

SENATE BILL REPORT

SB 6339

AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, FEBRUARY 4, 1994

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

SPONSORS: 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

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 6339 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chairman; Deccio, Morton, Sutherland and Talmadge.

Staff: Gary Wilburn (786-7453)

Hearing Dates: January 24, 1994; February 4, 1994

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:

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 written decisions in cases. The conflict of interest restrictions applicable to board members also apply to such hearings examiners. The boards' rules of practice and procedure shall govern the selection of hearings examiners and the functions to be performed by them. The procedures may allow a hearing examiner decision to be deemed the final order of the board.

It is clarified that all appeals under SEPA relating to GMA plans or development regulations shall be taken before the growth planning hearings boards. Appeals from board decisions on city or county actions shall be taken to the Court of Appeals, rather than to Thurston County superior court. Appeals from board decisions on state agency actions shall also be taken to the Court of Appeals rather than to Thurston county superior court.

Permit Applications

Development regulations to implement GMA comprehensive plans shall provide a timely and predictable process 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.

Cities and counties planning under GMA must provide notice within 10 days to an applicant either that an application received is complete or what is necessary to complete the application.

Local Government Hearings Examiners

Appeals of local government hearings examiner decisions upon SEPA procedural determinations shall be to superior court, not to the local government legislative body as under existing law.

Model Toxics Control Act

In addition to other types of enforcement orders and settlements, Ecology is authorized to enter "agreed orders", with which the PLPs 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 Ecology or by PLPs 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) Shoreline Management Act. The exemption also applies to local government permits or approvals for the remedial action. 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.

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 the State Environmental Policy Act (SEPA). This integration shall include the public participation procedures required under SEPA and MTCA.

EFFECT OF PROPOSED SUBSTITUTE:

A hearings examiner may make recommended decisions to the Growth Planning Hearings Board, but not final decisions of the Board, as in the original bill. A board member or hearings examiner may be disqualified for bias, prejudice, interest or other cause for which a judge may be disqualified. The time period for local government notice of the completeness of a development permit application is extended from 10 days to 20 working days, and the definition of such applications is clarified. Local governments at their option may provide that a hearing examiner's decision on a SEPA procedural matter is a final decision of the local government. The provisions of the bill regarding permit procedural exemptions in hazardous waste cleanups is amended to ensure that the state will not

lose authority to administer certain federal environmental laws. The Task Force on Regulatory Reform is directed to provide recommendations for improving local and state permit coordination, and for simplifying and improving timelines for permit review and for appeals of government land use actions and SEPA compliance.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Will reduce time necessary for government decisions upon permit applications and provide greater certainty regarding the procedures for review of such applications.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Senator Sheldon, prime sponsor; Mary Riveland, Dept. of Ecology; Rod Brown, Tom Goeltz, Regulatory Reform Task Force; Kathleen Rollins, Paul Roberts, Assn. of WA Cities; Lucy Steers, Mike Ryherd, 1000 Friends of Washington; Naki Stevens, People for Puget Sound; Jeff Parsons, National Audubon Society; Bruce Wishart, Sierra Club; Kris Backes, AWB, Ron Rants, The Rants Group; Steve Lewis, Weyerhaeuser Real Estate; Lisa Verner, Trammell Crow Co.; Dick McCann, Perkins Coie/The Boeing Co.; Paul Parker, WA State Assn. of Counties; Gwen Hudson, WA Assn. of Realtors