HOUSE BILL REPORT
HB 1649

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

Title: An act relating to growth management.

Brief Description: Modifying the growth management act.

Sponsors: Representatives Cairnes, Mulliken, Sherstad, Koster, Boldt, Skinner, Clements, Mielke, Radcliff, Dunn and McMorris.

Brief History:
Committee Activity:
Government Reform & Land Use: 2/20/97, 2/26/97 [DPS].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: The substitute bill be substituted therefor and the substitute bill 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: Joan Elgee (786-7135).

Background: GROWTH MANAGEMENT ACT. The Growth Management Act (GMA) was enacted in 1990 and 1991. The GMA establishes requirements for all counties and cities in the state, and imposes additional requirements for counties and cities that are required to plan under all the GMA requirements.

Requirements for counties and cities planning under all GMA requirements.

- Goals. Goals are set forth to guide the development and adoption of comprehensive plans and development regulations. The 13 goals address urban growth, reduction of sprawl, transportation, housing, and other matters.

- Critical areas. Each county and city must identify and protect five separate critical areas, including wetlands, areas with a critical recharging effect on aquifers used for potable water, frequently flooded areas, and geologically hazardous areas.

- Natural resource lands. Each county and city must identify and conserve natural resource lands with long-term commercial significance for agriculture, forestry, or mineral resource extraction.

- Planning policy. Each county must adopt a county-wide planning policy using a process agreed to by the county and cities within the county. The policy provides a framework for the comprehensive plans that the county and cities adopt.

- Urban growth areas. Each county must designate urban growth areas within the county inside of which urban growth must be encouraged and outside of which urban growth may not occur. At least every 10 years, a county must review its urban growth areas.

- Comprehensive plan. Each county and city must adopt a comprehensive plan including a variety of elements, as well as designations of critical areas and natural resource lands. The comprehensive plan of a county must include its designations of urban growth areas. The plan must be internally consistent.

- Development regulations. Each county and city must adopt development regulations implementing its comprehensive plan.

Requirements for other counties and cities.

All other counties and cities are required to designate and protect critical areas and designate (but not conserve) natural resource lands.

RELATED PROVISIONS

The Office of the Attorney General was required to prepare a checklist of matters for a local government or state agency to consider when determining if its actions may constitute an unconstitutional taking of private property without payment of just compensation. The use of this checklist is part of the attorney-client relationship between the local government or state agency and its attorney.

Following the 1994 report of the Governor's Task Force on Regulatory Reform, legislation was adopted in the 1995 session (ESHB 1724) to coordinate planning and environmental review, streamline local permitting and land use appeals, and make a

number of other changes in land use procedures. New procedures for review and appeal of land use permits were established, including an integrated and consolidated project permit process.

Generally, counties and cities must issue their final decision on a permit application within 120 days. This provision expires July 30, 1998.

Summary of Substitute Bill: GROWTH MANAGEMENT ACT.

Goals. A number of changes are made to the GMA goals:

- The goal relating to natural resource industries is altered to remove language about discouraging incompatible uses of productive forest and agricultural lands.

- The goal relating to reduction of sprawl is altered by removing language about reducing inappropriate sprawl and low density development.

- The goal relating to public facilities and services is altered to remove language relating to the provision of economic development within the capabilities of the state's resources, public services, and public facilities.

- The permitting goal is altered to provide that counties and cities must issue permits under the following timetable:

    - Seven business days - single-family residential construction;
    - 30 days - multifamily construction;
    - 30 days - short subdivision applications; and
    - 90 days - subdivision applications that are not short plats.

- The economic development goal is altered to delete language referring to the capabilities of the state's natural resources, public services, and public facilities.

- The goal on the environment is limited to protecting the environment from hazards and nuisances and to maintain, rather than enhance, the high quality of life.

- The goal on citizen participation is altered so that local governments coordinate their actions with property owners rather than communities.

- A new goal is added providing that property owners have the prospective right to uses similar to those adjacent to their property.

Critical areas. The authority of all counties and cities to regulate critical areas is limited to only those instances where the public's health and safety are being protected. Development regulations to protect designated critical areas may only be for protection from hazards and health and safety risks.

The definition of wetlands– is altered to refer to the current or subsequent definition of wetlands in the federal Clean Water Act. The definition of areas with critical recharging effect on aquifers used for potable water is limited to areas with documented health and sanitation effects. The definition of frequently flooded areas is restricted to only areas within 100-year flood plains.

Development of geologically hazardous areas may only be precluded if the city or county can prove that geologic conditions are not conducive to development. The definition of geologically hazardous areas is limited so that only those areas are included that the county or city proves are not suited for development.

Guidelines adopted by the Department of Community, Trade and Economic Development (DCTED) for designating critical areas become maximum limitations, and a county or city may not designate critical areas unless the critical areas meet these guidelines.

Natural resource lands. The DCTED guidelines for natural resource lands, as for critical areas, become maximum limitations.

The requirement for counties and cities planning under the GMA to conserve natural resource lands is altered. Development regulations are no longer required to assure the continued use of designated natural resource lands for agricultural purposes, harvesting of timber, or removing mineral resources.

Planning policy. The affordable housing portion of a county-wide policy is altered by eliminating a requirement for parameters for distributing affordable housing to all economic segments of the populations.

Urban growth areas. Urban growth is allowed outside of urban growth areas. An urban growth area must include territory outside of a city when a county determines the territory is necessary to provide an adequate land supply. Counties and cities must designate urban growth areas that favor expansive delineation of these areas.

A public utility retains its common law duty to make service available to all within its franchise area and other areas within which it holds itself out as a provider of service.

The definition of characterized by urban growth– is altered to include areas where public or private extensions of services are feasible. The definition of public services

is altered by deleting environmental protection and other governmental services not specifically listed in the definition.

Urban growth areas must be reviewed at least annually, rather than at least once every 10 years.

Comprehensive plan. The land use element in comprehensive plans is altered to remove requirements for population densities, building intensities, and estimates of future growth. Language requiring the protection of groundwater and corrective action to cleanse storm water is deleted.

The housing element is altered to delete requirements for government-assisted housing, low-income housing, manufactured housing, multifamily housing, group homes, and foster care facilities. Counties and cities may not condition project approval or land-use approval on the provision of low-income housing.

The rural element is altered so that an area designated as rural can be included in an urban growth area, or designated as forest, agricultural, or mineral resource lands. Development of less than 10 single-family residential units on any recorded parcel is allowed within rural areas.

The transportation element is altered to delete concurrency requirements. Also, the inventory of transportation facilities and services is to include specific actions by using motor vehicle excise tax and gas tax funds for bringing into compliance any facilities or services that are below an established level of service standard.

Development regulations. The authority of a county or city planning under all of the requirements of the GMA is restricted to adopting regulations for public health and safety.
A county or city that downzones any property has the burden of proving, by clear and convincing evidence, that the downzone is justified. Once a proceeding for a downzone has been determined, another downzone proceeding for the same property may not be commenced for five years. A property owner who prevails in a proceeding under this provision is entitled to reasonable attorneys' fees, expert witness fees, and costs.

Cities and counties must amend their development regulations by December 1, 1997.

Additional GMA provisions. The current language restricting the authority of a county or city to only include land in open space corridors that is either publicly owned or where the public owns easements is altered by adding a statement prohibiting the taking of private property for public use unless just compensation is paid and stating that the property rights should be protected from arbitrary and discriminatory actions.

Land development under the GMA is exempt from the Forest Practices Act.

Language is added to the GMA goals to state that cities operating public facilities and services are required to provide service within their service areas, if service is technically feasible and in compliance with local regulations. Cities providing water or sewer service beyond their boundaries may not require the property owner to agree to lot sizes or other development or design standards not required by the local government with jurisdiction over the property.

Outside an urban growth area, a city must issue a permit if the applicant has an approved water system and approval for a sewer or septic system.

RELATED PROVISIONS

Language relating to the checklist the attorney general prepares for local governments and state agencies to use in determining if an unconstitutional taking of property may occur from their proposed actions is altered to include takings beyond constitutional takings. The attorney-client privilege is removed, making any use of this process by a government available to the public. Language stating that the provision does not grant a private party a cause of action is deleted.

A project for which a federal permit is obtained under the Clean Water Act is exempt from the Department of Ecology water quality certification process.

Several changes are made to the procedures for local project review:

- Counties and cities planning under all of the requirements of the GMA are directed to establish an expedited appeals process to appeal any failure to take timely action on a permit, approval, or subdivision. If a decision-maker finds that timely actions have not been taken, the decision maker must set a date certain by which the permitting agency must act on the application and fully reimburse any filing and processing fees.

- Open record predecisions hearings and open record appeal hearings are eliminated.

- The requirement that review of a project's consistency with development regulations include consideration of the character of the development is deleted. Consistency is limited to consistency under the GMA.

- If an application is complete, the local government can request but not require additional information. Additional requested information must be based on the underlying development regulations.

- The time periods which are excluded from the 120-day permit decision time period are limited. The July 1, 1998 expiration date for the 120-day time period is deleted.

- The requirements for counties and cities to give notice of applications are modified. A county or city must use its existing notice procedures.

- The existing discretion to exclude some types of permits from the local review procedures is deleted. Instead, lot line adjustments, construction permits and other permits are excluded by statute.

- The required elements to consider in a project review are deleted.

The provisions apply retroactively to July 1, 1990.

Substitute Bill Compared to Original Bill: The substitute makes a number of changes: 1) restores current law to provide that project permit applications do not constitute development regulations (and are therefore not subject to review by a Growth Management Hearings Board); 2) modifies the provision relating to the Clean Water Act to provide that only projects for which a federal permit is obtained are exempt from the Department of Ecology's water quality certification process; 3) specifies that the permitted development of less than 10 single-family units in rural areas is on any recorded parcel; 4) restores current law to provide that "site specific rezones" constitute project permits for purposes of local project review; 5) provides that nothing in the project review provisions requires additional documentation or dictates procedures for considering consistency; and 6) deletes all references to "open record predecision hearing".

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: There is a shrinking supply of buildable lands and affordable housing has almost become an impossibility--often because of costs caused by the GMA. A $200,000 home often has $50,000 of regulatory costs associated with it. The bill has a number of simple fixes. The decisions have been made; go ahead and give us the permit in seven days. As to critical areas, the federal law covers this area well. The 120-day permit provision is a hoax as it expires in 1998. We can't sell our land because they changed us from one house per one acre to one house per 10 acres.

Testimony Against: Allowing incompatible uses adjacent to the Department of Natural Resources' land will decrease timber revenues and increase costs of dealing with adjacent property owners.

Testified: Myrtle Cooper (pro); Merton Cooper (pro); Jodi Walker, Building Industry Association of Washington (pro); Jim Williams, Master Builders Association of King/Snohomish County (pro); and Stan Biles, Department of Natural Resources (con). Written materials were also submitted.