

SENATE BILL REPORT

SB 5651

As of February 22, 2023

Title: An act relating to equity and environmental justice in the growth management act.

Brief Description: Concerning equity and environmental justice in the growth management act.

Sponsors: Senators Lovelett, Saldaña, Hasegawa, Hunt, Kuderer, Nguyen, Nobles, Pedersen, Stanford, Trudeau, Valdez and Wellman.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 2/07/23, 2/16/23
[DPS-WM, DNP].

Ways & Means: 2/22/23.

Brief Summary of First Substitute Bill

- Establishes environmental justice as a listed goal of the Growth Management Act.
- Amends the citizen participation goals to include participation from vulnerable populations and overburdened communities.
- Adds an environmental justice element to the list of elements included in comprehensive plans.
- Requires the Department of Commerce (Commerce) to prepare best practices to achieve equitable and inclusive public participation.
- Requires fully planning jurisdictions to use best practices established by Commerce to support the participation of overburdened communities and vulnerable populations in the formation of public policy.
- Defines environmental justice and related terms.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

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.

Majority Report: That Substitute Senate Bill No. 5651 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Kauffman.

Minority Report: Do not pass.

Signed by Senators Torres, Ranking Member; Short.

Staff: Maggie Douglas (786-7279)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Mahnur Khan (786-7437)

Background: Growth Management Act. 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 Originally enacted in 1990 and 1991, the GMA establishes land use designation, and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as fully planning under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, a land use element, and a capital facilities plan element, among others. In developing their comprehensive plans, counties and cities must consider various goals set forth in statute, including, for example, urban growth, housing, and citizen participation.

Comprehensive Plan Updates. Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every ten years. Counties, and the cities within them, are grouped into four different year classes for when the obligation to review and revise their comprehensive plans commence. The next round of required comprehensive plan updates begins with King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties, in 2024.

Growth Management Act—Citizen Participation. Cities and counties must establish a public participation program that provides notice to various interested or impacted individuals and organizations, including Indian tribes, who can be involved in the development and amendment of comprehensive land use plans and development regulations implementing such plans.

Tribes with a reservation or ceded lands within a county are required to be invited to

participate in the countywide planning process. Countywide planning policies must include policies that address the protection of tribal cultural resources in collaboration with tribes that choose to participate in the process.

Implementation Progress Report. Counties and cities planning under the GMA that meet certain population criteria must provide the Department of Commerce (Commerce) with an implementation progress report detailing the progress they have achieved in implementing their comprehensive plan, five years after the review and revision of their comprehensive plan. If a city or county has not implemented any specific actions identified in the most recent update to their comprehensive plan, the city or county must identify the need for such action in the implementation progress report. Cities and counties must adopt a work plan to implement any necessary regulations, zoning and land use changes, or take other legislative or administrative action identified in the implementation progress report, and complete all work necessary for implementation within two years of submission of the implementation progress report.

Environmental Justice. Legislation enacted in 2021 defined environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

Summary of Bill (First Substitute): Goals of the Growth Management Act. The citizen participation goal of the GMA must include specific efforts to involve and collaborate with vulnerable populations and overburdened communities.

Environmental justice is added as a goal of the GMA. Under the environmental justice goal, fully planning jurisdictions must develop and apply fair land use and environmental policy based on respect and justice for all peoples. Fully planning jurisdictions must:

- identify and plan for the reduction and prevention of environmental and health disparities; and
- work towards eliminating disparate harms and disproportionate environmental and health impacts by prioritizing vulnerable populations and overburdened communities; and the equitable distribution of resources and benefits.

Environmental Justice Element. Comprehensive plans must include an environmental justice element. The element must include goals, objectives, timelines, policies, and measures, and their application in appropriate elements that reduce environmental harms, that create environmental benefits, that work toward eliminating environmental health disparities, and promote public participation in decision-making by vulnerable populations and overburdened communities.

The environmental justice element of a comprehensive plan must:

- identify overburdened communities and vulnerable populations within the planning area using guidance developed by Commerce; and
- address how each mandatory element of a comprehensive plan individually, and how the entirety of the comprehensive plan collectively reflects considerations of environmental justice; addresses any cumulative environmental health impacts faced by vulnerable populations or overburdened communities; and advances the equitable distribution of environmental benefits.

The environmental justice element may address subjects including, but not limited to, regulations, decisions on siting and permitting, resource allocations, enforcement, and monitoring and reporting exposures to environmental health hazards.

Citizen Participation. Commerce must prepare and disseminate to fully planning cities and counties best practices to achieve equitable and inclusive public participation in order to engage those members of the public and populations who have been historically underserved and underrepresented in the formation of public policy. Best practices developed by Commerce must emphasize and provide resources to support the participation of overburdened communities and vulnerable populations, including community-based organizations, and with special consideration for people with limited English proficiency, low incomes, and other barriers to participation. Procedures should also support the voluntary collaboration and coordination with any federally recognized Indian tribe that has entered into a memorandum of agreement and whose reservation or ceded lands lie within the county or city. Cities and counties must determine which of these practices to incorporate in updated public participation programs no later than June 30, 2025.

Comprehensive Plan Updates. Any county or city required to include an environmental justice element as part of its comprehensive plan and is required to review, and if necessary, revise its comprehensive plan on or before December 31, 2024, must incorporate an environmental justice element into its comprehensive plan on or before June 30, 2029.

Any county or city required to include an environmental justice element as part of its comprehensive plan and is required to review, and if necessary, revise its comprehensive plan on or before June 30, 2025 must incorporate an environmental justice element into its comprehensive plan on or before June 30, 2030.

Definitions. Terms, including environmental justice, environmental benefits, environmental harm, equitable distribution, overburdened community, and vulnerable populations are defined.

EFFECT OF CHANGES MADE BY LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS COMMITTEE (First Substitute):

- Amends the definition of environmental justice, overburdened communities, and

vulnerable populations.

- Clarifies that any jurisdiction required to include the environmental justice element in its comprehensive plan and that is required to review its comprehensive plan on or before December 31, 2024, or June 30, 2025 must incorporate the new element into its comprehensive plan on or before June 30, 2029 and June 30, 2030, respectively.
- Requires counties and cities to incorporate best practices developed by Commerce by June 30, 2025, rather than June 30, 2024, in order to engage those members of the public and populations who have historically been underserved and underrepresented in the formation of public policy.

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 (Local Government, Land Use & Tribal Affairs): *The committee recommended a different version of the bill than what was heard.* PRO: Two years ago the HEAL Act was passed which laid a stronger foundation for how to engage communities and reflect how vulnerable and overburdened communities have been impacted. That tool focused on state agencies. This policy ensures local governments are doing that work as well. Comprehensive plans have historically displaced people of color. These updates focus on equity and environmental justice. This bill considers the long-term health of the environment and ensures people are not disproportionately impacted depending on where they live or who they are. This bill is a combination of the remaining environmental justice provisions that were included as part of the GMA task force recommendations but not covered under other pieces of policies heard in this committee. This bill harmonizes the definitions of environmental justice in the comprehensive and GMA planning documents to the HEAL Act. This bill defines the timeline for implementation and authorizes Commerce to create a guidebook and provide technical support for engaging overburdened communities and vulnerable populations. Local jurisdictions will have a better handle on what is being asked of them and what authentic community participation looks like.

CON: This bill works off of the wrong emissions pie chart. Despite the WAC and RCW and the checklist that are required, local industry is seen as the contributor. This cannot be used as a reason to get rid of industry anymore, instead, more goods should be grown and manufactured locally. This equity lens cannot attack local industry when it is needed.

OTHER: Economic opportunity and housing are ways to improve environmental health outcomes for overburdened communities. There are concerns with the way this bill is written. It would be better to work with stakeholders to incorporate environmental justice

principles throughout the current elements rather than including a new element in the GMA specifically for it. There are concerns with various definitions from the HEAL Act that are directly transferred to the GMA and should be modified, specifically regarding local populations of workers. These definitions could be perceived to create obligations that are unrelated to comprehensive land use planning. There are a few places in the bill that need to be addressed for it to be implementable. In section five, Commerce is given about six months to develop their best practice guideline. This topic requires broad conversation and will take more than six months. Section three indicates the permitting and siting language. It makes sense for environmental justice outreach and planning to go into permitting and siting, but the current language makes it seem like there is an additional step and clarification is needed for what that means in terms of permitting and siting.

Persons Testifying (Local Government, Land Use & Tribal Affairs): PRO: Senator Liz Lovelett, Prime Sponsor; Sierra Suafoa-McClain, Front and Centered; NiRae Petty, Urban League of Metropolitan Seattle; Martha Lucas, Washington State Coalition of African Community Leaders; Skippy Shaw, The Nature Conservancy; Deric Gruen, Front and Centered; Bryce Yadon, Futurewise; Annette Bryan, Councilmember, Puyallup Tribe of Indians.

CON: John Worthington.

OTHER: Paul Jewell, Washington State Association of Counties; Josie Cummings, Building Industry Association of Washington; Dave Andersen, Washington Department of Commerce; Jeanette McKague, Washington REALTORS.

Persons Signed In To Testify But Not Testifying (Local Government, Land Use & Tribal Affairs): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Environmental justice should be considered as the state is growing in number. Low income and communities of color are helped with SSB5651, it helps create more sustainable and equitable communities. It is important that environmental justice and community participation is taken into consideration.

OTHER: Supportive of changes to the environmental justice goal added to the GMA, however, have concerns about this bill. Needs more clarity on the element itself as it gets too expensive in litigation for local governments to implement this new element. Bill creates uncertainty and unpredictability for permitting processes for home owners- creating increased costs.

Persons Testifying (Ways & Means): PRO: Guillermo Rogel, Front and Centered; NiRae Petty, Urban League of Metropolitan Seattle.

OTHER: Bill Stauffacher, Building Industry Association of Washington.

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