

SENATE BILL REPORT

SB 5368

As of February 4, 2021

Title: An act relating to encouraging rural economic development.

Brief Description: Encouraging rural economic development.

Sponsors: Senators Short, Fortunato and Wilson, L..

Brief History:

Committee Activity: Housing & Local Government: 2/04/21.

Brief Summary of Bill

- Allows a code city to annex land within an urban growth area by interlocal agreement.
- Promotes economic development and affords deference to Growth Management Act (GMA) jurisdictions experiencing economic deterioration.
- Allows GMA jurisdictions to apply to the Department of Commerce for a determination of compliance with the GMA and State Environmental Policy Act for certain actions.
- Adds that development or redevelopment within limited areas of more intense rural development be permitted subject to available public facilities and public services and be consistent with local character.
- Changes the GMA and shoreline management planning cycles from eight years to ten years.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

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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.

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.

Rural Element and Limited Areas of More Intensive Rural Development. One element county comprehensive plans must include is a rural element. Rural character refers to the pattern of land use and development established by a county in the rural element:

- in which open space, the natural landscape, and vegetation predominate over the built environment;
- that foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- that provide visual landscapes traditionally found in rural areas and communities;
- that are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- that reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- that generally do not require the extension of urban governmental services; and
- that are consistent with the protection of natural surface water flows, and groundwater and surface water recharge and discharge areas.

Additionally, the rural element must protect rural character by applying measures that:

- contain or control rural development;
- assure the visual compatibility of rural development with surrounding rural areas;
- reduce inappropriate land conversions to low-density sprawl in rural areas;
- protect critical areas, and surface and groundwater resources; and
- protect against conflicts with designated agricultural, forest, and mineral resource lands.

The rural element of county comprehensive plans allows for the designation of limited areas of more intensive rural development (LAMIRDs), including public facilities and services

for the LAMIRD. Counties are authorized to designate three types of LAMIRDs.

Summary of 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.

Growth Management Act—Economic Development. The economic development element in comprehensive plans may include the following:

- a summary of the local economy, such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate;
- a summary of the strengths and weaknesses of the local economy, which may include the commercial, industrial, manufacturing, natural resource, and other locally significant economic sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources;
- an identification of policies, programs, and projects to foster economic growth and development and to address future needs;
- policies to promote increases in family, individual, and business incomes;
- an examination of whether sites planned for economic development have adequate public facilities and services, and, as appropriate, a plan for any needed public facilities and services;
- policies to encourage access to education and training for family wage jobs; and
- policies and opportunities to address economic development including existing industries and businesses, value-added manufacturing of locally produced natural resources, and the use of locally produced energy and other natural resources.

Each county and city planning under the GMA is encouraged to adopt comprehensive plans and development regulations that promote economic development in urban and rural areas, and evaluate economic performance in the jurisdiction in the time since the most recent update to the comprehensive plan. Each county and city planning under the GMA may make findings regarding the economic condition of the jurisdiction. If there is stagnation or economic deterioration during the period of time since the most recent update to the comprehensive plan, the comprehensive plan and development regulations may be modified to increase economic development opportunities.

Counties with a population of less than 75,000 as of January 1, 2021, as determined by the Office of Financial Management and published on April 1, 2021, that are planning under the

GMA, and the cities within those counties, may identify policies, programs, and development opportunities to address the potential for economic deterioration and to seize economic development opportunities that may deviate from prescriptive interpretations of the GMA.

Economic deterioration is exemplified by, but not limited to, any combination of the following performance outcomes:

- incomes at least \$10,000 less than the statewide median household income for the same year as established by the Office of Financial Management;
- a decrease in the county's household median income during any year within the prior eight years;
- the inability of the jurisdiction to add new full-time jobs in sufficient quantities to provide for population increases;
- decreases or stagnation of economic start-ups during multiple years within the prior eight years;
- unemployment rates higher than the national and statewide averages over multiple years within the prior eight years; and
- decreases or stagnation in the issuance of commercial building permits during multiple years.

In situations where the competing goals of the GMA would restrain economic development in the counties, and the cities within those counties, experiencing economic deterioration, the growth management hearings board and courts must afford deference to local development choices that make economic development a priority, consistent with the presumption of validity.

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;
- findings of noncompliance referred to the department 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 the department; 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 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—Amendments. Any changes or additions to the GMA after December 2020 must only be mandatory two years after the requirement becomes state law if funding sufficient to cover the additional costs is specifically provided for those planning requirements by the state.

Growth Management Act—Limited Areas of More Intensive Rural Development. Within a LAMIRD, any development or redevelopment in terms of building size, scale, use, or intensity may be permitted subject to confirmation from all existing providers of public facilities, and public services of sufficient capacity of existing public facilities, and public services to serve any new or additional demand from the new development or redevelopment. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use is consistent with the local character.

In counties east of the Cascades, the logical outer boundary of the existing area may include

the existing utility service areas and facilities and consider needed upgrades and replacement of related infrastructure including, the economies of scale for such service-related infrastructures and affordability for rate payers.

Growth Management Act—Planning Cycle. The cycle to revise comprehensive plans and development regulations is changed from eight years to ten years.

At the midpoint of the ten-year plan update cycles, metropolitan counties, and their cities, must report to Commerce the progress they have achieved implementing state goals and permit timelines under the GMA. Such reports are not subject to appeals under the GMA or SEPA. Commerce will review the report and issue its determination within 90 days. Commerce will adopt by administrative rule indicators, milestones, and criteria to determine compliance with the GMA.

Growth Management Act—Appeals. The Growth Management Hearings Board may hear appeals challenging the designation of natural resource lands and critical areas, and a determination of compliance as discussed above.

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.

Shoreline Management Master Programs—Planning Cycle. The planning cycle for shoreline management master programs is changed from eight to ten years.

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: 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: 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: No one.