

SENATE BILL REPORT

E2SHB 1099

As of March 27, 2021

Title: An act relating to improving the state's climate response through updates to the state's comprehensive planning framework.

Brief Description: Improving the state's climate response through updates to the state's comprehensive planning framework.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Duerr, Fitzgibbon, Dolan, Bateman, Ramel, Gregerson, Goodman, Ryu, Kloba, Chopp, Ormsby, Pollet, Fey, Santos and Davis).

Brief History: Passed House: 3/5/21, 56-41.

Committee Activity: Housing & Local Government: 3/16/21, 3/24/21 [DPA-WM, DNP].
Ways & Means: 3/27/21.

Brief Summary of Amended Bill

- Adds a goal of climate change mitigation to the listed goals of the Growth Management Act (GMA).
- Adds a climate change and resiliency element to the list of elements that must be included within the comprehensive plans certain counties and cities must adopt under the GMA.
- Requires the Department of Commerce (Commerce), in consultation with other state agencies, to publish guidelines that specify a set of actions counties and cities have available to take related to greenhouse gas (GHG) emissions reductions and vehicle miles traveled (VMT) reductions.
- Requires the climate change and resiliency element of the comprehensive plan of certain counties and cities to identify actions the jurisdiction will take, consistent with guidelines adopted by Commerce, to reduce GHG emissions and VMT.

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.

- Requires the climate change and resiliency element of the comprehensive plan of certain counties and cities to address the adverse impacts of climate change on people, property, and ecological systems.
- Specifies the process by which the GHG emissions reduction sub-element of the climate change and resiliency element takes effect.
- Requires Commerce to adopt guidance that creates a model climate change and resiliency element.
- Requires the Department of Ecology to update its Shoreline Master Program guidelines to require Shoreline Master Programs to address the impact of sea level rise and increased storm severity.
- Adds consideration of climate change impacts to the list of elements that must be contained in optional comprehensive flood control management plans.

SENATE COMMITTEE ON HOUSING & LOCAL GOVERNMENT

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Kuderer, Chair; Das, Vice Chair; Cleveland, Lovelett and Salomon.

Minority Report: Do not pass.

Signed by Senators Fortunato, Ranking Member; Gildon, Assistant Ranking Member; Short, Assistant Ranking Member; Warnick.

Staff: Bonnie Kim (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

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. 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, which 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 economic development.

Growth Management Act—Comprehensive Plan Updates. Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four 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.

Greenhouse Gas Emissions Reductions. Washington enacted legislation in 2008 that set a series of limits on the emission of greenhouse gases (GHGs) within the state. Those limits were modified by legislation enacted in 2020, such that Washington must limit anthropogenic emissions of GHGs to achieve the following reductions for the state:

- by 2020, reduce overall emissions of GHGs to 1990 levels, or 90.5 million metric tons;
- by 2030, reduce overall emissions of GHGs to 45 percent below 1990 levels, or 50 million metric tons;
- by 2040, reduce overall emissions of GHGs to 70 percent below 1990 levels, or 27 million metric tons; and
- by 2050, reduce overall emissions of GHGs to 95 percent below 1990 levels, or 5 million metric tons, and achieve net-zero GHG emissions.

State Environmental Policy Act. The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or adoption of land-use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that the SEPA checklist process identifies as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of an environmental impact statement.

Regional Transportation Planning Organizations. A regional transportation planning organization is a voluntary association of local governments within a county, or within geographically contiguous counties, created primarily to prepare regional transportation plans, to ensure local and regional coordination of transportation planning, and to maintain a six-year regional transportation improvement program.

Comprehensive Flood Control Management Plans. Counties may adopt comprehensive flood control management plans for any drainage basin located wholly or partially within

the county. Whenever any river flows through two counties, the counties may contract with each other for flood control and settling disputes regarding flood control.

Shoreline Master Programs. The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The Department of Ecology and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, SMA regulations are developed in local shoreline master programs. All counties and cities with shorelines of the state are required to adopt shoreline master programs that regulate land-use activities in shoreline areas of the state.

Summary of Amended Bill: Goals of the Growth Management Act—Climate Change. The issue of climate change is added as a goal of the GMA. Under the climate change goal, comprehensive plans, development regulations, and regional plans must support state GHG emissions reduction goals and foster resiliency to climate impacts and natural hazards, among other requirements.

Applicability of Provisions of the Bill. The requirements of the GHG emissions reduction sub-element of the climate change and resiliency element apply only to those counties required or that choose to plan fully under the GMA, and the cities within them with a population greater than 6000, that meet either of the following criteria as of January 1, 2021:

- a county with a population density of at least 100 people per square mile and a population of at least 200,000; or
- a county with a population density of at least 75 people per square mile and an annual growth rate of at least 1.75 percent as determined by the Office of Financial Management.

Once a county meets either of the sets of criteria described above, the requirement to conform with the GHG emissions reduction subelement of the climate change and resiliency element remains in effect, even if the county no longer meets one of these sets of criteria.

If the population of a county that previously had not been required to conform with the GHG emissions reduction subelement of the climate change and resiliency element changes such that the county meets either of the sets of criteria described above, the county, and the cities within that county, must adopt a GHG emissions reduction sub-element at the next scheduled update of the comprehensive plan.

The requirements of the amendments to the transportation element of comprehensive plans apply to the counties and cities required to comply with the GHG emissions reduction sub-element, as well as all cities planning fully under the GMA that have a population greater than 6000.

The requirements of the amendments to the land use element of comprehensive plans apply

to all counties and cities required to comply with the amendments to the transportation element, as well as all counties planning fully under the GMA that have a population greater than 20,000.

The requirements of the amendments to the rural element of comprehensive plans apply to all counties planning fully under the GMA that have a population greater than 20,000.

Growth Management Act—Elements of Comprehensive Plans. The land use element of comprehensive plans should give special consideration to achieving environmental justice in its goals and policies, and should avoid creating or worsening environmental health disparities. The land use element must also reduce and mitigate the risk to lives and property posed by wildfires by using land use planning tools, which may include reducing residential development pressure in the wildland urban interface area.

The forecasts of traffic demand contained within the transportation element of comprehensive plans must address forecasts of multimodal transportation demands and needs within cities and urban growth areas, and forecasts of traffic demands and needs outside of cities and urban growth areas, to inform the development of a transportation element that balances transportation system safety and convenience to accommodate all users of the transportation system to safely, reliably, and efficiently provide access and mobility to people and goods.

A development approval may not be denied because it fails to meet traffic level of service standards if it is possible to provide for the transportation needs of a development through pedestrian and bicycle facility improvements, increased or enhanced public transportation service, ride-sharing programs, demand management, or other transportation systems management strategies funded by the development.

The park and recreation element of comprehensive plans must include a consideration of the health disparities map, published by the Department of Health (DOH), to increase greenspace in the most pollution-burdened locations.

Growth Management Act—Climate Change and Resiliency Element. Comprehensive plans must include a climate change and resiliency element. The element must be designed to reduce overall GHG emissions and must enhance resiliency to and avoid the adverse impacts of climate change. The climate change and resiliency element is divided into two subelements—a GHG emissions reduction subelement and a resiliency subelement. The GHG emissions reduction subelement is mandatory for the counties and cities described below and encouraged for all other jurisdictions. The resiliency subelement is mandatory for all counties and cities fully planning under the GMA and is encouraged for all other jurisdictions.

The GHG emissions reduction subelement of the comprehensive plan, and its related development regulations, must identify the actions the jurisdiction will take during the

planning cycle consistent with the guidelines published by the Department of Commerce (Commerce) that will:

- result in reductions in overall GHG emissions generated by the transportation and land use systems within the jurisdiction, but without increasing emissions elsewhere in the state;
- result in reductions in vehicle miles traveled (VMT) within the jurisdiction, but without increasing emissions elsewhere in the state; and
- prioritize reductions in communities that experience disproportionate impacts and harm due to air pollution in order to maximize the cobenefits of reduced air pollution.

Actions not specifically identified in the guidelines published by Commerce may be considered to be consistent with those guidelines only if they are projected to achieve GHG emissions reductions or VMT reductions equivalent to what would be required of the jurisdiction under Commerce's guidelines and they are supported by scientifically credible projections.

Until December 31, 2034, actions not specifically identified in the guidelines developed by Commerce, or considered to be consistent with those guidelines according to the process described above, must still be considered to be sufficient to meet the requirements of the GHG emissions reduction subelement, and must be approved by Commerce if the actions provide for the authorization of the development of middle housing types. Certain actions must be considered to satisfy the GHGs reduction subelement of the act if the actions provide authorization for middle housing in certain areas. "Middle housing" means accessory dwelling units and at least one of the following housing types: duplexes; triplexes; or quadplexes, in all zoning districts within an urban growth area that permit detached single-family residences.

The resiliency subelement must, among other things, equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change on people, property, and ecological systems through goals, policies, and programs consistent with the best available science and scientifically credible climate projections and impact scenarios. A natural hazard mitigation plan or similar plan that complies with the applicable requirements of the GMA may be adopted by reference to satisfy those requirements. A supplement to a natural hazard mitigation plan adopted by reference may be required if not all substantive requirements are met by the adopted plan.

If a county or city intends to incorporate by reference a Federal Emergency Management Agency (FEMA) natural hazard mitigation plan in order to meet the requirement of the resiliency subelement, and the natural hazard mitigation plan is not adopted within three years prior to the required update set forth in the GMA but is intended to be adopted no later than two years after the required update set forth in the GMA, the county or city may be granted an extension to meeting the requirements of the resiliency subelement by providing notice to Commerce. If a county or city incorporates by reference a FEMA natural hazard mitigation plan in order to meet the requirement of the resiliency subelement, the plan must

be guided by the climate change goal of the GMA and must comply with the requirements set forth in the resiliency subelement.

Greenhouse Gas Emissions Reduction and Vehicle Miles Traveled Reduction Guidelines. Commerce, in consultation with the Department of Ecology (Ecology), DOH, and the Department of Transportation (WSDOT), must publish guidelines that specify a set of measures, counties and cities have available to them to take through updates to their comprehensive plans and development regulations that have a demonstrated ability to reduce GHG emissions in order to achieve statewide GHG emissions reductions required by the state Clean Air Act, allowing for consideration of the emissions reductions achieved through the adoption of statewide programs. The guidelines must prioritize reductions in communities that have experienced disproportionate harm due to air pollution.

Commerce, in consultation with WSDOT, must also publish guidelines that specify a set of measures counties and cities have available to them to take through updates to their comprehensive plans and development regulations that have a demonstrated ability to reduce VMT. The measures must be designed to be achievable throughout the state, including in small cities and rural cities.

Commerce must publish the full set of GHG emissions reduction and VMT reduction guidelines no later than December 31, 2025. Commerce must update the guidelines at least every four years based on the most recently available data, and must provide a process for local governments and other interested parties to submit alternative actions for possible inclusion into the guidelines at least once per year. Commerce must publish an intermediate set of guidelines no later than December 31, 2022, for use by local governments whose comprehensive plan updates are required to occur prior to December 31, 2025.

In any updates to the guidelines published after 2025, Commerce must include a determination of whether adequate progress has been made toward statewide GHG emissions reduction and VMT reduction goals. If adequate progress has not been made, Commerce must identify in the guidelines what additional measures counties and cities must take in order to make further progress.

Greenhouse Gas Emissions Reduction—Process for Adoption. Upon receipt of a proposed GHG emissions reduction subelement, Commerce must first provide notice and an opportunity for comment to all persons, groups, and agencies that have requested in writing notice of the proposed subelement. Commerce may, at its discretion, conduct a public hearing in the jurisdiction proposing the subelement. The comment period must be at least 30 days.

Within 15 days of the close of the comment period, Commerce must request the local government address the comments raised during the comment period and provide a written response as to how the proposal addresses the identified issues. Within 30 days of receiving the local government's response, Commerce must make written findings and conclusions

regarding the consistency of the proposal with the requirements of the GMA and the applicable guidelines adopted by Commerce, and provide a response to the issues identified during the comment period. Commerce must either approve the GHG emissions reduction subelement as submitted, recommend specific changes, or deny the subelement in those instances in which no alteration of the GHG emissions reduction subelement appears likely to be consistent with the policy of the GMA and the applicable guidelines.

If Commerce recommends changes to the proposed GHG emissions reduction subelement, Commerce must require that the local government either agree to the proposed changes or submit an alternative GHG emissions reduction subelement.

Commerce must approve a proposed GHG emissions reduction subelement unless it determines the proposed subelement is not consistent with the policy of the GMA or the applicable guidelines.

A GHG emissions reduction subelement takes effect once approved by Commerce. Commerce must maintain a record of each GHG emissions reduction subelement, the action taken on any proposed GHG emissions reduction subelement, and any appeal of Commerce's action. Commerce's approved document of record constitutes the official GHG emissions reduction subelement.

Greenhouse Gas Emissions Reduction — Appeals. Commerce's final decision to approve or reject a proposed GHG emissions reduction subelement or amendment may be appealed to the Growth Management Hearings Board (GMHB). The GMHB's decision concerning an appeal of Commerce's final decision to approve or reject a proposed GHG emissions reduction subelement or amendment must be based solely on whether or not the adopted or amended GHG emissions reduction subelement complies with the GMA's climate change goal, the guidelines adopted by Commerce related to GHG emissions reductions and VMT reductions, or the State Environmental Policy Act (SEPA).

Model Climate Change and Resiliency Element. Commerce must develop, in collaboration with the departments of Ecology, Fish and Wildlife, Natural Resources, and DOH, and the Emergency Management Division of the Washington Military Department, and adopt by rule a model climate change and resiliency element that may be used by counties, cities, and multiple-county planning regions for developing and implementing climate change and resiliency plans and policies.

Compilation of Vehicle Miles Traveled. WSDOT must compile, maintain, and publish a summary of the per capita VMT annually in each city in the state, and in the unincorporated portions of each county in the state.

Shoreline Master Program Guidelines. Ecology must update its shoreline master program guidelines to require shoreline master programs to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and

the environment.

State Environmental Policy Act—Appeals. The adoption of ordinances, amendments to comprehensive plans, and other related nonproject actions taken by a county or city to implement the guidelines published by Commerce are not subject to appeal under the SEPA.

Comprehensive Flood Control Management Plan. A comprehensive flood control management plan, if a county chooses to adopt such a plan, must include a consideration of climate change impacts, including the impact of sea level rise and increased storm severity on people, property, natural resources, and the environment.

Growth Management Act—Definitions. "Per capita vehicle miles traveled" means the number of miles traveled using cars and light trucks in a calendar year divided by the number of residents in Washington. The calculation of this value excludes vehicle miles driven conveying freight.

"Active transportation" means forms of pedestrian mobility including walking or running, the use of a mobility assistive device such as a wheelchair, bicycling and cycling irrespective of the number of wheels, and the use of small personal devices such as foot scooters or skateboards. Active transportation includes both traditional and electric-assist bicycles and other devices. Planning for active transportation must consider and address accommodation pursuant to the Americans with Disabilities Act and the distinct needs of each form of active transportation.

"Transportation system" means all infrastructure and services for all forms of transportation within a geographical area, irrespective of the responsible jurisdiction or transportation provider.

"Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies; with a focus on the equitable distribution of resources, benefits, and burdens in a manner that prioritizes communities that experience the greatest inequities, disproportionate impacts, and have the greatest unmet needs.

"Active transportation facilities" means facilities provided for the safety and mobility of active transportation users, including, but not limited to, trails, sidewalks, bike lanes, shared-use paths, and other facilities in the public right-of-way.

Funding. The obligation of local governments to comply with the requirements established in the amendments to the requirements of comprehensive plans under the GMA and the updated shoreline master program guidelines adopted by Ecology is contingent on the provision of state funding to local governments for the specific purpose of complying with

these requirements. The obligation of local governments to comply with these requirements takes effect two years after the date the Legislature appropriates state funding to provide to local governments for complying with these requirements.

EFFECT OF HOUSING & LOCAL GOVERNMENT COMMITTEE AMENDMENT(S):

- Makes avoiding creating or worsening environmental health disparities an encouragement rather than a mandatory requirement.
- Changes the mandatory approval of the GHG emissions reductions subelement to voluntary.
- Adds voluntary cross jurisdictional strategies to address resiliency.
- Requires a supplement to a natural hazard mitigation plan adopted by reference if not all substantive requirements are met by the adopted plan.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

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 Engrossed Second Substitute House Bill (Housing & Local Government): *The committee recommended a different version of the bill than what was heard.* PRO: This bill makes climate change a priority by reducing greenhouse gas emissions coming from the transportation sector. We have worked very hard to streamline the process with Commerce. We will be requesting at least three amendments as stakeholdering continues. This bill will include consideration of greenhouse gas emissions in land use planning. The resiliency subelement will help us thrive in changing climate. This bill will ensure all cities will be better equipped to plan for the future. The climate change crisis demands we change how we plan before it is too late. The bill sponsor worked with stakeholders to ensure the work under the bill is paid for. We need to plan now for future generations. The City of Spokane is developing a comprehensive sustainability plan. Local government pays the cost of resiliency in the end. This bill requires Commerce to develop a menu of choices for our cities. This bill offers significant public health benefits. Local governments will need state guidance, funding, and legal protection to implement this bill.

CON: We have an issue in Section 4 but may have an amendment that will address our concerns. This bill will result in lack of balance in the GMA because there are no enforceable parts of the housing element. We have concerns about adding the climate change requirements to the GMA without addressing the housing crisis.

OTHER: Section 6 is not necessary any longer and we support an amendment addressing that. The funding contingency language has been changed and we would like to see a return to the original language to guarantee local government costs. Washington is the last state on the west coast to integrate climate change into its land use framework. This is work that needs to be done this year. This bill entrenches the rural-urban divide particularly with respect to housing development. We have concerns about the major new planning requirements in this bill because of the potential litigation risks. We will request one small amendment regarding parking.

Persons Testifying (Housing & Local Government): PRO: Representative Davina Duerr, Prime Sponsor; Bryce Yadon, Futurewise; Bruce Wishart, Sierra Club; Danielle Shaw, Washington Conservation Voters, Washington Environmental Council; Cynthia Stewart, League of Women Voters of Washington; Kristiana de Leon, Council Member - Black Diamond City Council; Doug Levy, Outcomes By Levy, LLC - Washington Recreation and Park Association; Jim Street, 43rd District Environmental Caucus; Breean Beggs, Spokane City Council President; Ken Lans, Washington Physicians for Social Responsibility; Lara Whitely Binder, King County; Carl Schroeder, Association of Washington Cities.

CON: Mike Ennis, Association of Washington Business; Jan Himebaugh, Building Industry Association of Washington; Bill Clarke, Washington Realtors.

OTHER: Paul Jewell, Washington State Association of Counties; Pam Lewison, Washington Policy Center; Dave Andersen, Washington Department of Commerce; Scott Hazlegrove, Master Builders Association of King and Snohomish Counties.

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

Staff Summary of Public Testimony (Ways & Means): PRO: This is an important policy to have the State meet climate goals. This policy would reduce sprawl which would help reduce emissions. Speaking to the resiliency impact, the climate impacts of natural climate-change driven changes is costly. Please include the funding for this policy in the budget to reduce future higher costs. Cities are ready to step forward and plan for reduced emissions, they do not have funding. This bill along with other legislation keeps this funded. Fiscal note is too low, expect 13-20 million in first biennium.

CON: Many counties are already required to do things required in the GMA. The state could save costs by allowing more leeway in planning. Forcing counties to account for reducing vehicle miles traveled is not good for all counties. Washington State is not one size fits all. Cannot support a bill that tips the balance of the growth management act. This pushes limits to housing choices and availability.

OTHER: The House created a safe harbor provision and allows local governments to choose if they would like to make the changes to their comprehensive plans in this bill, but

are not required to change things. This will cost less in planning for local governments. Amendments have helped. Do not support section 6. Cities should not be required to get Commerce's approval of comprehensive plan elements. Want to restore language about sufficient funding requirements. The fiscal note needs to be corrected, it is not sufficient.

Persons Testifying (Ways & Means): PRO: Bryce Yadon, Futurewise; Danielle Shaw, Washington Environmental Council/Washington Conservation Voters; Carl Schroeder, Association of Washington Cities.

CON: Sharon Hanek; Margaret Lee; Jan Himebaugh, Building Industry Association of Washington.

OTHER: Scott Hazlegrove, Master Builders Association of King & Snohomish Counties; Paul Jewell, Washington State Association of Counties.

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