

HOUSE BILL REPORT

ESSB 6339

As Reported By House Committee On:
Environmental Affairs

Title: An act relating to facilitating growth management planning and decisions, integration with related environmental laws, and improving procedures for cleanup of hazardous waste sites.

Brief Description: Facilitating growth management planning and decisions, integration with related environmental laws, and improving procedures for cleanup of hazardous waste sites.

Sponsors: Senate Committee on Ecology & Parks (originally sponsored by Senators Sheldon, Amondson, Moore, Morton, Snyder, Gaspard, Skratek, Loveland, Quigley, Fraser, Drew, Hargrove, McAuliffe, Franklin, Haugen, Williams, Spanel, M. Rasmussen, Pelz, A. Smith, Wojahn, Winsley and Ludwig).

Brief History:

Reported by House Committee on:
Environmental Affairs, February 24, 1994, DPA.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: Do pass as amended. Signed by 14 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Van Luven, Assistant Ranking Minority Member; Bray; Edmondson; Foreman; Hansen; Holm; L. Johnson; J. Kohl; Linville; Roland and Sheahan.

Staff: Rick Anderson (786-7114).

Background: Executive Order 93-06 created the Governor's Task Force on Regulatory Reform and charged it with making recommendations "for statutory and administrative changes that lead to more reasonable, efficient, cost-effective, and coordinated regulatory actions." The task force was directed to submit interim recommendations to the Governor by December 1, 1993 and final recommendations by December 1, 1994. Among other subjects, the task force was to make recommendations upon integrating the state's environmental and growth management requirements and processes, and improving project approval, permitting and appeals processes and structures.

The task force submitted its interim report and recommendations on December 17, 1993. It made several specific recommendations on integrating the decision and appeal processes under the Growth Management Act (GMA) and the State Environmental Policy Act (SEPA), and providing greater certainty in determining the completeness of project applications and consistency with GMA plans and regulations. It also recommended exempting the procedural requirements of various state and local permits for hazardous waste site cleanup actions subject to state control or oversight.

The Growth Management Act, enacted in 1990 and expanded in 1991, requires most counties and cities in the state to adopt comprehensive land use plans and urban growth areas. All local governments in the state are required to identify and protect six types of "critical areas" as well as mineral, forest and agricultural lands. Appeals from local government planning decisions, adoption of implementing regulations and certain other decisions are appealable to three regional growth planning hearings boards.

The State Environmental Policy Act was enacted in 1971 and requires the preparation of an environmental impact statement upon all local or state proposals or approvals of private actions that may have a significant adverse impact on the environment. Local governments are granted considerable discretion in the procedures at the local level for appeals of SEPA decisions by local officials.

The Model Toxics Control Act (MTCA), adopted by Initiative 97 in 1988, provides for a comprehensive program for the cleanup of unauthorized hazardous waste sites. The act and its implementing rules specify detailed procedures for the study of sites, the design of the cleanup work, and the carrying out of the cleanup. Substantial public participation procedures are required at each stage. The act contains no provisions for the integration with other state and local permit requirements, which some believe have delayed site cleanup and caused public confusion and unnecessary duplication. Under the federal Superfund law no other federal, state or local permits apply to site cleanup. A similar exemption was provided in state law under 1987 legislation, but was repealed by Initiative 97.

Summary of Amended Bill:

Growth Planning Hearings Boards

The growth planning hearings boards may appoint hearings examiners to carry out board functions as directed by the board, including issuing recommended decisions. A board member or hearings examiner may be disqualified for bias, prejudice, interest or other cause for which a judge may be

disqualified. The boards' rules of practice and procedure shall govern the selection of hearings examiners and the functions to be performed by them. All appeals under SEPA relating to GMA plans or development regulations are to be taken before the growth planning hearings boards.

Permit Applications

Development regulations to implement GMA comprehensive plans must provide timely and predictable procedures for determining the compliance of complete development permit applications with those regulations. The regulations shall specify the contents of a completed application necessary to determine compliance. A "development permit application" is defined.

Within 20 working days, cities and counties planning under the GMA must notify an applicant that an application is complete or specify what information is necessary to complete the application.

Local Government Hearings Examiners

Local governments may provide that appeals of SEPA procedural determinations by a hearings examiner is the final decision at the local government level.

Model Toxics Control Act

In addition to other types of enforcement orders and settlements, the Department of Ecology is authorized to enter "agreed orders," with which potentially liable parties agree to comply. Such orders are not a settlement under MTCA, do not provide contribution protection, or provide eligibility for public funding of cleanup.

Cleanups conducted by the Department of Ecology or by potentially liable parties acting under a consent decree, order, or agreed order are exempt from the procedural requirements of the following state laws: (1) air pollution; (2) solid waste management; (3) hazardous waste management; (4) hydraulics act; (5) water pollution control; and (6) the Shoreline Management Act. The exemption also applies to local government permits or approvals for the remedial action. The Department of Ecology is to adopt procedures to ensure compliance with the substantive provisions of such laws, and must consult with the state agencies and local governments charged with implementing the laws. The procedures must provide an opportunity for comments by the public and government agencies. The procedural exemption is not intended to prohibit charging fees related to review of the substantive requirements applied to the cleanup. The exemption does not apply where its application may result in loss of state authority to administer federal environmental laws.

The Department of Ecology is to ensure that the procedures for cleanups it conducts or supervises through a consent decree, order, or agreed order are integrated to the maximum extent practicable with those required in complying with SEPA. This integration must include the public participation procedures.

Amended Bill Compared to Engrossed Substitute Bill: The amended bill deletes a provision that requires appeals of a decision by the Growth Hearings Board to be referred directly to the Court of Appeals. The amended bill also deletes a provision that the Governor's Regulatory Task Force conduct a study on expediting local government permitting processes.

Fiscal Note: Available on original bill.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed, exception section 5 which takes effect July 1, 1994.

Testimony For: The bill streamlines state and local permit decisions and will provide greater certainty for developers. A mechanism needs to be developed to allow local government to receive additional information from a permit applicant.

Testimony Against: Appeals of Growth Hearings Board decisions should not be directly referred to the Court of Appeals as these courts are already overloaded with cases.

Witnesses: Senator Betti L. Sheldon, prime sponsor; Elizabeth Schrag; Chuck Foster, Office of the Court Administrator (con); Dave Williams, Association of Washington Cities (pro with questions); R. F. Krochalis, Seattle Department of Construction and Land Use (pro with questions); Kris Backes, Association of Washington Business (pro); Glen Hudson, Washington Association of Realtors (pro); Paul Parker, Washington State Association of Counties (pro); Mike Ryherd, 1,000 Friends of Washington (pro); Mark Erickson, Washington Association of Municipal Attorneys; and Mary Riveland, Department of Ecology (pro).