

FINAL BILL REPORT

EHB 1224

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Synopsis as Enacted

Brief Description: Providing a process for county legislative authorities to withdraw from voluntary planning under the growth management act.

Sponsors: Representatives Kretz, Takko and Short.

House Committee on Local Government
Senate Committee on Governmental Operations

Background:

Growth Management Act: Introduction and Two-Tiered Planning Requirements.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities and a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

The GMA directs planning jurisdictions (jurisdictions that must satisfy all planning requirements of the GMA) to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specific planning elements, including land use, housing, and rural area provisions, each of which is a subset of a comprehensive plan. Comprehensive plans are implemented through locally adopted development regulations, and the plans and regulations are both subject to recurring review and revision requirements.

In addition to comprehensive plan and development regulations obligations, planning jurisdictions are required to satisfy a broad array of land-use planning requirements established in the GMA. Examples of these planning requirements include provisions for:

- developing and adopting countywide planning policies;
- designating urban growth areas; and
- developing processes for identifying and siting essential public facilities.

While planning jurisdictions are subject to significantly more requirements under the GMA than jurisdictions that do not fully plan under the GMA, all counties and cities are required

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by the GMA to satisfy designation mandates for natural resource lands. More specifically, all counties and cities must designate, where appropriate, agricultural lands that are not characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products. Planning jurisdictions must also adopt development regulations that conserve these agricultural lands and other designated natural resource lands.

As established in the GMA, all counties and cities must also designate and protect environmentally sensitive critical areas. These requirements obligate local governments, using the best available science, to adopt development regulations to protect critical areas (also known as critical areas ordinances) that comply with specified criteria. Critical areas include: wetlands; aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.

The Department of Commerce provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

Planning Jurisdiction Obligations: Mandates and Choices.

Of the 29 counties and the cities within that fully plan under the GMA, 18 were required by population criteria to become planning jurisdictions. The remaining 11 counties elected through a resolution of their county legislative authority to have all planning requirements of the GMA apply to them and to the cities within.

According to the 2010 Census and April 1, 2013, population estimates of the Office of Financial Management (OFM), four counties that adopted resolutions to make the county and cities within subject to all planning requirements of the GMA had populations of 20,000 or fewer residents between April 1, 2010, and April 1, 2013: Columbia, Ferry, Garfield, and Pend Oreille.

Growth Management Hearings Board.

The GMA establishes a seven-member quasi-judicial Growth Management Hearings Board (Board) to make determinations related to the implementation of the GMA. The Board may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments;
- that the 20-year planning population projections adopted by the OFM should be adjusted;
- that an approval or rejection of a county work plan by the Department of Commerce for the Voluntary Stewardship Program (VSP) is noncompliant with specific VSP requirements;
- that county regulations adopted to comply with VSP requirements are not rationally applicable and cannot be adopted by another jurisdiction in the implementation of the VSP; or
- that the Department of Commerce's certification of county development regulations adopted to protect certain critical areas in conformity with VSP requirements is erroneous.

Each petition for review that is filed with the Board must be heard and decided by a regional three-member panel of Board members. The Board must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more members of the regional panel deciding the case and upon being filed at the Board's principal office. Final decisions of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

Summary:

Resolution for Partial Planning Under the GMA.

Until December 31, 2015, the legislative authority of a county that is obligated by choice to fully plan under the GMA may adopt a resolution for partial planning (resolution) removing the county and the cities within from requirements to fully plan under the GMA. A county may exercise the authority to adopt the resolution if:

- the county has a population of 20,000 or fewer inhabitants at any time between April 1, 2010, and April 1, 2015;
- at least 60 days prior to adopting a removal resolution, the county provides written notification to the legislative body of each city located within the county of its intent to consider adopting the resolution; and
- the legislative bodies of at least 60 percent of the cities in the county having an aggregate population of at least 75 percent of the incorporated county population have not adopted resolutions opposing the removal action by the county and have not provided corresponding written notification.

Upon adoption of a resolution, the county and the cities within are no longer obligated to fully plan under the GMA. The adoption of a resolution, however, does not nullify or otherwise modify requirements of the GMA for counties and cities relating to:

- designating natural resource lands;
- designating and protecting critical areas;
- employing the best available science in designating and protecting critical areas; and
- the rural element of a comprehensive plan.

The legislative authority of a county that adopts a resolution is barred from subsequently passing a resolution indicating its intention to fully plan under the GMA for a minimum of 10 years from the date of the adoption of the resolution.

Requirements for Counties Subject to a Resolution, Determinations of Compliance.

Each county that adopts a resolution and the cities within must, within one year of the adoption of the resolution, adopt development regulations to assure the conservation of designated natural resource lands. These regulations may not prohibit uses legally existing on any parcel prior to their adoption and must assure that the use of lands adjacent to the designated natural resource lands do not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of the lands for the production of food, agricultural products, or timber or for the extraction of minerals.

A county that adopts a resolution and that is not in compliance with specific obligations of the GMA at the time the resolution is adopted must, by January 30, 2017, apply for a

determination of compliance from the Department of Commerce finding that the county's development regulations (including regulations adopted to protect critical areas) and comprehensive plans are in compliance with the same specified obligations of the GMA. The Department of Commerce must approve or deny the application for a determination of compliance within 120 days of its receipt or by June 30, 2017, whichever date is earlier.

The planning obligations that are subject to the compliance provisions are obligations requiring:

- the adoption of county-wide planning policies, development regulations to conserve designated natural resource lands, comprehensive plans and implementing development regulations, and designated urban growth areas;
- the adoption of a rural element of a comprehensive plan;
- the designation and conservation of natural resource lands; and
- the designation and protection of critical areas and the employment of the best available science in designating and protecting critical areas.

Denials of Applications of Determinations of Compliance, Appeals.

If the Department of Commerce denies an application for a determination of compliance, the county's resolution ceases to have effect and the county and each city within is obligated to comply with all requirements of the GMA.

Until December 31, 2020, the Board is authorized to hear and determine petitions regarding determinations of compliance by the Department of Commerce. The petition must allege that the Department of Commerce's determination was erroneous and must be filed with the Board within 60 days of the issuance of a determination decision by the Department of Commerce. In the event the petition is regarding a determination of compliance approval, the county and the Department of Commerce must equally share the costs incurred by the Department of Commerce in defending the approval before the Board.

Determinations of Compliance: Authorization for Agency Rules.

The Department of Commerce is authorized to adopt rules related to determinations of compliance. The rules may address, but are not limited to:

- requirements for applications for determinations of compliance;
- charging of costs to a county for incurred defense expenses;
- procedures for processing applications;
- criteria for the evaluation of applications;
- issuance and notice of department decisions; and
- applicable timelines.

Votes on Final Passage:

House	75	19	
Senate	49	0	(Senate amended)
House	84	12	

Effective: June 12, 2014