

HOUSE BILL REPORT

HB 2244

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

Title: An act relating to revising the recommendations of the land use study commission.

Brief Description: Revising the recommendations of the land use study commission.

Sponsors: Representatives Reams, Mulliken, Bush and Thompson.

Brief History:

Committee Activity:

Government Reform & Land Use: 3/5/97 [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.

Staff: Kimberly Klaiber (786-7156).

Background:

Growth Management Act

Two categories of counties and cities are established under the Growth Management Act (GMA): those that are required to plan under all GMA requirements, and all other counties in the state. A county is required to plan under all GMA requirements if it meets one of two separate sets of population and 10-year growth criteria, or if the county legislative authority adopts a resolution placing the county under these requirements. A city follows the lead of the county in which it is located, and is required to plan under all GMA requirements if the county plans under all of these requirements.

Under the GMA, each county uses a procedure that is agreed to by the cities and the county 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, which 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, the rural element, and 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 Land Use Study Commission

The Land Use Study Commission was created by the 1995 Legislature as part of major regulatory reform legislation. The commission is directed to examine the consolidation of state land use and environmental laws and complete a report and recommendations with respect to the GMA and related state laws.

Summary of Substitute Bill:

Rural Intent

The Legislature recognizes the importance of rural lands and rural character but seeks to recognize regional differences in rural-based economies. Counties should develop a local vision of rural character and land use patterns that will help preserve rural-based economies and traditional rural lifestyles and enhance the rural sense of community and quality of life.

Growth Management Act Definitions

Critical areas include, among other things, documented wetlands and areas with a critical recharging effect that is necessary for the health of aquifers used for potable water. The definition of wetlands is changed. Wetlands must measurably and demonstrably perform a wetland function, and any land not used as a wetland prior to 1987 is deemed a non-wetland.

Rural Development: Provisions Applying to Rural Element

New definitions pertaining to the rural element are created.

Rural character— is defined to mean the patterns of land use and development established by a county where the following circumstances are present:

- Open space, the natural landscape, and vegetation predominate over the built environment;
- Traditional rural lifestyles and rural-based economies are fostered; and
- Extension of urban governmental services is generally not required.

Rural development— is defined as development outside the urban growth area and outside lands that have been designated as agricultural, forest, or mineral resource

lands. Rural development may consist of diverse uses and densities as long as they are consistent with the preservation of rural character and the requirements of the rural element.

Rural governmental services– means public services and public facilities typically delivered at an intensity customarily found in rural areas and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas.

In addition, the definition of urban growth– is amended to clarify the relationship with the rural element and natural resource lands and urban growth. The definition provides that a pattern of more intensive rural development is *not* urban growth.

The county must document in writing how the rural element harmonizes the planning goals of the GMA and the planning requirements in the GMA. Rural areas may provide for a variety of rural densities and uses. Rural development must protect the rural character of the area by containing or controlling rural development, reducing low-density sprawl, surface and groundwater resources, and protecting against conflict with use of agricultural, forest, and mineral resource lands. Counties may provide for limited areas of more intensive rural development, including certain necessary public facilities and services. The county must adopt measures to minimize and contain the existing areas or uses of more intensive rural development.

Public Participation Requirements

Counties and cities planning under the GMA must adopt procedures that are reasonably calculated to notify property owners and others affected by or interested in amendments to a comprehensive plan and development regulations. The procedures may include, but are not limited to, posting property, publishing notices in a newspaper of general circulation or in other publications, and sending notices to mailing lists.

A county or city that considers a change to an amendment to a comprehensive plan or development regulation must provide for public comment on the proposed change before its adoption if it has not been previously available for public comment. Additional public comment is not required if the proposed change has already been discussed, relates to a capital budget decision, enacts an interim control, or is only technical in nature.

Amendments to Comprehensive Plans

A county or city may amend its comprehensive plan more frequently than once a year if the amendment pertains to the capital facilities element and occurs simultaneously with the adoption of the county or city budget.

Open Space Corridors

Counties, and cities in the counties, are required to identify open space corridors in cooperation with adjacent property owners, and in the process, counties and cities must respect private property rights. Maps indicating open space corridors must designate those corridors as private land closed to trespass and public use.— Land use restrictions with respect to open space corridors can only be imposed upon agreement between the property owner and the county or city, or if the county or city acquires sufficient interest to prevent development of the lands.

Growth Management Hearings Boards' Compliance with the Administrative Procedures Act

The Growth Management Hearings boards must comply with the Administrative Procedure Act (APA) unless the APA conflicts with a *specific* provision of the GMA. The board is specifically directed to comply with the APA with respect to *ex parte* communications.

Limitations on Issues the Boards May Address

The authority of the boards to render decisions is modified. The decision must be in writing and must articulate the basis for the board's holding on issues that have been presented to it in a petition. The board may not render advisory opinions on issues not presented to it for review.

Direct Review to Superior Court

In lieu of filing a petition with the board, a petition may be filed directly in superior court. A party against whom a petition is filed may also demand transfer of the matter to superior court.

Extension of Time for Board Decisions

A board may extend the time for issuing a decision beyond the 180-day period currently provided by the GMA to allow settlement negotiations to proceed if the parties agree to the extension. The boards may allow up to 90 additional days, and the extension may be renewed. If a board determines that a plan or development regulation does not comply with the GMA, the board may establish a compliance schedule that goes beyond 180 days if the complexity of the case justifies. The board

may also require periodic updates on progress towards compliance as part of the compliance order.

Invalidity

Boards can issue orders only with respect to findings of compliance or noncompliance. Boards cannot make findings or issue orders with respect to invalidity.

Presumption of Validity

Comprehensive plans and development regulations are presumed valid, and the burden is on the petitioner to show that any action by a state agency, county, or city is not in compliance with the requirements of the GMA.

Standard of Review for Determining Whether Plan or Regulations in Compliance

The Legislature intends to change the standard of review that applies to the Growth Management Hearings boards' review of county and city comprehensive plans and development regulations. The intent section refers to the broad range of discretion counties and cities are given under the GMA and increases the deference to local decisions by increasing the standard of review from preponderance of the evidence— (i.e., that it is more likely than not) to clearly erroneous.—

In reviewing the actions of a state agency, county, or city, the board must consider whether the action was *clearly erroneous* in light of the entire record before the board, and in light of the goals and requirements of the GMA.

Compliance Proceedings

The board may modify a compliance order and allow additional time for compliance in appropriate circumstances. The board is directed to take into account a county or city's progress toward compliance in making its decision as to whether to recommend the imposition of sanctions by the Governor.

Sunset of Boards

The boards' existence terminates on December 31, 1999.

Agricultural Zoning

A county or city may implement a variety of zoning techniques in designated rural areas. The techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Nonagricultural uses should be limited to lands

with poor soil or otherwise not suitable for agricultural uses. Among the zoning techniques that may be considered are:

- agricultural zoning;
- clustering;
- large lot zoning;
- quarter/quarter zoning (one residential dwelling on a one acre minimum lot for each one-sixteenth of a section of land); and
- sliding scale zoning.

Monitoring and Evaluation of Plans

Six western Washington counties (Snohomish, King, Pierce, Kitsap, Thurston and Clark) and their cities are required to establish a monitoring and evaluation program to determine whether the county-wide planning policies are meeting planned residential densities and uses. The evaluation must be conducted every five years. If the evaluation shows that the densities are not being met, the county and its cities must take measures designed to meet those objectives. The monitoring and evaluation provisions are null and void if funding for this purpose is not provided in the 1997-99 biennial budget. The county may only expand the urban growth boundary after three years of taking measures if it determines that those measures have not been successful. The Department of Community, Trade and Economic Development (DCTED) must provide grants and technical assistance to the counties and cities to implement this requirement.

Planning and Environmental Review Fund

The DCTED is directed to encourage participation in the grant program by other public agencies through the provision of grant funds. The DCTED must also develop the grant criteria, monitor the grant program, and select grant recipients in consultation with state agencies participating in the grant program. Grants from the planning and environmental review fund are to be provided for proposals designed to improve the project review process (environmental analysis) and that encourage the use of GMA plans to meet the requirements of other state programs.

Current Use Taxation

The provisions governing access to the current use taxation program are modified to include land designated for agriculture under the GMA.

Property Tax Assessment of Designated Agricultural Land

In valuing designated natural resource lands (agricultural, forest, or open space) for property tax purposes, a county assessor may not include comparable sales that have

been converted to nonagricultural or nonopen-space uses within the five years after the sale.

Permit Assistance Center

The permit assistance center is part of the DCTED. Its responsibilities are expanded to include collecting and providing information on programs used by public agencies that use private professional expertise to assist in project review.

Petition Annexation Requirements in Code Cities

An area contiguous to a city or town may petition for annexation (except where property is owned by a school district or is in an urban growth area) if the signatures of the owners of at least 75 percent of the property to be annexed are obtained. If the property is within an urban growth area, the petition must be signed by the owners of at least 60 percent of the value of the property to be annexed.

Code City Island Annexations

In addition to the ability to annex islands— of unincorporated territory of less than 100 acres surrounded by the city without using the petition process, a code city planning under the GMA may also annex larger islands— under the following conditions:

- at least 80 percent of the island's boundaries were contiguous to the city prior to July 1, 1994; and
- the island contains residential property owners.

Territory bounded by a body of water is considered to be contiguous for purposes of determining whether the territory is an island if the city is also bounded by the same river, lake, or other body of water.

Additionally, a code city planning under the GMA may annex larger islands in existence prior to July 1, 1994.

Charter City Island Annexations

The annexation procedures for islands made available to code cities are also made available to charter cities planning under the GMA.

Boundary Review Board Review

A boundary review board reviewing a proposed annexation must consider GMA comprehensive plans, service agreements, and annexation agreements in reaching its decision.

Multifamily Housing Property Tax Exemption

The program of tax incentives that allows cities with populations over 150,000 to provide a 10-year property tax exemption for multi-family housing in urban centers is expanded to allow cities with a population of at least 100,000 to be eligible. In addition, if no city has a population of at least 100,000, the largest city in a county becomes eligible for the property tax exemption.

Duties of The Land Use Study Commission

The Land Use Study Commission is directed to review long-term approaches for resolving disputes that arise under the GMA, identifying needed changes to the structure of boards that hear environmental appeals, and evaluating whether quasi-judicial bodies are needed to provide continued oversight.

Commission Membership

The number of members is increased from a maximum of 14 to a maximum of 22. Fifteen of the members are to be appointed by the Governor. In addition to existing requirements, membership must also reflect small business operators and small property owners. The provision under current law requiring representation of agricultural interests is replaced by the following three specific categories: a dryland farmer or major crop commodity producer, a representative from irrigated agriculture, and a livestock producer. Four members of the commission must be drawn from the Legislature, in equal numbers from each chamber and each caucus.

Substitute Bill Compared to Original Bill: Technical corrections to numerous provisions in the bill are made. Unlike the original, the substitute does not require that a nonresidential industrial area be principally designed to serve the existing and projected rural population and existing nonresidential uses.

The original bill uses the current GMA definition of wetlands, and the substitute provides that wetlands must measurably and demonstrably perform a wetland function. Any land farmed, developed, or otherwise employed in a non-wetland use prior to 1987 cannot be designated as a wetland.

Rural residential densities may include clustered residential developments. The DCTED may provide information and technical assistance to members of the public to assist in the development of comprehensive plans. Technical corrections to the tax

code valuation provisions were added to provide clarity and consistency with new tax incentive programs under the GMA.

In the original bill, The Land Use Study Commission membership was increased from 14 to 20 members. The original bill also provided that 13 of the members were to be appointed by the Governor, and membership would reflect the interests of two new categories: small businesses and small property owners. The bill also provided that four members of the commission were to be members of the Legislature (two from each caucus of the Senate and House). The substitute raised the number of commission members from 20 to a maximum of 22, removed the general category of agriculture from the interests to be represented on the commission and replaced that category with livestock producer, irrigated agriculture, dryland farmer or major crop commodity producer.

The original bill did not require counties or cities planning under the GMA to designate open space corridors in their comprehensive plans and development regulations. The substitute does require open space designation but adds provisions relating to private property rights. Counties and cities in those counties are required to identify open space corridors in cooperation with adjacent property owners and in the process. Maps indicating open space corridors must designate those corridors as private land closed to trespass and public use.— Land use restrictions with respect to open space corridors can only be imposed upon agreement between the property owner and the county or city, or if the county or city acquires sufficient interest to prevent development of the lands.

The original bill provided that a petition filed by an affected property owner will be directly reviewed in superior court. The substitute provides that one party alone may request removal to superior court. Additional procedures are provided with respect to the removal option.

Appropriation: None.

Fiscal Note: Requested on March 4, 1997.

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

Testimony For: None.

Testimony Against: None.

Testified: Keith Dearborn and Harry Reinert, The Land Use Study Commission (answered questions at the request of the committee).

