

# HOUSE BILL REPORT

## HB 1241

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**As Reported by House Committee On:**  
Local Government

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

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

**Sponsors:** Representatives Duerr, Berg, Ortiz-Self, Bateman, Wicks, Macri, Harris-Talley and Pollet.

**Brief History:**

**Committee Activity:**

Local Government: 2/3/21, 2/10/21 [DPS].

**Brief Summary of Substitute Bill**

- Increases the review and revision cycle for comprehensive plans and Shoreline Master Plans from eight to 10 years.
- Requires cities and counties with a population of 7,500 or more, that have not experienced a specified recent population decline, to produce an annual work program for implementing the comprehensive plan.
- Requires 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

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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.*

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.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Pollet, Chair; Duerr, Vice Chair; Berg and Senn.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Goehner, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Robertson.

**Staff:** Kellen Wright (786-7134).

### **Background:**

The Growth Management Act (GMA) requires that 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 10 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. Conversely, counties that do not meet the standards for automatic inclusion in the GMA may choose to be included. Currently, 18 counties are required to plan, 10 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. Finally, 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 of goals 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 that are 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 to occur outside of a UGA. Cities and counties must include sufficient area and densities to accommodate the growth that is 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 that are characterized by urban growth and that may be provided with any additional public service capabilities that are needed.

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 that 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 different counties. Currently, King, Kitsap, Pierce, and Snohomish counties and the cities within those counties have a deadline of June 30, 2024. Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom, and the cities within those counties, have a deadline of June 30, 2025. Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima, and the cities within those counties, have a deadline of

June 30, 2026. Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman, and the cities within those counties, have a deadline of June 30, 2027. Each of these counties, and the cities within those counties, must again update their comprehensive plans every eight years after the current deadline.

Before adopting a comprehensive plan, or an amendment to a comprehensive 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.

Counties west of the Cascade mountain range that had a population of more than 150,000 in 1996 are also required to adopt, in consultation with the cities within those counties, a review and evaluation program. The purpose of this program is to compare the assumptions that went into the comprehensive plan with the actual growth that is occurring, and to identify measures to be taken to reduce the differences between the assumptions and the reality. The program must also provide for the collection, evaluation, and reconciliation of data, which must be collected and reviewed at least three years before the county's comprehensive plan is due to be updated.

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. Currently, the deadline for this review is 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.

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### **Summary of Substitute Bill:**

Comprehensive plans and Shoreline Master Programs must be reviewed and revised every 10 years.

Each city and county planning under the GMA that has a population of 7,500 or more must create an annual work program for implementing its comprehensive plan. The work program should describe the actions, including development regulations and nonregulatory measures, that are going to be considered in the coming year for implementing the

comprehensive plan, as well as the actions that were considered and acted upon in the current year. Cities or counties that experienced a population decline in the second most recent year for which the Office of Financial Management has made a determination of the population are exempt from the requirement to create an annual work program.

Counties and cities planning under the GMA must provide Commerce with an implementation progress report five years after the adoption of a comprehensive plan. Commerce must develop guidelines for the criteria and measures for cities and counties to use in the report. At a minimum, these must cover:

- housing affordability and availability within the jurisdiction;
- permit processing timelines;
- the protection of critical areas and the use of best available science;
- the jurisdiction's response to new statutory changes adopted since the previous comprehensive plan update; and
- achieving any required reductions to meet greenhouse gas reduction and vehicle miles traveled requirements.

Counties and cities subject to the review and evaluation program must include in the implementation progress report any inconsistencies that have been identified during the review and evaluation program between the comprehensive plan and what has occurred since the adoption of that plan.

If a county or city has yet to implement statutory changes that have occurred since adoption of the comprehensive plan by the time of the implementation progress report, then the county or city must identify the needed changes and must include those changes in the work program. These changes must occur within two years of the submission of the implementation progress report.

A federally recognized Indian tribe that has a reservation located within Washington or a federally recognized Indian tribe with a reservation outside of Washington with treaty rights in the state (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 that the tribe has a planning process or will initiate a parallel planning process, the local government must enter into an agreement with the tribe regarding coordination, cooperation, and participation in the planning process. Entering into a planning process does not alter or limit any authority or rights that the tribe may have.

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 port container element, the city must collaborate with a federally recognized tribe that has a reservation within or adjacent to the lands subject to the port container element.

Upon request, Commerce must provide a tribe with notice of a proposed comprehensive plan or amendment to a comprehensive plan provided by a city or county to Commerce.

A tribe with a reservation within Washington may request formal government-to-government consultation with Commerce if the tribe believes that a county's proposed comprehensive plan or amendment to its comprehensive plan will negatively impact the tribe's rights on the reservation or on land ceded under a treaty. 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. If the tribe objects within 60 days of the final adoption of a plan, then Commerce must enter into government-to-government consultation. If Commerce determines that the tribe's rights will be negatively impacted, it must notify the county. The county must either amend the plan or enter into mediation with the tribe.

Federal agencies and tribes are required to be invited to participate in the countywide planning process.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- exempts counties and cities that have experienced a population decline over the second most recent year that population has been determined by the Office of Financial Management from the requirement to create an annual work program to implement its comprehensive plan;
- requires Commerce to adopt guidelines, rather than rules, for indicators, measures, milestones, and criteria for use by cities and counties in the implementation progress report;
- requires counties, cities, and other local governments to consult with tribes during the planning processes under the GMA upon receipt of notice from the tribes that they are planning or would like to plan;
- requires cities to collaborate with tribes on the port container element of the comprehensive plan;
- allows tribes to request and receive notice of planning by counties and cities from Commerce;
- requires cities and counties to coordinate planning efforts for urban growth when a tribe voluntarily chooses to participate in the planning process under the GMA;
- provides that a federally recognized tribe may request consultation with Commerce regarding the tribe's concern that a proposed county comprehensive plan or amendment may injure rights reserved to the tribes. Commerce must inform the county and offer mediation. If a tribe objects to a comprehensive plan or amendment within 60 days after it is adopted, and Commerce finds that the plan or amendment might injure the tribe's rights, then the county must either amend the plan or enter into mediation with the tribe; and
- requires that federal agencies and tribes be invited to participate in the process of adopting a countywide planning policy.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3 which, because of a double amendment, takes effect July 1, 2025.

**Staff Summary of Public Testimony:**

(In support) The extension of the planning cycle for both comprehensive plans and for shoreline management is appreciated. Some jurisdictions have underestimated their populations because of the distance from the underlying census. The underlying bill makes good changes, such as the mid-cycle check-in with specified metrics, particularly around housing accountability. It might be better to focus on a few specific reporting areas in order to ease the burden on cities and counties. The permit processing review should look at the actual amount of time that a permit has taken to be processed, as well as the legal time, as the clock on the legal time can be stopped and started frequently. The longer a permit takes to process, the greater the costs to the developers. The changes in the proposed substitute cannot be supported. There are concerns with the requirements for tribal participation. This has not fully been discussed among stakeholders, and now is not the time to add these requirements.

(Opposed) None.

(Other) The update cycle is already effectively 10 years, as legislative changes often push the deadlines back to allow local governments to use the Office of Financial Management population forecast put out after the census so that local governments can establish growth targets. This bill would codify this practice. This bill would allow focus to be on implementation of plans rather than tinkering with plans by formalizing the recommended practice of determining what is necessary for implementation in an annual process. This process allows the local government the opportunity to take action if necessary. Implementation plans and check-ins give important ability to make course corrections. There are concerns with continually pushing the timelines for comprehensive plans out further. Requiring local governments to adopt new GMA provisions within two years of an implementation report is good, but it is unclear what happens if the local government does not do so, and whether this would qualify as being out of compliance with the GMA. This would be an additional cost for local governments, but with the reports and check-ins the 10-year cycle can work. The 10-year cycle is critical, as it allows more time and capacity to do planning and implementation, and to better utilize census information. The mandatory update process can cost hundreds of thousands of dollars, therefore moving to a 10-year cycle is a cost savings. However, care needs to be given so that benefits of the 10-year cycle are not eclipsed by the costs of the new implementation progress report. Local governments would be trying to update shoreline management plans at the same time as the

implementation progress report is due. Requiring a best available science update in the implementation progress report is significant and would almost change that element to being on a five-year cycle. The work plan does not need to be a statutory requirement. This bill should be part of a balanced GMA package to help local governments, and there is concern about the new implementation progress report elements. Local governments look forward to collaboration with tribal neighbors, but this policy would not be balanced. It would be voluntary for the tribes but mandatory for cities and counties, which would give the tribes more power. It would be problematic for the state to disapprove of a comprehensive plan because the state believes the plan could injure a tribal treaty right. This would completely change planning. Current coordination and cooperation requirements in the GMA are designed to enhance cooperation with other entities that share the same responsibilities and goals. The substitute would not add any new requirements for tribes to share county risks or goals, so it would be very one-sided. Counties are interested in including tribes, but this may not be the best way to do it, and can significantly increase liability for counties with tribal appeals processes.

**Persons Testifying:** (In support) Representative Duerr, prime sponsor; Brent Ludeman, Building Industry Association of Washington; Mike Ennis, Association of Washington Business; and Jeanette McKague, Washington REALTORS.

(Other) Dave Andersen, Department of Commerce; Bryce Yadon, Futurewise; Carl Schroeder, Association of Washington Cities; and Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** None.