

# HOUSE BILL REPORT

## 2SSB 5368

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### As Passed House - Amended:

April 11, 2021

**Title:** An act relating to encouraging rural economic development.

**Brief Description:** Encouraging rural economic development.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Short, Fortunato and Wilson, L.).

### Brief History:

#### Committee Activity:

Local Government: 3/16/21, 3/23/21 [DPA];

Appropriations: 4/1/21 [DPA(APP w/o LG)].

#### Floor Activity:

Passed House: 4/11/21, 93-5.

### Brief Summary of Second Substitute Bill (As Amended By House)

- Allows code cities to annex unincorporated territory within an urban growth area.
- Allows interlocal agreements for annexation to include use of a sales tax credit for annexed areas should such a credit be reinstated by the Legislature.
- Allows the Growth Management Hearings Board (GMHB) to refer a finding of noncompliance to the Department of Commerce (Commerce).
- Tasks Commerce with providing technical assistance to facilitate speedy resolution of the finding of noncompliance.
- Requires Commerce to offer training to assist rural counties in understanding findings of noncompliance and applying prior decisions of the GMHB, and allows Commerce to award grants to a public agency

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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 part of the legislation nor does it constitute a statement of legislative intent.*

with expertise and funded by local governments to provide the training.

- Permits local governments that are not currently in compliance with the Growth Management Act to receive funding from the Public Works Board for certain broadband projects.
- Bars the Community Economic Revitalization Board, the Utilities and Transportation Commission, and Commerce from considering whether a local government is in compliance with the Growth Management Act when considering applications for broadband funding.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Pollet, Chair; Duerr, Vice Chair; Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Berg, Robertson and Senn.

**Staff:** Elizabeth Allison (786-7129).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Local Government. Signed by 33 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Staff:** Jessica Van Horne (786-7288).

### **Background:**

#### Growth Management Act.

The Growth Management Act (GMA) is the state's comprehensive land use planning framework for cities and counties. Counties planning under the GMA, and the cities within such counties, must adopt internally consistent comprehensive plans and designate critical areas, agricultural lands, forestlands, and mineral resource lands. Jurisdictions must implement comprehensive plans through locally adopted development regulations that conform to the plan. Counties must also adopt countywide planning policies in cooperation with adjacent cities to coordinate planning.

### Urban Growth Areas.

Counties that fully plan under the GMA must designate urban growth areas (UGAs), within which urban growth must be encouraged and outside of which growth may occur only if it is not urban in nature. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

### Growth Management Hearings Board.

The Growth Management Hearings Board (GMHB) hears petitions and resolves disputes concerning the GMA. The GMHB is comprised of five members appointed by the Governor. Petitions are heard by three-member regional panels that generally include two members from the region where the case arose, and one member from a different region.

The GMHB may hear and determine petitions alleging that a state agency or planning jurisdiction is not in compliance with the GMA. The GMHB may issue a final order finding compliance or it may remand for plans and regulations to be brought into compliance. If a plan or regulation is found to be not in compliance, the GMHB must remand it back to the affected state agency, county, or city. The GMHB must allow a reasonable time, generally 180 days, within which the agency, county, or city must come into compliance. After the time to come into compliance has passed, the GMHB must have a hearing to determine whether the agency, city, or county is in compliance. A finding of compliance or noncompliance must be issued within 45 days of the hearing. If the GMHB finds the agency, county, or city to not be in compliance, it must transmit such finding to the Governor, and may recommend sanctions be imposed.

### Public Works Projects Assistance.

The Public Works Assistance Account (PWAA) was established in 1985 to provide a source of funding to assist local governments with infrastructure projects. Moneys in the PWAA must be used to make loans and grants and to give financial guarantees to local governments for public works projects. The Public Works Board (Board) is composed of 13 Governor-appointed members with staff support provided by the Commerce. The Board may make loans or grants to local governments from the PWAA to assist local governments in financing public works projects.

To qualify for such financial assistance, a local government must:

- be imposing a real estate excise tax at a rate of at least one-quarter of 1 percent;
- have developed a capital facilities plan; and
- be using all local revenue sources which are reasonably available for funding public works.

With limited exceptions, a local jurisdiction planning under the GMA may not receive

financial assistance from the PWAA unless it has adopted a comprehensive plan, including a capital facilities element, and development regulations.

#### Broadband Funding.

The Community Economic Revitalization Board (CERB) within Commerce was formed in 1982 to respond to local economic development in Washington communities. Through the Rural Broadband Program, CERB provides funding to local governments and federally recognized Indian tribes to assist in financing public infrastructure, including high-speed, open-access broadband services to rural underserved communities.

The Utilities and Transportation Commission (UTC) is a three-member commission appointed by the Governor and confirmed by the Senate. The UTC regulates the rates, services, facilities, and practices of utilities and transportation services and administers the Universal Communications Services Program (UCS). The UCS program was established in 2014 to support the provision of basic telecommunications services under rates, terms, and conditions and the provision, enhancement, and maintenance of broadband services. Under the UCS program, eligible communications providers may receive distributions from the universal communications services account based on criteria established by the UTC.

#### **Summary of Amended Bill:**

##### Annexation.

A code city may collaborate with the county or counties where the code city is located to form an interlocal agreement regarding annexation of unincorporated territory within a UGA boundary. An interlocal agreement for annexation may include use of a sales tax credit for annexed areas should such a credit be reinstated by the Legislature.

The agreement must address the following:

- a balancing of annexations of commercial, industrial, and residential properties so any potential loss or gain is considered and distributed fairly as determined by tax revenue;
- development, ownership, and maintenance of infrastructure; and
- the potential for revenue-sharing agreements.

The interlocal agreement formation processes must include procedures for public participation including opportunity for written comments and public meetings.

The Association of Washington Cities and the Washington State Association of Counties must report to the Legislature by December 1, 2021, on how a sales tax credit may be utilized to encourage appropriate annexations and what limits should be associated with such a credit if reinstated.

##### Growth Management Hearings Board – Noncompliance.

The GMHB may, after finding a jurisdiction out of compliance with the GMA, refer the finding of noncompliance to the Commerce. The purpose of the referral is for Commerce to provide technical assistance to facilitate speedy resolution of the finding of noncompliance and to provide training as necessary.

Commerce must offer training to assist counties that are largely rural in understanding findings of noncompliance from the GMHB and applying prior decisions of the GMHB to ongoing planning efforts to avoid findings of noncompliance. Commerce may award grants to a public agency with appropriate expertise and funded by local governments to provide the training.

Public Works Projects Assistance for Broadband Services.

Local jurisdictions planning under the GMA that have not adopted comprehensive plans and development regulations as required by the GMA are not prohibited from applying for grants and loans from the PWAA for projects that support certain broadband services where the grants and loans will assist the local jurisdiction with economic development, disaster resiliency and response, adaptation to public health emergencies such as pandemics, and emergency management.

Broadband Funding.

The CERB, the UTC, and Commerce are prohibited from considering whether a local jurisdiction is compliant with the GMA when considering applications for broadband funding.

**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 (Local Government):**

(In support) The annexation provision addresses the disparities in resources between cities and counties. Often counties provide the infrastructure for areas that are annexed and cities receive the revenue from such areas. The method for annexation is through an interlocal agreement and allows a single interlocal agreement to address all annexations within a UGA. This is a powerful option to encourage collaboration between cities and counties. It differs from current methods because it is collaborative, allows cities to qualify for an annexation sales tax credit, and does not have a referendum provision. The goal is to provide a straightforward and achievable annexation process. One recommendation would be to expand the annexation provision beyond code cities. Boundary review boards have very robust procedures for public involvement and notification and hearing processes. There are a great number of objectives and factors that must be weighed in annexation

processes which can be very complex. Language in the bill addresses boundary review boards and public processes and such language should remain.

The safe harbor provisions create an opportunity for jurisdictions to safeguard against appeals and litigation because jurisdictions are thinking more completely about the planning process going forward. The option to seek a determination of compliance is permissive, not mandatory. Commerce is allowed to offer technical guidance to jurisdictions. The GMHB is quasi-judicial and can only inform a jurisdiction it is not in compliance. It cannot offer guidance on how jurisdictions can come into compliance, and as a result, jurisdictions have struggled to know what changes they can make to come into compliance. The bill helps reduce liability and improve outcomes in planning, and allows for money to be saved. There is concern about the greenhouse gas emissions reduction subelement as it is a technical issue and not part of anything else discussed in the bill, but cities and counties are adopting greenhouse and climate change options.

(Opposed) None.

(Other) One issue with enforcement is the handful of cases where jurisdictions have to go before the GMHB until they are in compliance. The GMHB is a quasi-judicial board that can tell a jurisdiction what it did wrong, but it cannot say what would need to be fixed or provide feedback to a jurisdiction as to whether an action would result in a finding of compliance. The bill provides a voluntary process that would allow some dialogue and is less legalistic and more collaborative. It allows jurisdictions who are contemplating high-risk actions to have a formal path where they can get an independent certification of compliance before taking that action. Commerce has engaged in an informal process like this in the past, and the bill creates a more formal process. The procedures are modeled on the Shoreline Management Act because there is a clear process understood by people within that act.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Counties support this legislation. Counties have less diverse revenue streams than other forms of government, as they primarily rely on property taxes. The GMA has made activities more difficult due to restrictions on the types of developments that can occur in a county versus a city. There are existing concerns around the annexation process in terms of who will provide services and infrastructure. This legislation provides a pathway to address many of these areas of concern for counties.

(Opposed) None.

**Persons Testifying (Local Government):** (In support) Senator Short, prime sponsor; Bryce Yadon, Futurewise; Paul Jewell, Washington State Association of Counties; Mary Lynne Evans, Washington State Boundary Review Boards Association; Jan Himebaugh, Building Industry Association of Washington; Jeanette McKague, Washington

REALTORS; and Carl Schroeder, Association of Washington Cities.

(Other) Dave Andersen, Washington Department of Commerce.

**Persons Testifying (Appropriations):** Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying (Local Government):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.