES municipal storm water general permits, including a description of DOE's proposed draft permits and an update on the permit development process.

Shoreline Management Program. 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.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & MARINE WATERS COMMITTEE (Recommended Second Substitute):

- Removes the delay of the adoption of NPDES Phase II municipal storm water general permits.
- Requires DOE to report to the Legislature by November 30, 2011, on the progress of reissuing the NPDES municipal storm water general permits, including a description of DOE's proposed draft permits and an update on the permit development process.
- Removes the 180-day requirement for DOE's review of a local master plan, segment, or amendment.

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 storm water 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 (Government Operations, Tribal Relations & Elections): 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 (Government Operations, Tribal Relations & Elections): 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.

Staff Summary of Public Testimony on Recommended First Substitute (Natural Resources & Marine Waters): PRO: This bill will provide some fiscal relief to cities and counties who are having difficulty during this economic downturn. Local governments are short on revenue and need additional time to meet the requirements in this bill. This bill will defer some of the costs associated with the mandates; however, it will not eliminate any mandates. The cities and the counties currently do not have enough money to pay for it all. We are asking for help; we are not asking to get out of our responsibilities. The NPDES Phase II permits are due to be reissued in February 2012; if they are not issued the existing permit stays in place. The delay is needed to help cities and counties find funding sources for establishing the infrastructure needed.

CON: Any delay in the NPDES permitting process could lead to a need for more resources to clean up. The delay in storm water permits is not the answer. Over 140,000 pounds of toxins go into Puget Sound daily. The SMA's master programs were once set to update every five years; they are currently at seven years. Under the seven year schedule, 38 master programs have already been approved. It takes time for DOE to review the master programs, and they are not valid until they are approved. Two years for DOE to review a master program is too long.

OTHER: Storm water runoff is a key contaminant and should not be delayed. DOE would prefer a June 30th deadline rather than December 1 because it coincides with the budget period. With regards to the 180-day requirement for approval of master programs, the department will work on making this happen. DOE needs to know under the 180-day requirement when the clock starts ticking and when to turn the clock off when the master program goes back to the counties or cities for their review.

Persons Testifying (Natural Resources & Marine Waters): PRO: Senator Swecker, prime sponsor; Dave Williams, Association of Washington Cities.

CON: Mo McBroom, Washington Environmental Council; April Putney, Futurewise; Bruce Wishart, People for Puget Sound; Bridget Moran, Department of Natural Resources.

OTHER: Tom Clingman, DOE.