

HOUSE BILL REPORT

EHB 1224

As Amended by the Senate

Title: An act relating to providing a process for county legislative authorities to withdraw from voluntary planning under the growth management act.

Brief Description: Providing a process for county legislative authorities to withdraw from voluntary planning under the growth management act.

Sponsors: Representatives Kretz, Takko and Short.

Brief History:

Committee Activity:

Local Government: 2/8/13, 2/22/13 [DP].

Floor Activity:

Passed House: 2/17/14, 75-19.

Senate Amended.

Passed Senate: 3/6/14, 49-0.

Brief Summary of Engrossed Bill

- Allows a county that elected to fully plan under the Growth Management Act (GMA) and that has 20,000 or fewer inhabitants to exempt itself and the cities within from selected planning requirements of the GMA if specific requirements are satisfied.
- Expires the authority of a county to exempt itself and the cities within from selected planning requirements of the GMA on December 31, 2014.
- Specifies that counties adopting withdrawal resolutions, and the cities within, that are not in compliance with requirements of the GMA relating to designating and protecting critical areas, and designating and assuring the conservation of natural resource lands, must, within one year of the adoption of the withdrawal resolution, adopt ordinances complying with the applicable requirements.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 5 members: Representatives Takko, Chair; Kochmar, Assistant Ranking Minority Member; Buys, Springer and Taylor.

Minority Report: Do not pass. Signed by 3 members: Representatives Fitzgibbon, Liias and Upthegrove.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act - Introduction and Two-Tiered Planning Requirements.

The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Originally enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the GMA (planning jurisdictions) and a reduced number of directives for all other counties and cities.

The GMA directs planning jurisdictions to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specific planning elements, including land use, housing, and rural area provisions, each of which is a subset of a comprehensive plan. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to recurring review and revision requirements prescribed in the GMA.

Planning jurisdictions are further required to satisfy a wide array of planning requirements established in the GMA. Examples of these planning requirements include provisions for:

- developing and adopting countywide planning policies;
- designating urban growth areas;
- ensuring a sufficient capacity of land suitable for development;
- developing processes for identifying and siting essential public facilities; and
- identifying lands for public purposes and for open space corridors.

While planning jurisdictions are subject to significantly more requirements under the GMA than non-planning jurisdictions, the GMA requires all counties and cities to satisfy specific designation mandates for natural resource lands. All counties and cities, for example, must designate, where appropriate, agricultural lands that are not characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products. Planning jurisdictions must also adopt development regulations that conserve these agricultural lands and other designated natural resource lands.

As established in the GMA, all counties and cities must also designate and protect environmentally sensitive critical areas. These protection requirements obligate local governments, using the best available science, to adopt development regulations, also known as critical areas ordinances, that comply with specified criteria. As defined by statute, critical areas include: wetlands; aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.

Planning Jurisdiction Obligations: Mandates and Choices.

Of the 29 counties and the cities within that fully plan under the GMA, 18 were required by population criteria established in the GMA to become planning jurisdictions. The remaining 11 counties elected through a process described below to have all planning requirements of the GMA apply to them and to the cities within.

A county obligated by mandate to fully plan under the GMA is one that either:

- has a population of 50,000 or more and has experienced a population increase of more than 17 percent in the previous 10 years; or
- has experienced a population increase of more than 20 percent over the previous 10 years, regardless of population.

A county obligated by choice to fully plan under the GMA is one that, not meeting the specified population requirements, adopted a resolution of intention permanently subjecting itself and the cities within to all planning requirements of the GMA.

The counties that elected to fully plan under the GMA, and the year in which their resolution of intention was adopted, are as follows: Benton (1990); Columbia (1991); Douglas (1990); Ferry (1990); Franklin (1990); Garfield (1991); Kittitas (1990); Pacific (1990); Pend Oreille (1990); Stevens (1993); and Walla Walla (1990).

According to the 2010 Census and April 1, 2013, population estimates of the Office of Financial Management (OFM), four counties that adopted resolutions of intention have had populations of 20,000 or fewer residents between April 1, 2010, and April 1, 2013.

<i>County</i>	<i>Census (April 1) 2010 Population</i>	<i>April 1, 2013 OFM Estimate</i>
Columbia	4,078	4,100
Ferry	7,551	7,650
Garfield	2,266	2,250
Pend Oreille	13,001	13,150

Summary of Engrossed Bill:

Until December 31, 2014, the legislative authority of a county that is obligated by choice to fully plan under the GMA may adopt a withdrawal resolution exempting the county and the cities within from selected planning requirements of the GMA if:

- the county has a population of 20,000 or fewer inhabitants at any time between January 1, 2010, and December 31, 2014;
- at least 60 days prior to adopting a withdrawal resolution, the county provides written notification to the legislative body of each city located within the county of its intent to consider adopting the resolution; and
- the legislative bodies of at least 60 percent of those cities having an aggregate population of at least 75 percent of the incorporated county population adopt resolutions supporting the action by the county and provide written notification of this support.

Upon adoption of a withdrawal resolution, the county and the cities within are exempt from selected planning requirements of the GMA. If, however, a county meets the population threshold for mandatory planning under the GMA as of January 1, 2010, or on any subsequent date, the county withdrawal resolution is invalid and the county and the cities within are required to comply with all requirements of the GMA. Additionally, the legislative authority of a county that adopts a withdrawal resolution may subsequently pass a resolution indicating its intention to fully plan under the GMA.

Each county that adopts a withdrawal resolution and that is not, on the date of the resolution's adoption, in compliance with requirements of the GMA related to designating and protecting critical areas, including using the best available science, and designating and assuring the conservation of natural resource lands, must, within one year of the adoption of the resolution, adopt an ordinance complying with the applicable requirements.

Similarly, each city that is within a county that adopts a withdrawal resolution and that is not in compliance with requirements of the GMA related to designating and protecting critical areas, including using the best available science, and designating and assuring the conservation of natural resource lands, must, within one year of the adoption of the resolution, adopt an ordinance complying with the applicable requirements.

Examples of the planning requirements that a county and the cities within are exempted from upon the adoption of a withdrawal resolution include provisions requiring:

- the development and adoption of a comprehensive plan and associated elements, and implementing development regulations (except for provisions mandating the adoption of a rural element of a comprehensive plan and associated regulations, and requirements to conserving designated natural resource lands);
- the development and adoption countywide planning policies;
- the designation of urban growth areas;
- that comprehensive plans and development regulations provide a sufficient capacity of land suitable for development within the jurisdiction;
- the development of processes for identifying and siting essential public facilities; and
- the identification of lands for public purposes and for open space corridors.

EFFECT OF SENATE AMENDMENT(S):

Strikes the underlying bill and establishes a modified process by which a county that elected to fully plan under the Growth Management Act (GMA) and that has 20,000 or fewer inhabitants may reduce the planning obligations that it and the cities within must satisfy under the GMA. Examples of the changes include:

1. Expiring the authority of a county to remove itself and the cities within from requirements to fully plan under the GMA on December 31, 2015, rather than December 31, 2014;
2. Modifying provisions governing the county resolution-based process that a county may use to remove itself and the cities within from requirements to fully plan under the GMA and to instead partially plan under the GMA;

3. Removing a provision that would invalidate a county's actions to remove itself and the cities within from requirements to fully plan under the GMA if an existing population threshold mandating full GMA planning is subsequently met;
4. Adding a provision specifying that a county that adopts a resolution for partial planning (resolution) may not, for a minimum of 10 years from the date of adoption of the resolution, adopt a resolution to fully plan under the GMA;
5. Deleting provisions exempting a county that removes itself and the cities within from delineated requirements of the GMA, including requirements for comprehensive plan elements and implementing development regulations (except for requirements related to the rural element of a comprehensive plan and the conservation natural resource lands), requirements for urban growth areas, requirements for essential public facilities, requirements for countywide planning policies, and provisions governing fully contained communities, master planned resorts, and affordable housing incentive programs;
6. Specifying that each county that adopts a resolution and each city within the county must adopt development regulations, within one year of the adoption of the resolution, to assure the conservation of natural resource lands;
7. Specifying that the adoption of a resolution does not nullify or otherwise modify the requirements for counties and cities relating to the designation and conservation of natural resource lands, the adoption of a rural element of a comprehensive plan and associated development regulations, the designation and protection of critical areas, and the use of the best available science in designating and protecting critical areas;
8. Modifying provisions governing obligations that apply to a county and the cities within in the event that a county removes itself and the cities within from requirements to fully plan under the GMA by specifying that a county that adopts a resolution and that is not in compliance with specified requirements of the GMA must, by January 30, 2017, apply for a determination of compliance from the Department of Commerce (Commerce) for the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans;
9. Specifying that Commerce must approve or deny the application for a determination of compliance within 120 days of its receipt or by June 30, 2017, whichever date is earlier;
10. Specifying that if Commerce denies an application for a determination of compliance, the county and each city within is obligated to comply with all requirements of the GMA, and that the adopted resolution is no longer in effect;
11. Establishing that determinations of Commerce may only be appealed to the Growth Management Hearings Board (Board) within 60 days of the issuance of the decision by Commerce;
12. Authorizing the Board, until December 31, 2020, to hear petitions alleging that Commerce's determination was erroneous;
13. Specifying that, in the event of a filing of a petition with the Board regarding the defense of an approval of a determination of compliance, the county and Commerce must equally share the appeal defense costs of Commerce;
14. Authorizing Commerce to adopt rules related to determinations of compliance; and
15. Making numerous technical changes, including deleting references to "withdrawal resolution" and inserting the term "resolution of partial planning."

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:

(In support) This bill is very similar to a bill that was before the Legislature a couple of years ago. The GMA was adopted to control sprawl and with good intentions. In some of Washington's smallest counties, the GMA has been more of a burden than a help. If all of the counties that can opt out under this bill do, it will only affect 26,000 people. City input has been reflected in this bill and it is not a mandate.

Counties that opt out will still have to do the most difficult parts of the GMA. Ferry County has a comprehensive plan and a foundation in place and will continue to do land use planning. The population of Ferry County is about the same as it was 100 years ago, and the county is still recovering from the depression of the 1930s.

The burdens of the GMA are too large for small counties. The GMA drives up the cost of land and housing, and has a chilling effect on the economy. Businesses have relocated because of the regulatory environment of the GMA. If opting out is a good idea for the small counties, it is a good idea for the large counties. Florida repealed their smart growth laws. The population threshold in the bill should be increased to allow counties near that threshold to opt out. Growth Management Hearings Board decisions have reduced or eliminated local control and have had unintended consequences. The bill's provisions are optional and counties support local options and control.

This bill will allow county commissioners to have a discussion with their residents as to whether to opt out. County commissioners can strive to meet with and engage various environmentally-oriented persons. Small and slow-growing counties with natural resources have a low likelihood of significant population growth. There is no need to fear environmental degradation or the creation of housing concerns from the passage of this bill.

(Opposed) Over 20 years ago the GMA was passed and Washington refused to trade its quality of life for economic prosperity. The lack of an opt-out provision in the GMA is a recognition of the long-term planning vision of the GMA. An amendment is being discussed and considered.

Persons Testifying: (In support) Representative Kretz, prime sponsor; Brad Miller, Ferry County Commissioners Office; Scott Roberts and Glen Morgan, The Freedom Foundation; Laura Merrill, Washington State Association of Counties; Karen Skoog, Pend Oreille County Commissioners Office; and Jeanette McKague, Washington Realtors.

(Opposed) April Putney, Futurewise.

Persons Signed In To Testify But Not Testifying: None.