

# HOUSE BILL REPORT

## HB 1148

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### As Reported By House Committee On: Government Reform & Land Use

**Title:** An act relating to growth management hearings boards.

**Brief Description:** Declaring growth management hearings boards rulings to be recommendations rather than orders.

**Sponsors:** Representatives Cairnes, Smith, Zellinsky, Radcliff, Sterk, McMorris, Buck, Skinner, Mielke, Clements, D. Sommers, D. Schmidt, DeBolt, Johnson, Mulliken, Grant, Chandler, Sherstad, Thompson, O'Brien, Schoesler, Dunn, Van Luven and Koster.

**Brief History:**

**Committee Activity:**

Government Reform & Land Use: 1/29/97, 2/20/97 [DP].

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### HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

**Majority Report:** Do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

**Staff:** Kimberly Klaiber (786-7156).

**Background:** In 1990 the Legislature enacted the Growth Management Act (GMA) to coordinate comprehensive land use planning. Under the GMA, each county uses a procedure that is agreed to by the cities and the counties to adopt a *county-wide planning policy*. This policy establishes a "framework" from which the county and cities in the county develop and adopt *comprehensive plans*; these plans must be *consistent* with the county-wide planning policy. The GMA requires counties to address certain issues in the comprehensive plan (land use, housing, capital facilities plan, utilities, rural designation, transportation), and the GMA requires counties to protect critical areas, designate and conserve certain natural resource lands, and

designate urban growth areas. Finally, each county and city adopts *development regulations* consistent with its comprehensive plan.

The GMA created an administrative review process consisting of three regional growth management hearings boards to resolve disputes over comprehensive plans and development regulations. The boards hear requests for review of growth management actions taken by counties and cities located in each of the regions the boards represent if a person with standing to request the review, files a petition challenging a county or city's action. The boards do not consider matters outside of the detailed statement of issues presented for review.

If the board finds that the actions reviewed are not in compliance with the GMA's requirements, the board issues an order to the affected agency, county or city requiring it to take action within a maximum of 180 days to bring it into compliance. After the 180-day period has expired, the board holds a second hearing (known as a compliance hearing) to determine if the agency, county or city has come into compliance. If the board finds that an agency, county, or city is still not in compliance, the board must transmit its findings to the Governor and may recommend that sanctions be imposed. Comprehensive plans and development regulations are presumed to be valid under the GMA, and a board finding of *invalidity* requires a determination that the comprehensive plan or regulations "substantially interfere with the fulfillment of the goals" of the GMA. A board may issue an order of *noncompliance* if it finds by a preponderance of the evidence that a county or city's actions are not in compliance with the GMA.

In addition to considering whether the comprehensive plan or development regulations are in compliance with the GMA, the boards may also hear and determine petitions alleging that the 20 year growth management planning population projections adopted by the Office of Financial Management should be adjusted. The boards may adjust a growth management population projection after considering the implications of an adjustment on the population forecast for the entire state. If a county growth management planning population projection is adjusted by a board, it becomes known as the "board adjusted population projection" and can only be used for planning purposes.

Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in the Administrative Procedure Act (APA). Under the APA, the trial court is limited to considering the following issues:

- whether an agency's action is supported by *substantial evidence*;
- whether an agency's action was *arbitrary or capricious*;
- whether an action was outside the statutory authority or jurisdiction of the agency;

- whether an agency engaged in unlawful procedure or failed to follow a prescribed procedure; or
- whether the agency *erroneously* interpreted or applied the law.

Under the APA, if a court reviews a matter that lies within agency discretion, the court may only consider whether the agency has exercised its discretion in accordance with law and cannot substitute its discretion for that of the agency. If the court finds that an agency exceeded its discretion, it must remand the matter to the agency for modification unless remand is "impracticable" or would "cause unnecessary delay."

After reviewing an agency action, a trial court must enter an order containing findings and conclusions with respect to each violation or error by the agency. The court may do any one of the following:

- affirm the agency action;
- order an agency to take action required by law;
- order an agency to exercise discretion required by law;
- set aside an agency action;
- enjoin or stay an agency action;
- remand the matter for further proceedings; or
- enter a declaratory judgment order.

**Summary of Bill:** Any and all findings of invalidity by boards in the past, present, and future are null and void. The boards have no authority to determine that a plan or regulation is invalid.

Instead of issuing *orders* finding compliance or noncompliance with the requirements of the GMA, the Shorelines Management Act (SMA) (adoption or amendment of shoreline master programs), or the State Environmental Protection Act (SEPA) (plans and development regulations), the boards issue *recommendations* as to whether or not the comprehensive plans and development regulations of a state agency, county, or city are in compliance. If a board finds noncompliance, it remands its recommendation to the affected agency, county, or city. Upon receiving a recommendation from a board, the affected state agency, county, or city will be required only to *consider* whether to comply with the board's recommendation. Boards may no longer issue orders that contain findings of invalidity.

Hearings boards will still be able to hear petitions alleging that the 20 year growth management planning population projections adopted by the Office of Financial Management should be adjusted. However, the boards will be authorized only to *recommend adjusting* (rather than to actually issue an order) a growth management planning population projection. If a board recommends an adjustment, the board's rationale must still be documented and filed with the Office of Financial Management.

When either a state agency, county, or city receives a board recommendation, it has the discretion to decide whether to act upon the recommendation. If any party feels

aggrieved by an agency, county, or city's response to a board's recommendation, the party may appeal the decision to superior court within 30 days of the agency, county, or city's decision in response to the board's recommendation. Neither a burden of proof nor a standard of review for such an appeal is specified, and the previous Administrative Procedure Act standard is removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Boards have too much power, which takes away control of local government. Hearings boards should not review legislative issues. Unelected officials get too much power.

**Testimony Against:** Retroactive and prospective effect will lead to chaos. Superior courts will have to step in and take over the role of boards, which is costly.

**Testified:** David Clevenger and Jodi Walker, Building Industry Association of Washington (pro); Commissioner Betty Sue Morris, Clark County (pro); Steve Wells, Department of Community, Trade and Economic Development (con); Mike Ryherd, 1,000 Friends of Washington (con); Laura Hitchcock, Sierra Club (con); Michael Devolics, American Planning Association (con); Bob Mack, Association of Washington Cities (con); and Scott Merriman, Washington Environmental Council (con).