# SENATE BILL REPORT
# ESHB 1241

As of March 16, 2021

**Title:** An act relating to planning under the growth management act.

**Brief Description:** Planning under the growth management act.

**Sponsors:** House Committee on Local Government (originally sponsored by Representatives Duerr, Berg, Ortiz-Self, Bateman, Wicks, Macri, Harris-Talley and Pollet).

**Brief History:** Passed House: 3/8/21, 56-41.
**Committee Activity:** Housing & Local Government: 3/16/21.

**Brief Summary of Bill**

- Increases the review and revision cycle for comprehensive plans and Shoreline Master Plans from eight to ten years.
- Requires certain counties and cities to submit an implementation progress report with certain required information to the Department of Commerce (Commerce) five years after reviewing and revising a comprehensive plan.
- Requires counties, cities, and other local governments to consult with federally recognized tribes during the planning processes under the Growth Management Act upon receipt of notice from the tribes that they are planning or would like to plan, and requires planning and coordination with tribes on certain aspects of a comprehensive plan.
- Provides that a federally recognized tribe may request formal government-to-government consultation with Commerce regarding the tribe's concern that a proposed comprehensive plan or amendment may injure rights reserved to the tribes and requires Commerce to take certain actions in response.

*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.*

## SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

**Staff:** Bonnie Kim (786-7316)

**Background:** The Growth Management Act (GMA) requires certain counties, and the cities within those counties, engage in planning for future population growth. Counties that have a population of 50,000 or more and, prior to May 16, 1995, had its population grow by 10 percent or more, or, after May 16, 1995, by 17 percent or more in the prior ten years are covered by the GMA. So too, is any county that experiences population growth of 20 percent. Counties with populations under 50,000, that would otherwise be required to plan, can remove themselves from the GMA's comprehensive planning requirements. Counties that do not meet the standards for automatic inclusion in the GMA may choose to be included. Eighteen counties are required to plan, ten have chosen to plan, and 11 are not subject to the full GMA planning requirements.

Whether a county is automatically required to plan under the GMA or voluntarily chooses to, the planning requirements are largely the same. The county must develop a countywide planning policy to provide a framework in which the county and the cities within the county can develop consistent comprehensive plans. The county and cities must adopt development regulations to conserve agricultural lands, forestlands, and mineral resource lands. The county and cities must also adopt urban growth area (UGA) regulations. The county and cities must adopt a comprehensive land use plan and adopt development regulations consistent with the plan.

The comprehensive plan is the central part of the whole planning process. The Legislature has established 13 goals to act as the basis of all comprehensive plans. Examples include reducing sprawl, providing for affordable housing, and protecting property rights. The comprehensive plan must address these goals and set out the policies and standards meant to guide the city or county's actions and decisions in the future. Comprehensive plans must contain certain elements, such as a land use element, a housing element, and a capital facilities plan element. These elements must satisfy the requirements for each individual element while fitting within the overall comprehensive plan.

A city that has a marine container port with more than $60 million in operating revenue must include a container port element in its comprehensive plan. This element must be developed cooperatively between the city and the port, and must establish programs that define and protect the core port and port-related industrial uses in the city; provide reasonably efficient access to these areas through freight corridors in the city; resolve land use conflicts along the edge of the core area and minimize incompatible uses along the edge of the area to the extent practicable. The container port element must be consistent with the other elements of the city's comprehensive plan.

Another portion of a comprehensive plan is the designation of a UGA or areas. Urban growth is encouraged inside of a designated UGA, and is not allowed outside of a UGA.

Cities and counties must include sufficient area and densities to accommodate the growth projected to occur over the next 20 years. Urban growth areas must be first located in areas already characterized by urban growth that have sufficient public service capabilities to serve the new growth, and second in areas characterized by urban growth and may be provided with any additional public service capabilities that are needed.

Within 14 months of a county initially becoming subject to the GMA's requirements, the county must adopt a countywide planning policy in consultation with the cities within the county. Countywide planning policies must address UGAs, policies to promote orderly development, policies for siting state or countywide capital facilities, policies and strategies for countywide transportation, policies considering the need for affordable housing, policies for countywide economic development, and the fiscal impact of these policies. When adopting countywide planning policies, federal agencies and Indian tribes may participate in and cooperate with the plan-adoption process.

Every eight years, a county or county that is planning under the GMA must review and revise its comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of the GMA. This review and revision requires legislative action from the county or city. The county and cities must establish a public participation program that provides notice to various interested or impacted individuals and organizations, including Indian tribes, who can become involved in the process. The county and cities may generally only consider updates to the comprehensive plan once a year. The county must also update its designated UGAs.

The eight-year reviews and revision deadlines are staggered for counties as follows:

- June 30, 2024 for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- June 30, 2025 for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom, and the cities within those counties;
- June 30, 2026 for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima, and the cities within those counties; and
- June 30, 2027 for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman, and the cities within those counties.

Each of these counties, and the cities within those counties, must update their comprehensive plans every eight years after the current deadline.

Before adopting a comprehensive plan, or an amendment to a comprehensive plan or development regulation in the comprehensive plan, a city or county must notify the Department of Commerce (Commerce) at least 60 days prior to the final adoption of the plan.

The Shoreline Management Act requires all counties and most towns and cities to develop

and implement shoreline master programs. These programs are designed to help regulate and protect the shorelines of the state. The Department of Ecology has adopted shoreline master program guidelines to provide standards for adopting and implementing shoreline programs. Counties and cities must review and revise their master program every eight years. The following deadlines for this review are:

- June 30, 2028 for King, Pierce, Snohomish counties, and the cities within those counties;
- June 30, 2029 for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;
- June 30, 2021 for Benton, Chelan, Cowlitz, Douglas, Grant, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and
- June 30, 2022 for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

**Summary of Bill:** Comprehensive plans and shoreline master programs must be reviewed and revised every ten years.

Counties planning under the GMA that have a population of 200,000 and a population density of at least 100 people per square mile on or after January 1, 2021; and/or have grown by an annual rate of 1.75 percent or more and have a population density of at least 75 people per square mile on or after January 1, 2021, and cities with more than 6,000 people on January 1, 2021 within counties that satisfy either or both of these criteria, must provide Commerce with an implementation progress report five years after the adoption of a comprehensive plan. Once a county has satisfied either of the criteria, the implementation progress report requirement will remain for that county and its covered cities, even if the county later does not satisfy either or both of the criteria. Commerce must develop guidelines for the criteria and measures for counties and cities to use in the report covering the following:

- the implementation of previously adopted changes to the housing element of the comprehensive plan and the effect of those changes on housing affordability and availability within the jurisdiction;
- permit processing timelines; and
- progress toward implementing actions required to achieve reductions to meet greenhouse gas and vehicle miles traveled requirements as provided in any of the elements of the comprehensive plan.

If a county or city that is required to provide an implementation progress report has yet to implement any changes to specifically identified regulations, zoning or land use, or has not taken other legislative or administrative action necessary to implement such changes, that has been included the most recent update to their comprehensive plan by the due date for the implementation progress report, then the county or city must identify the need for such changes in the implementation progress report. The county or city must adopt a work plan to implement the changes, and must complete all work necessary for implementation within

two years of the submission of the implementation progress report.

A federally recognized Indian tribe may voluntarily choose to participate in the county or regional planning process. Once a local government receives notice from a tribe whose reservation or ceded lands are in the county where the tribe has a planning process or will initiate a parallel planning process, the local government must enter into a memorandum of agreement with the tribe regarding collaboration and participation in the planning process. Entering into a planning process does not alter or limit any authority or rights the tribe may have, and a local government's authority to adopt and amend comprehensive land use plans and development regulations is not affected or altered, other than as may be provided in the memorandum of agreement. A tribe that does not choose to plan has not waived its rights to seek review under the GMA.

When a tribe has chosen to participate in the planning process, the county and the tribe must coordinate their planning efforts for any areas planned for urban growth.

When a city's comprehensive plan includes a container port element, the city must collaborate with a tribe that has a reservation within or adjacent to the lands subject to the container port element.

Upon request, Commerce must provide a tribe with any notices of proposed comprehensive plans or amendments to comprehensive plans provided by a city or county to Commerce.

A tribe may request formal government-to-government consultation with Commerce if the tribe believes a county's proposed comprehensive plan or amendment to its comprehensive plan will directly or indirectly negatively impact the tribe's rights on a reservation or on land ceded under a treaty. Upon receipt of a request, Commerce must enter into formal government-to-government consultation with the tribe not to exceed 60 days. Commerce must notify the county or city of this, and the county or city must delay any final action on the plan or amendment during that period. A county or city cannot be penalized under the GMA for this delay in adopting a plan or amendment. When the consultation process is completed, Commerce must relay the tribes concerns to the county and offer to assist in mediation or dispute resolution prior to the adoption of the plan. The county or city may either amend the plan as requested or enter into mediation with the tribe.

Federal agencies and tribes with a reservation or ceded lands within a county are required to be invited to participate in the countywide planning process.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: This bill changes the comprehensive plan planning cycle to stop the need for extensions. This bill includes tribes in the process for the first time so they can weigh in on the planning. Longer planning periods are helpful to local jurisdictions. This bill gives tribes a seat at the planning table. Moving to a ten- year update saves counties money.

CON: We have concerns over the tribal consultation process because it could delay planning and create uncertainty. The midcycle check-in is a positive change but this bill creates a special conversation not on the public record. This is a problem for planning. The five-year check-in is unclear.

OTHER: Changing the planning cycle is okay so long as cities and counties are meeting planning goals and outcomes. We appreciate the goals of tribal engagement in section 4 but section 5 is inconsistent. We would like an amendment to section 5 if we can reach agreement with the Puyallup Tribe.

**Persons Testifying:** PRO: Representative Davina Duerr, Prime Sponsor; Cynthia Stewart, League of Women Voters of Washington; Dawn Vyvyan, Yakama Nation Puyallup Indian Tribe; Paul Jewell, Washington State Association of Counties; Carl Schroeder, Association of Washington Cities.

CON: Mike Ennis, Association of Washington Business; Jan Himebaugh, Building Industry Association of Washington; Jeanette McKague, Washington REALTORS.

OTHER: Bryce Yadon, Futurewise; Sean Eagan, The Northwest Seaport Alliance.

**Persons Signed In To Testify But Not Testifying:** No one.