

HOUSE BILL REPORT

EHB 1224

As Passed Legislature

Title: An act relating to providing a process for county legislative authorities to withdraw from voluntary planning under the growth management act.

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.

Brief History:

Committee Activity:

Local Government: 2/8/13, 2/22/13 [DP].

Floor Activity:

Passed House: 2/17/14, 75-19.

Senate Amended.

Passed Senate: 3/6/14, 49-0.

House Concurred.

Passed House: 3/12/14, 84-12.

Passed Legislature.

Brief Summary of Engrossed Bill

- Allows a county that elected to fully plan under the Growth Management Act (GMA) and that has 20,000 or fewer inhabitants to reduce the planning obligations that it and the cities within must satisfy under the GMA.
- Expires the authority of a county to reduce planning obligations for it and the cities within on December 31, 2015.
- Specifies that a county action to reduce planning obligations for it and the cities within does not nullify requirements that counties and cities must satisfy for natural resource lands, critical areas, the employment of the best available science, and the rural element of a comprehensive plan.
- Establishes that a county action to reduce planning obligations for it and the cities within may be invalidated if, provided the county is not in compliance with certain requirements of the GMA at the time of the county's reduction action, the county does not receive a determination of compliance from the Department of Commerce (Commerce).

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.

- Makes compliance determinations by Commerce subject to review by the Growth Management Hearings Board.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 5 members: Representatives Takko, Chair; Kochmar, Assistant Ranking Minority Member; Buys, Springer and Taylor.

Minority Report: Do not pass. Signed by 3 members: Representatives Fitzgibbon, Lias and Upthegrove.

Staff: Ethan Moreno (786-7386).

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, both of which are subject to recurring review and revision requirements prescribed in the GMA.

In addition to comprehensive plan and development regulations obligations, planning jurisdictions are further 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 by the GMA to satisfy specific 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. As defined by statute, critical areas include: wetlands; aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.

The Department of Commerce (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 established in the GMA to become planning jurisdictions. The remaining 11 counties elected through a process described below to have all planning requirements of the GMA apply to them and to the cities within.

A county obligated by mandate to fully plan under the GMA is one that either:

- has a population of 50,000 or more and has experienced a population increase of more than 17 percent in the previous 10 years; or
- has experienced a population increase of more than 20 percent over the previous 10 years, regardless of population.

A county obligated by choice to fully plan under the GMA is one that, not meeting the population requirements, adopted a resolution of intention permanently subjecting itself and the cities within to all planning requirements of the GMA.

The counties that elected to fully plan under the GMA, and the year in which their resolution of intention was adopted, are as follows:

- Benton (1990);
- Columbia (1991);
- Douglas (1990);
- Ferry (1990);
- Franklin (1990);
- Garfield (1991);
- Kittitas (1990);
- Pacific (1990);
- Pend Oreille (1990);
- Stevens (1993); and
- Walla Walla (1990).

According to the 2010 Census and April 1, 2013 population estimates of the Office of Financial Management (OFM), four counties that adopted resolutions of intention had populations of 20,000 or fewer residents between April 1, 2010, and April 1, 2013.

<i>County</i>	<i>Census (April 1, 2010) Population</i>	<i>April 1, 2013 OFM Estimate</i>
Columbia	4,078	4,100

Ferry	7,551	7,650
Garfield	2,266	2,250
Pend Oreille	13,001	13,150

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 has limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific 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 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 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 of Engrossed Bill:

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 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. 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 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 Commerce. The petition must allege that Commerce's determination was erroneous and must be filed with the Board within 60 days of the issuance of a determination decision by Commerce. In the event the petition is regarding a

determination of compliance approval, the county and Commerce must equally share the costs incurred by Commerce in defending the approval before the Board.

Determinations of Compliance: Authorization for Agency Rules.

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

- requirements for applications for a determination 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.

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) This bill is very similar to a bill that was before the Legislature a couple of years ago. The GMA was adopted to control sprawl and with good intentions. In some of Washington's smallest counties, the GMA has been more of a burden than a help. If all of the counties that can opt out under this bill do, it will only affect 26,000 people. City input has been reflected in this bill and it is not a mandate.

Counties that opt out will still have to do the most difficult parts of the GMA. Ferry County has a comprehensive plan and a foundation in place and will continue to do land use planning. The population of Ferry County is about the same as it was 100 years ago, and the county is still recovering from the depression of the 1930s.

The burdens of the GMA are too large for small counties. The GMA drives up the cost of land and housing, and has a chilling effect on the economy. Businesses have relocated because of the regulatory environment of the GMA. If opting out is a good idea for the small counties, it is a good idea for the large counties. Florida repealed their smart growth laws. The population threshold in the bill should be increased to allow counties near that threshold to opt out. Growth Management Hearings Board decisions have reduced or eliminated local control and have had unintended consequences. The bill's provisions are optional and counties support local options and control.

This bill will allow county commissioners to have a discussion with their residents as to whether to opt out. County commissioners can strive to meet with and engage various environmentally-oriented persons. Small and slow-growing counties with natural resources have a low likelihood of significant population growth. There is no need to fear environmental degradation or the creation of housing concerns from the passage of this bill.

(Opposed) Over 20 years ago the GMA was passed and Washington refused to trade its quality of life for economic prosperity. The lack of an opt-out provision in the GMA is a recognition of the long-term planning vision of the GMA. An amendment is being discussed and considered.

Persons Testifying: (In support) Representative Kretz, prime sponsor; Brad Miller, Ferry County Commissioners Office; Scott Roberts and Glen Morgan, The Freedom Foundation; Laura Merrill, Washington State Association of Counties; Karen Skoog, Pend Oreille County Commissioners Office; and Jeanette McKague, Washington Realtors.

(Opposed) April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.