

HOUSE BILL REPORT

ESB 6194

As Reported by House Committee On: Local Government

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: Senators Dansel, Sheldon, Schoesler, Rivers, King, Benton, Brown, Braun, Angel, Padden, Bailey, Becker, Honeyford, Roach, Dammeier, Baumgartner, Holmquist Newbry and Hatfield.

Brief History:

Committee Activity:

Local Government: 2/24/14, 2/26/14 [DPA].

Brief Summary of Engrossed Bill (As Amended by Committee)

- 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.
- Establishes that a county action to reduce the planning obligations for it and the cities within may be invalidated if: the county is not in compliance with certain planning requirements of the GMA at the time of the county's reduction action; and the county does not receive a determination of compliance from the Department of Commerce (Commerce).
- Makes compliance determinations by Commerce subject to review by the Growth Management Hearings Board.
- Specifies that a county that reduces the planning obligations for it and the cities within must satisfy requirements for natural resource lands, critical areas, and the employment of the best available science.
- Expires the authority of a county to reduce the planning obligations for it and the cities within on December 31, 2015.

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.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 9 members: Representatives Takko, Chair; Gregerson, Vice Chair; Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Farrell, Fitzgibbon, Pike, Springer and Taylor.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a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.

Planning jurisdictions are further required to satisfy a wide array of 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 nonplanning jurisdictions, the GMA requires all counties and cities to satisfy specific designation mandates for natural resource lands. All counties and cities, for example, 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 protection requirements obligate local governments, using the best available science, to adopt development regulations, 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 specified 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 have 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 Amended 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 the designation of natural resource lands, the designation and protection of critical areas, and the use of the best available science in designating and protecting critical areas.

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 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 planning 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.

Amended Bill Compared to Engrossed Bill:

The amended bill makes numerous changes to the original bill, including:

- making technical modifications to provisions governing development regulations to assure the conservation of natural resource lands that a county and the cities within must adopt after a resolution is adopted;
- specifying that the adoption of a resolution does not nullify or otherwise modify the requirements for counties and cities relating to the designation of natural resource lands, the designation and protection of critical areas, and the use of the best available science in designating and protecting critical areas;
- specifying that a county that adopts a resolution and that is not in compliance with specified requirements of the GMA must, by January 30, 2017, apply for a determination of compliance from Commerce for the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans;
- specifying that 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;
- specifying that if Commerce denies an application for a determination of compliance, the county and each city within is obligated to comply with all requirements of the GMA, and that the adopted resolution is no longer in effect;
- establishing that determinations of Commerce may only be appealed to the Board within 60 days of the issuance of the decision by Commerce;
- specifying that, in the event of a filing of a petition with the Board regarding the defense of an approval of a determination of compliance, the county and Commerce must equally share the appeal defense costs of Commerce;
- authorizing Commerce to adopt rules related to determinations of compliance;
- authorizing the Board to hear petitions alleging that Commerce's determination was erroneous;
- expiring the Board's authority to hear petitions alleging that Commerce's determination was erroneous on December 31, 2020; and
- making numerous technical changes, including deleting references to "removal resolution" and inserting the term "resolution of partial planning."

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: 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, which passed unanimously out of the Senate, would allow four counties with fewer than 20,000 residences to opt out of the GMA. This bill is narrower than the corresponding bill of the House of Representatives. The four counties to which this bill applies are close to meeting the requirements prescribed in the bill, but additional work will remain for Ferry County. Ferry County, which has fewer citizens now than in 1906, has spent more than \$1 million in lawsuits since the passage of the GMA. Futurewise is in

support of this bill. Although this bill has the opt out provisions, it still has teeth. The bill is a cost-saving measure and will allow places that do not have the resources to fully plan under the GMA to use their resources for other purposes.

This bill, in one form or another, has been around for years. Counties support the bill and the House proposal, and are glad to see it moving forward. Realtors have been working on these bills for years. The different House and Senate versions provide room for negotiation and reaching agreement on the legislation. The bill protects natural resources, shorelines, forests, and agricultural lands. Support exists for the House version of the legislation and for the proposed striker to the Senate bill. This bill has been the subject of many negotiations between the Senate sponsor, Futurewise, and the Governor, and has included the involvement of several legislators.

(Neutral) Commerce is willing to work with stakeholders on the implementation of the bill. The bill represents a unique and new challenge for the agency, and it wants to have clear direction from the Legislature regarding its role under the bill. Commerce will work with stakeholders and jurisdictions to make the implementation of the bill successful.

(Opposed) None.

Persons Testifying: (In support) Senator Dansel, prime sponsor; Laura Merrill, Washington State Association of Counties; Jeanette McKague, Washington Realtors; and Cody Arledge, Futurewise.

(Neutral) Jeff Wilson, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.