

SENATE BILL REPORT

SB 5203

As of January 17, 2023

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

Brief Description: Improving the state's response to climate change by updating the state's planning framework.

Sponsors: Senators Lovelett, Lias, Frame, Hasegawa, Hunt, Keiser, Nguyen, Nobles, Pedersen, Rolfes, Salomon, Stanford, Valdez and Wilson, C.; by request of Office of the Governor.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/17/23.

Brief Summary of Bill

- Adds a goal of climate change and resiliency 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 that certain counties and cities must adopt under the GMA.
- Requires certain counties and cities to address the adverse impacts of climate change on people, property, and ecological systems, and identify actions the jurisdiction will take to reduce greenhouse gas emissions (GHG) and vehicle miles traveled (VMT) under the climate change and resiliency element of their comprehensive plan.
- Specifies the process by which the GHG emissions reduction subelement of the climate change and resiliency element takes effect.
- Requires the Department of Commerce to adopt guidance that creates a model climate change and resiliency element, and to publish guidelines that specify a set of actions counties and cities have available to them to take related to GHG emissions reductions and per capita 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.

reductions.

- Requires the Department of Ecology to update its Shoreline Master Program guidelines 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 LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Staff: Maggie Douglas (786-7279)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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, that 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 ten years. Counties, and the cities within them, are grouped into four different year classes for purposes of 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.

Implementation Progress Report. Counties and cities planning under the GMA that meet certain population criteria must provide the Department of Commerce (Commerce) with an implementation progress report detailing the progress they have achieved in implementing their comprehensive plan five years after the review and revision of their comprehensive

plan. If a city or county has not implemented any specific actions identified in the most recent update to their comprehensive plan, the city or county must identify the need for such action in the implementation progress report. Cities and counties must adopt a work plan to implement any necessary regulations, zoning and land use changes, or take other legislative or administrative action identified in the implementation progress report and complete all work necessary for implementation within two years of submission of the implementation progress report.

Greenhouse Gas Emissions and Per Capita Vehicle Miles Traveled Reductions.

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

The legislation enacted in 2008 also required the Department of Transportation (DOT) to adopt statewide goals to reduce annual per capita vehicle miles traveled (VMT) by 2050. Using a statewide baseline of 75 billion vehicle miles traveled, Washington must achieve the following reductions for the state:

- by 2020, reduce the annual per capita VMT by 18 percent;
- by 2035, reduce the annual per capita VMT by 30 percent; and
- by 2050, reduce the annual per capita VMT by 50 percent.

Environmental Justice. Legislation enacted in 2021 defined environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with the respect to the development, implementation, and enforcement of environmental laws, rules, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

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 the 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.

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 purposes of 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 (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 Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Goals of the Growth Management Act—Climate Change. The issue of climate change and resiliency is added as a goal of the GMA. Under the climate change and resiliency goal, comprehensive plans, development regulations, and regional plans must support reductions in GHG emissions and per capita VMT, prepare for climate impact scenarios, foster resiliency to climate impacts and natural hazards, protect and enhance environmental, economic, and human health and safety, and advance environmental justice.

Growth Management Act—Elements of Comprehensive Plans. The land use element of comprehensive plans must give special consideration to achieving environmental justice in its goals and policies. The land use goal must 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, creating open space buffers between human development and wildfire prone landscapes, and protect existing residential development through community wildfire preparedness and fire adaptation measures.

A capital facilities plan element must include an inventory of existing capital facilities owned by public entities, including green infrastructure, showing the locations and capacities of the capital facilities.

A utilities element must consist of the general location, proposed location, and capacity of all existing and proposed utilities, including components of drinking water, stormwater, wastewater, and telecommunications systems.

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.

Growth Management Act—Climate Change and Resiliency Element. Comprehensive plans must include a climate change and resiliency element. The element must be designed to result in reductions in 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 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 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 VMT within the jurisdiction but without increasing emissions elsewhere in the state; and
- prioritize reductions in overburdened communities in order to maximize the co-benefits of reduced air pollution and environmental justice.

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. A jurisdiction may not restrict population growth or limit population allocation in order to achieve the requirements of the subelement.

The resiliency subelement must, among other things, equitably enhance resiliency to, and avoid or substantially reduce the adverse impacts of, climate change in human communities and ecological systems through goals, policies, and programs consistent with the best available science and scientifically credible climate projections and impact scenarios. The resiliency subelement must prioritize actions in overburdened communities that will disproportionately suffer from compounding environmental impacts, and will be most

impacted by natural hazards due to climate change.

Specific goals, policies, and programs of the resiliency subelement must include, but are not limited to, those designed to:

- identify, protect, and enhance natural areas to foster resiliency to climate impacts, as well as areas of vital habitat for safe passage and species migration;
- identify, protect, and enhance community resiliency to climate change impacts, including social, economic, and built factors that support adaptation to climate impacts consistent with environmental justice; and
- address natural hazards created or aggravated by climate change, including sea level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to temperature and precipitation patterns.

A federal emergency management agency (FEMA) natural hazard mitigation plan or similar plan that complies with the applicable requirements of the GMA, prioritizes actions in overburdened communities, and complies with the resiliency subelement may be adopted by reference to satisfy those requirements. If any of the substantive requirements of the subelement are not addressed or are inadequately addressed in the hazard mitigation plan, a county or city must supplement the natural hazard mitigation plan accordingly so that the adopted resiliency subelement complies fully with the substantive requirements of the subelement.

If a county or city intends to adopt by reference a FEMA natural hazard mitigation plan in order to meet all or part of the resiliency subelement, and the plan does not comply with the requirements of the subelement, Commerce may grant the county or city an extension of time to submit a natural hazard mitigation plan. Eligibility for an extension is limited to a city or county required to review its comprehensive plan on or before June 30, 2025, or for a city or county with an existing, unexpired FEMA natural hazard mitigation plan scheduled to expire before December 31, 2024. Extension requests after July 1, 2027, may be granted under certain conditions.

A city or county that wishes to request an extension to meet the requirements of the subelement must submit a request in writing to Commerce no later than the date in which the jurisdiction is required to review its comprehensive plan. A city or county may have an additional 48 months to either adopt by reference an updated FEMA natural hazard mitigation plan or adopt its own natural hazard mitigation plan and submit the plan to Commerce.

Applicability of Provisions of the Bill. The requirements of the GHG emissions reduction subelement of the climate change and resiliency element apply only to those counties that are 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 April 1, 2021:

- a county with a population of at least 100,000; 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 (OFM).

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.

The resiliency subelement is mandatory for all counties and cities fully planning under the GMA, and is encouraged for all other jurisdictions.

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 subelement, 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.

Any county or city required to include a climate change and resiliency element and the GHG emissions reduction subelement, and is required to review, and if necessary, revise its comprehensive plan on or before December 31, 2024, must incorporate a climate change and resiliency element into its comprehensive plan as part of the first implementation progress report.

Greenhouse Gas Emissions Reduction and Vehicle Miles Traveled Reduction Guidelines. Commerce, in consultation with Ecology, the Department of Health, and DOT, must publish guidelines that specify a set of measures that counties and cities have available to them to take through updates to their comprehensive plans and development regulations that have a demonstrated ability to increase housing capacity within urban growth areas or reduce GHG emissions, allowing for consideration of the emissions reductions achieved through the adoption of statewide programs.

The guidelines must be based on the most recent GHG emissions report prepared by Ecology and Commerce, the most recent city and county population estimates prepared by OFM, the locations of major employment centers and transit corridors for the purposes of increasing housing supply in these areas, and available environmental justice data and data regarding access to public transportation for people with disabilities and for vulnerable populations.

Commerce, in consultation with DOT, must also publish guidelines that specify a set of measures that 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 per capita VMT.

The guidelines must be based on the most recent GHG emissions report prepared by Ecology and Commerce, the most recent city and county population estimates prepared by OFM, and the most recent summary of per capita VMT compiled by DOT. 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, 2023, 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 an evaluation of the impact that locally adopted climate change and resiliency elements have had on local GHG emissions and per capita VMT reduction goals. The evaluation must also address the impact locally adopted GHG emissions reduction subelements have had on zoned housing capacity. Commerce must provide and prioritize options that support housing diversity and that assist counties and cities in meeting GHG emissions reduction and other requirements established by the bill.

Commerce may not propose or adopt any guidelines that would include any form of a road usage charge or any fees or surcharges related to vehicle miles traveled, as well as any guidelines that would direct or require local governments to regulate or tax, in any form, transportation service providers, delivery vehicles, or passenger vehicles.

Greenhouse Gas Emissions Reduction—Process for Adoption. A county or city required to complete the GHG emissions reduction subelement may submit the subelement to Commerce for approval, and it becomes effective when approved by Commerce. If a county or city does not seek Commerce's approval of the subelement, the effective date of the subelement is the date on which the comprehensive plan is adopted by the county or city.

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 ask the local government to 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 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 SEPA.

Model Climate Change and Resiliency Element. Commerce must develop, in collaboration with the departments of Ecology, Fish and Wildlife, Natural Resources, and Health, 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.

The model element must establish minimum requirements for fulfilling the requirements of the climate change and resiliency element, and should provide guidance on identifying, designing, and investing in infrastructure that supports community resilience to climate

impacts. The model element should provide guidance on identifying and addressing natural hazards created or aggravated by climate change. The rule must recognize and promote as many co-benefits of climate resilience as possible, such as climate change mitigation, salmon recovery, forest health, ecosystem services, and socioeconomic health and resilience.

Compilation of Vehicles Miles Traveled. DOT 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.

Comprehensive Flood Control Management Plan. A comprehensive flood control management plan, if a county chooses to adopt one, 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.

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 SEPA.

Growth Management Act—Definitions. Terms, including per capita VMT, active transportation, transportation system, environmental justice, active transportation facilities, greenspace, and green infrastructure are defined.

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 the purpose of complying with these requirements.

Appropriation: None.

Fiscal Note: Requested on January 9, 2023.

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 Proposed Substitute: PRO: GMA planning counties have a responsibility once a decade to figure out a vision for what their communities must look like over the next decade. This bill helps to set a course to ensure communities are climate resilient. It considers how infrastructure is going to be able to deal with floods, wildfires, and droughts. It considers the planning of our urban centers, it ensures reducing greenhouse gas emissions and making sure transportation goals line up with housing goals. This bill puts density in rather than choosing to sprawl which harms communities by taking away open spaces that are less suitable to develop and goes against the goals of the GMA. This ensures that as Washington develops over time, growth is concentrated in areas that can best support that development. This makes our communities more livable, walkable, and encourages multimodal transportation to ensure past harms are being undone by looking through a lens of environmental justice. Addressing climate change and its effects will require intentional and cooperative action at all levels of government. This bill obligates our cities and counties in coordination with the state to ensure the climate crisis is addressed. It uses the comprehensive planning process to ensure that local plans, regulations, and policies adapt to and mitigate the effect of the changing climate. This bill would require Ecology to update rules for Shoreline Master Programs to address impacts of sea level rise and increased storm severity on people, property, and the environment. This bill requires the largest, fastest growing communities to plan for the reduction of greenhouse gas emissions and vehicle miles travelled.

CON: This bill needs stronger housing language that is consistent with the guidance of the Department of Commerce. This bill must ensure that appeals are limited to the GMA, not carbon reduction requirements or other climate change related statutes beyond what the growth board is empowered to deal with. The Wildland Urban Interface map (WUI) created by Department of Natural Resources (DNR) is not an appropriate tool for mapping wildfire risk. It is a tool for mapping where urban structures exist and wildlands intermix, not a wildfire risk map. DNR has stated that using it is not a good indicator for looking at development in terms of wildfire risk and many of the places that are included in the WUI map are also located within the UGA.

OTHER: Language in the bill regarding information specific to utilities are good additions. But most local governments don't own, operate, or maintain those facilities. There are services that are provided by other providers who are not obligated to plan under the GMA. It would make sense to address the issue of who is responsible for planning under the GMA. Responsibility for planning under the greenhouse gas emission reduction sub element should be reconsidered. Third party appeals have been a challenge for local governments as part of the GMA structure over time. Section six is a potential model that could be expanded beyond just the greenhouse gas emissions supplement.

Persons Testifying: PRO: Senator Liz Lovelett, Prime Sponsor; Carl Schroeder, Association of Washington Cities; Micah Lusignan; Tanisha Sepulveda; John Flanagan,

Office of Governor Inslee; Dave Andersen, Washington Department of Commerce; Tim Gates, Washington State Department of Ecology; Kerri Woehler, Washington State Department of Transportation; Tamar Shuhendler, Washington Bikes; Jessica Forsythe, Redmond Council President; Guillermo Rogel, Front and Centered; Bryce Yadon, Futurewise; Jamie Stroble, The Nature Conservancy; Clifford Traisman, Washington Conservation Action/Environmental Priorities Coalition; Leah Missik, Climate Solutions; Liz Schotman, Surfrider Foundation; Adam Maxwell, Audubon; Ryan Walters, Anacortes Councilmember; Kaylee Galloway, Whatcom County Councilmember; Kristiana De Leon, Black Diamond Councilmember; Kelli Refer, Move Redmond.

CON: Josie Cummings, Building Industry Association of Washington; Bill Clarke, WA Realtors.

OTHER: John Worthington; Paul Jewell, Washington State Association of Counties.

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