

SENATE BILL REPORT

ESHB 1241

As Reported by Senate Committee On:
Housing & Local Government, March 24, 2021

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

Brief Description: Planning under the growth management act.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Duerr, Berg, Ortiz-Self, Bateman, Wicks, Macri, Harris-Talley and Pollet).

Brief History: Passed House: 3/8/21, 56-41.

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

Brief Summary of Amended Bill

- Increases the review and revision cycle for comprehensive plans and Shoreline Master Plans from eight to ten years.
- Requires certain 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.
- Requires Commerce to provide services to facilitate the timely resolution of disputes between a federally recognized Indian tribe and a city or county.

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.

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; Short, Assistant Ranking Member; Warnick.

Minority Report: That it be referred without recommendation.
Signed by Senator Gildon, Assistant Ranking Member.

Staff: Bonnie Kim (786-7316)

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

Within 14 months of a county initially becoming subject to the GMA's requirements, the county must adopt a countywide planning policy in consultation with the cities within the county. 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 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 counties as follows:

- June 30, 2024 for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;
- June 30, 2025 for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom, and the cities within those counties;
- June 30, 2026 for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima, and the cities within those counties; and
- June 30, 2027 for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and

Whitman, and the cities within those counties.

Each of these counties, and the cities within those counties, must update their comprehensive plans every eight years after the current deadline.

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

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. The following deadlines for this review are:

- 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.

Summary of Amended Bill: Comprehensive plans and shoreline master programs must be reviewed and revised every ten years.

Counties planning under the GMA that have a population of 200,000 and a population density of at least 100 people per square mile on or after January 1, 2021; and/or have grown by an annual rate of 1.75 percent or more and have a population density of at least 75 people per square mile on or after January 1, 2021, and cities with more than 6,000 people on January 1, 2021 within counties that satisfy either or both of these criteria, must provide Commerce with an implementation progress report five years after the adoption of a comprehensive plan. Once a county has satisfied either of the criteria, the implementation progress report requirement will remain for that county and its covered cities, even if the county later does not satisfy either or both of the criteria. Commerce must develop guidelines for the criteria and measures for counties and cities to use in the report covering the following:

- the implementation of previously adopted changes to the housing element of the comprehensive plan and the effect of those changes on housing affordability and availability within the jurisdiction;
- permit processing timelines; and

- progress toward implementing actions required to achieve reductions to meet greenhouse gas and vehicle miles traveled requirements as provided in any of the elements of the comprehensive plan.

If a county or city that is required to provide an implementation progress report has yet to implement any changes to specifically identified regulations, zoning or land use, or has not taken other legislative or administrative action necessary to implement such changes, that has been included the most recent update to their comprehensive plan by the due date for the implementation progress report, then the county or city must identify the need for such changes in the implementation progress report. The county or city must adopt a work plan to implement the changes, and must complete all work necessary for implementation within two years of the submission of the implementation progress report.

Adopted port elements must be developed collaboratively between the city, the applicable port, and the applicable tribe.

Commerce must provide services to facilitate the timely resolution of disputes between a federally recognized Indian tribe and a city or county. A federally recognized Indian tribe may request Commerce to provide facilitation services to resolve issues of concern with a proposed comprehensive plan and its development regulations, or any amendment to the comprehensive plan and its development regulations. Upon receipt of a request from a tribe, Commerce must notify the city or county of the request and offer to assist in providing facilitation services to encourage resolution before adoption of the proposed comprehensive plan. Upon receipt of the notice from Commerce, the city or county must delay any final action to adopt any comprehensive plan, or any amendment or its development regulations for at least 60 days. The tribe and the city or county may jointly agree to extend this period by notifying Commerce. A county or city must not be penalized for noncompliance due to any delays associated with the mediation process.

Upon receipt of a request, Commerce must provide comments to the county or city including a summary and supporting materials regarding the tribe's concerns. The county or city may either agree to amend the comprehensive plan as requested consistent with the comments of Commerce, or enter into a facilitated process with the tribe, which must be arranged by Commerce using a suitable expert to be paid by Commerce. This facilitated process may also extend the 60-day delay of adoption, upon agreement of the tribe and the city or county. At the end of the 60-day period, unless by agreement there is an extension of the 60-day period, the city or county may proceed with adoption of the proposed comprehensive plan and development regulations.

A federally recognized Indian tribe may voluntarily choose to participate in the county or regional planning process and coordinate with the county and cities if that collaboration and participation is a nonexclusive exercise of coordination and cooperation in the planning process and failure to exercise discretionary collaboration and participation does not limit a party's standing for quasi-judicial or judicial review or appeal.

Upon receipt of notice in the form of a tribal resolution from a tribe whose reservation or ceded lands lie within the county, which indicates the tribe has a planning process or intends to initiate a parallel planning process, the county, cities, and other local governments conducting the planning must enter into good faith negotiations to develop a mutually agreeable memorandum of agreement with such tribes in regard to collaboration and participation in the planning process. If a mutually agreeable memorandum of agreement cannot be reached between the local government and such tribes, the local government must enter mediation with such tribes for a period not to exceed 30 days, which will be arranged by Commerce using a suitable expert to be paid by Commerce. If a mutually agreeable memorandum of agreement is not reached at the conclusion of the mediation period, the period shall be extended for one additional period not to exceed 30 days, upon written notice to Commerce by one or more parties. If a mutually agreeable memorandum of agreement cannot be reached at the end of the mediation period or the extended mediation period, the parties must have no further obligation to develop a memorandum of agreement. Inability to reach a mutually agreeable memorandum of agreement does not preclude a tribe from providing notice in subsequent planning processes.

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

- Removes proposed language from the “Additional Elements” section—RCW 36.70A.080—of the Growth Management Act.
- Inserts a requirement in the “Port Element” section—RCW 36.70A.085—that cities comply with GMA tribal engagement provisions in the bill.
- Clarifies the obligation of local governments to negotiate a memorandum of understanding with a tribe whose reservation or ceded lands lie within the county.
- Replaces a requirement for government-to-government consultation with a concerned tribe with a process for timely dispute resolution.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill changes the comprehensive plan planning cycle to stop the need for extensions. This bill includes tribes in the process for the first time so they can weigh in on the planning. Longer planning periods are helpful to local jurisdictions. This bill gives tribes a seat at the planning table. Moving to a ten- year update saves counties money.

CON: We have concerns over the tribal consultation process because it could delay planning and create uncertainty. The midcycle check-in is a positive change but this bill creates a special conversation not on the public record. This is a problem for planning. The five-year check-in is unclear.

OTHER: Changing the planning cycle is okay so long as cities and counties are meeting planning goals and outcomes. We appreciate the goals of tribal engagement in section 4 but section 5 is inconsistent. We would like an amendment to section 5 if we can reach agreement with the Puyallup Tribe.

Persons Testifying: PRO: Representative Davina Duerr, Prime Sponsor; Cynthia Stewart, League of Women Voters of Washington; Dawn Vyvyan, Yakama Nation Puyallup Indian Tribe; Paul Jewell, Washington State Association of Counties; Carl Schroeder, Association of Washington Cities.

CON: Mike Ennis, Association of Washington Business; Jan Himebaugh, Building Industry Association of Washington; Jeanette McKague, Washington REALTORS.

OTHER: Bryce Yadon, Futurewise; Sean Eagan, The Northwest Seaport Alliance.

Persons Signed In To Testify But Not Testifying: No one.