

# SENATE BILL REPORT

## 2SSB 5368

---

---

As Amended by House, 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:** Housing & Local Government: 2/04/21, 2/11/21 [DPS, w/oRec].  
Ways & Means: 2/18/21, 2/22/21 [DP2S, DNP, w/oRec].

**Floor Activity:** Passed Senate: 3/5/21, 44-4.  
Passed House: 4/11/21, 93-5.

### Brief Summary of Second Substitute Bill

- Allows code cities to annex unincorporated territory within an urban growth area.
- Qualifies a city with an annexing interlocal agreement for the annexation sales tax credit.
- Allows the Growth Management Act (GMA) planning jurisdictions to apply for a determination of compliance from the Department of Commerce (Commerce) for certain actions under the GMA and the State Environmental Policy Act.
- Allows the Growth Management Hearings Board to refer a finding of noncompliance to Commerce.
- Tasks Commerce with providing technical assistance to facilitate speedy resolution of the finding of noncompliance.

---

*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

**Majority Report:** That Substitute Senate Bill No. 5368 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Cleveland, Lovelett and Salomon.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Warnick.

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

---

## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5368 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Hunt, Lias, Mullet, Muzzall, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Darneille and Pedersen.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Carlyle, Conway, Dhingra, Hasegawa and Keiser.

**Staff:** Trevor Press (786-7446)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA: the county legislative authority must adopt a countywide planning policy; the county, and the cities within the county, must adopt comprehensive plans and designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and the county must designate and take other actions related to urban growth areas (UGAs).

Urban Growth Areas. Counties that fully plan under the GMA must designate 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.

**Summary of Second Substitute 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 the UGA boundary. The interlocal agreement must be formed consistent with planning requirements. An interlocal agreement for annexation will qualify the city for the annexation sales tax credit. The agreement or plan must address the following:

- balancing 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.

Agreements must include procedures for public participation including opportunity for written comments and public meetings.

**Growth Management Act—Determination of Compliance.** For certain countywide planning policy, comprehensive plan, and development regulations specified in this section, counties and their cities may apply for a determination of compliance from the Department of Commerce (Commerce) finding that the action is in compliance with GMA and the State Environmental Policy Act (SEPA). The following actions may be submitted for approval:

- development of or amendments to the housing element;
- development of or amendments to comprehensive plan or development regulations designating or protecting critical areas;
- development of or amendments to comprehensive plan or development regulations to designate or assure the conservation of resource lands;
- development of or amendments to countywide planning policy, comprehensive plan, or development regulation amendments that change the urban growth area;
- countywide planning policy, comprehensive plan, or development regulation amendments that govern the siting of essential public facilities; or
- findings of noncompliance referred to Commerce by the Growth Management Hearings Board.

Upon receipt of a proposed comprehensive plan, development regulation, or countywide planning policy, Commerce must provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of the proposed action. The comment period will be at least 30 days, unless Commerce determines the level of complexity or controversy involved supports a shorter period.

Commerce may conduct a public hearing during the 30-day comment period in the jurisdiction proposing the comprehensive plan, development regulation, or countywide planning policy. Within 15 days after the close of public comment, Commerce must request the local government review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues.

Within 30 days after receipt of the local government response, Commerce must make written findings and conclusions regarding the consistency of the proposal with the goals and requirements of the GMA and procedural criteria adopted by Commerce, provide a response to the identified issues, and either approve the comprehensive plan, development regulation, or countywide planning policy as submitted, recommend specific changes necessary to make the comprehensive plan, development regulation, or countywide planning policy approvable, or deny approval of the comprehensive plan, development regulation, or countywide planning policy in those instances where no alternative comprehensive plan, development regulation, or countywide planning policy appears likely to be consistent with the goals and requirements of the GMA and with applicable guidelines and procedural criteria adopted by Commerce.

The written findings and conclusions must be provided to the local government, and made available to all interested persons, parties, groups, and agencies of record on the proposal.

If Commerce recommends changes to the proposed comprehensive plan, development regulation, or countywide planning policy, within 90 days after it mails the written findings and conclusions to the local government, the local government may:

- agree to the proposed changes by written notice to Commerce; or
- submit an alternative comprehensive plan, development regulation, or countywide planning policy.

Commerce must approve a proposed comprehensive plan, development regulation, or countywide planning policy unless it determines the proposed comprehensive plan, development regulation, or countywide planning policy is not consistent with the goals and requirements of the GMA and with applicable guidelines and procedural criteria adopted by Commerce.

A comprehensive plan, development regulation, or countywide planning policy takes effect when and in such form as approved or adopted by Commerce. The effective date is 14 days from the date of Commerce's written notice of final action to the local government stating approval or rejection of the proposed comprehensive plan, development regulation, or countywide planning policy. Commerce's written notice to the local government must conspicuously and plainly state it is the final decision and there will be no further modifications to the proposed comprehensive plan, development regulation, or countywide planning policy. Commerce must maintain a record of each comprehensive plan, development regulation, or countywide planning policy, the action taken on any proposed

comprehensive plan, development regulation, or countywide planning policy, and any appeal of Commerce's action.

Promptly after approval or disapproval of a comprehensive plan, development regulation, or countywide planning policy, Commerce must publish a notice consistent in the Washington State Register that the comprehensive plan, development regulation, or countywide planning policy has been approved or disapproved.

Commerce's final decision to approve or reject a proposed comprehensive plan, development regulation, or countywide planning policy may be appealed according to the following provisions:

- to the Growth Management Hearings Board by filing a petition;
- a decision of the Growth Management Hearings Board concerning an appeal of Commerce's final decision to approve or reject a proposed greenhouse gas emissions reduction subelement or amendment must be based solely on whether or not the adopted comprehensive plan, development regulation, or countywide planning policy complies with the goals and requirements of the GMA or the State Environmental Policy Act (SEPA); or
- if approval of a determination of compliance by Commerce under this section is appealed to the Growth Management Hearings Board, the city or county may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the board or subsequent judicial appeals.

Growth Management Act—Noncompliance. The Growth Management Hearings Board may, after finding a jurisdiction out of compliance with the GMA, refer the finding of noncompliance to Commerce. The purpose of the referral is for Commerce to provide technical assistance to facilitate speedy resolution of the finding of noncompliance.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Housing & Local Government):**  
*The committee recommended a different version of the bill than what was heard.* PRO: This bill has been developed over several meetings we have had over the last couple of years to think about how the GMA could work in a rural area versus an urban area. There are differences between our rural and urban counties and the GMA should be adjusted to fit rural counties better. More flexible LAMIRDs will result in better economic opportunities. Current standards for LAMIRDs are too restrictive. The mandatory eight-year update only

provides five or six years of implementation before changes must be made again. These updates are costly. Extending the planning cycle to ten years will hopefully give communities an opportunity to review the effects of previous changes. The voluntary safe harbor sections highlight the millions of dollars spent on defending GMA appeals. The low bar for GMA standing to appeal creates an environment that stifles creativity. Under the GMA, the assumption is, UGAs will be annexed before development occurs but this is not what happens. The solution in this bill provides an incentive for cities and counties to solve issues related to infrastructure collaboratively. There should be some additional metrics offered at the mid-cycle check-in point if the planning cycles are extended to ten years.

CON: I support the annexation provision to help local jurisdictions find a necessary balance. We have concerns about allowing economic development supersede other elements of the GMA. We also have concerns regarding section 6 of the bill.

OTHER: Section 6 changes the focus away from uses and scale, to design and character of a LAMIRD. This is a positive change. We have concerns about expanding the outer boundary and using utility service areas as boundaries. Commerce supports extending the periodic update to ten years.

**Persons Testifying (Housing & Local Government):** PRO: Senator Shelly Short, Prime Sponsor; Heidi Eisenhour, Jefferson County Commissioner; Robert Gelder, Kitsap County Commissioner; Patty Charnas, Jefferson County; Paul Jewell, Washington State Association of Counties; Jan Himebaugh, Building Industry Association of Washington.

CON: Bryce Yadon, Futurewise.

OTHER: Dave Andersen, Department of Commerce.

**Persons Signed In To Testify But Not Testifying (Housing & Local Government):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: Rural communities need help and assistance in planning for growth. Rural residents need resources and this bill helps give options to provide economic stability for those communities. Although the new collaborative approach to annexation is not subject to referendum, residents have a way to submit concerns through elected officials. Voluntary processes where cities and counties could submit historically contentious GMA policies to Commerce. Any lawsuit would be about a state decision and not local government decisions which will help address costly litigation and liability risks for cities.

**Persons Testifying (Ways & Means):** PRO: Jan Himebaugh, Building Industry Association of Washington; Carl Schroeder, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

**EFFECT OF HOUSE AMENDMENT(S):**

- Provides that interlocal agreements for annexation may include use of a sales tax credit for annexed areas should such a credit be reinstated by the Legislature.
- Requires the Association of Washington Cities and the Washington State Association of Counties to report to the Legislature 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.
- Removes the provision allowing jurisdictions planning under the GMA to apply for a determination of compliance from Commerce for certain actions under the GMA and SEPA.
- Requires Commerce to offer training to assist rural counties in understanding findings of noncompliance and applying prior decisions of the Growth Management Hearings Board to ongoing planning efforts and allows Commerce to award grants to a public agency with expertise and funded by local governments to provide the training.
- Adds a provision that establishes an exception to Public Works Board rules requiring a county, city, or town to be in compliance with the GMA in order to receive financial assistance if the county, city, or town is seeking grants and loans for certain broadband projects.
- Adds a provision that prohibits the Community Economic Revitalization Board, the Utilities and Transportation Commission, and Commerce from considering whether a county, city, or town is compliant with the GMA when considering applications for broadband funding.