

# HOUSE BILL REPORT

## 2ESB 5185

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**As Passed House:**

March 4, 1998

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

**Brief Description:** Revising procedures for growth management hearings boards.

**Sponsors:** Senators Horn, McCaslin, Long, Benton, Prince and Deccio.

**Brief History:**

**Committee Activity:**

Government Reform & Land Use: 2/19/98, 2/26/98 [DP].

**Floor Activity:**

Passed House: 3/4/98, 56-40.

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### HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

**Majority Report:** Do pass. Signed by 6 members: Representatives Reams, 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:** Caroleen Dineen (786-7156).

**Background:** The Growth Management Act (GMA) requires certain counties, and the cities located in those counties, to plan according to the statutory requirements. Counties and cities subject to all the GMA requirements are typically referred to as counties and cities that plan under the GMA. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county and the cities located in that county plan under all of the GMA requirements.

All counties and cities must identify and protect critical areas and designate natural resource lands. Counties and cities that plan under the GMA must also conserve natural resource lands, adopt county-wide planning policies, designate urban growth areas, adopt a comprehensive plan with certain required elements, and adopt development regulations implementing the comprehensive plan.

### ***Board Authority***

Three Growth Management Hearings Boards hear and determine petitions within their jurisdictional boundaries which address GMA compliance issues and seek adjustment of the Office of Financial Management (OFM) growth management planning population projections.

### ***Board Proceedings***

Petitions for review must be filed within 60 days after publication of a GMA plan or regulation by a county or city. Petitions for review may be filed by the state or by a:

- county or city planning under the GMA;
- person who participated with the county or city regarding the action being challenged;
- person who is certified by the Governor; or
- person who qualifies for standing under the Administrative Procedure Act's (APA's) standing provisions.

A board must generally issue a final order within 180 days of receipt of a petition for review. The time period may be extended to attempt to achieve settlement under certain conditions. The boards may appoint hearing examiners to assist with hearings, make findings of fact and conclusions of law and make recommendations on cases before the boards.

GMA comprehensive plans and development regulations are presumed valid upon adoption. The burden is on the person challenging a GMA plan or regulation to prove it is clearly erroneous. If a board does find noncompliance, the board remands the GMA plan or regulation to the county or city and specifies a reasonable time (generally not more than 180 days) for the county or city to come into compliance with the GMA. A finding of noncompliance does not affect the validity of plans and regulations or the vesting of permit applications.

At the end of the remand period, the board holds a hearing to determine if the county or city has taken actions sufficient to come into compliance with the GMA. The board may recommend that the Governor impose sanctions if it finds continued noncompliance.

A board may invalidate all or a portion of GMA plans and regulations if it finds noncompliance and determines the plans or regulations would substantially interfere with the fulfillment of GMA goals. The determination of invalidity does not affect the vesting of those development permit applications vested prior to the determination of invalidity or of certain development permits filed after the determination of invalidity.

A county or city subject to a determination of invalidity may adopt interim controls which the board determines do not substantially interfere with GMA goals for the

purposes of vesting development permit applications affected by the invalidity determination. The board must modify or rescind the invalidity determination if it finds the county or city has amended the invalidated plan or regulation (or the invalidated portions of the plan or regulation) such that the plan or regulation no longer substantially interferes with GMA goals.

Final orders of the boards may be appealed to superior court as provided in the APA.

**Summary of Bill:** The scope of the boards' authority and jurisdiction and procedures related to board proceedings are revised.

### ***Board Authority***

A board may hear and determine only petitions alleging a:

- shoreline master program or amendment does not comply with the GMA or with the shoreline master program provisions of the State Environmental Policy Act (SEPA) or the Shoreline Management Act;
- a county or city planning under the GMA has not taken an action by the time the GMA requires the action to have been taken;
- a county or city has not addressed relevant issues in a GMA plan or regulation; or
- a comprehensive plan is not coordinated or consistent with another comprehensive plan as required by the GMA.

The boards may not determine whether a GMA plan or regulation complies with the GMA or whether OFM population projections should be adjusted. The boards also may not issue determinations of invalidity.

### ***Board Proceedings***

The boards are authorized to mediate and to hire mediation staff or contract for mediation services for disputes between counties and cities regarding coordination and consistency of comprehensive plans.

The authority of hearing examiners assisting the boards to make conclusions of law is eliminated.

Petitions for review alleging a county or city has not taken an action required by the GMA may be filed at any time. All other authorized petitions must be filed no later than 60 days after publication of a GMA plan or regulation or a shoreline master program or amendment.

The classifications of persons who may file a petition for review are retained for most types of allegations. Provisions are added authorizing: (i) any person to file a petition

alleging a county or city has not taken an action required by the GMA; and (ii) a person with standing under SEPA to file a petition challenging a shoreline master program or amendment.

The boards issue decisions, not final orders, containing their findings. Appeals of board decisions are taken directly to the court of appeals, rather than to superior court.

An aggrieved party may file an action for equitable relief based on a county or city's alleged failure to comply with GMA requirements or to challenge actions taken pursuant to the GMA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** Local control is an essential element of the GMA, and local plans are presumed valid upon adoption. The boards are not responsive to local governments and are dictating policy decisions to local elected officials. Invalidation determinations obstruct construction financing, threaten businesses and cost revenues for local governments attempting to attract businesses. Significant costs are associated with redrafting comprehensive plans and development regulations and conducting additional public process. The bill may need to be amended to remove all references to invalidity, to clarify what "relevant issues" the boards may review and to eliminate redundant references.

**Testimony Against:** Invalidation authority is a crucial component in getting problems addressed by local governments on remand. Vesting cannot be halted without invalidity. The board system is not perfect, but the boards are still the better alternative if the problems related to certain board decisions are balanced against the costs associated with court appeals.

**Testified:** Senator Horn, prime sponsor; Jodi Walker, Building Industry Association of Washington (pro with concerns); Mike Ryherd, 1000 Friends of Washington (con); Josh Baldi, Washington Environmental Council (con); and Paul Parker, Washington State Association of Counties (neutral).