

HOUSE BILL REPORT

ESB 5185

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

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: 4/2/97, 4/4/97 [DPA].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass as amended. 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 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, 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 a board finds that the actions reviewed are not in compliance with the GMA's requirements, that 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, a board holds a second hearing (known as a compliance hearing) to determine if the agency, county or city has come into compliance. If that board finds that an agency, county, or city has not fixed the problems identified at the first hearing (i.e., is still not in compliance), that 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. In order for a board to find *invalidity*, that board must determine that the comprehensive plan or regulations "substantially interfere with the fulfillment of the goals" of the GMA.

In addition to considering whether the comprehensive plan or development regulations are in compliance with the GMA, a board 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. A board 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 a 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 Amended Bill: Hearing examiners may only make findings of fact, not conclusions of law, if assisting a board in hearing cases before the board.

A board may mediate or provide for mediation of disputes between counties or cities over whether their comprehensive plans are coordinated or consistent.

A board is no longer authorized to determine whether a state agency is in compliance with GMA requirements, or whether the Office of Financial Management population forecasts should be adjusted. A board may consider whether a county or city planning under the GMA has met deadlines imposed by the GMA; whether a city or county has addressed relevant issues associated with required actions under the GMA; whether a county or city comprehensive plan is coordinated or consistent with the comprehensive plan of another county or city; or whether a city or county shoreline master program or amendment is in compliance with the relevant statutes. The board then renders an advisory decision, not a final order.

In determining whether a county or city has addressed relevant issues, a board may not consider the adequacy of the actions taken by the county or city. A board does not determine the validity or invalidity of a county or city's comprehensive plan or development regulations.

In its review of a county or city action, a board must apply a higher, more deferential standard of review. The standard is raised from preponderance of the evidence– to clearly erroneous.–

Any person may file a petition alleging a county or city has not met GMA deadlines. However, only a person with the required standing under the State Environmental Policy Act (SEPA) may challenge a SEPA or shoreline master program action by a city or county.

Petitions challenging a city's or county's failure to address relevant issues associated with an action required under the GMA, or whether comprehensive plans are coordinated or consistent, must be filed within 60 days after publication by the city or county. Petitions alleging that a county or city has not met GMA deadlines may be filed at any time.

Notice requirements relating to the approval or disapproval of a local government's shoreline master program or amendment are deleted.

Amended Bill Compared to Engrossed Bill: The provision allowing direct appeal from a board's decision to the court of appeals is deleted. The standard of review to be applied by the board's is raised from preponderance of the evidence to clearly erroneous. Clarifying language is added to emphasize that decisions rendered by the board are advisory decisions, not orders.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill retains certain skills of the boards but eliminates areas which they are not qualified to address. Alternative dispute resolution is a step in the right direction. Advisory decisions provide clarity and guidance. Legal determinations are made in court, where they rightfully should be.

Testimony Against: The Land Use Study Commission findings should be adopted. The concept of mediation is good, but the rest of the bill is too drastic. Hearings boards are referees for adoption of plans and development regulations. Without them, there is no meaningful oversight. This bill does not let the boards decide whether parties are doing what the GMA requires. The bill is unbalanced.

Testified: Senator Jim Horn, prime sponsor; Scott Hazlegrove, Association of Washington Business (pro); Sally Feldman, Washington Association of Realtors (pro); Sally Clarke, Weyerhaeuser (pro); Jodi Walker, Building Industry Association of Washington (pro); Paul Parker, Washington State Association of Counties (pro); Michael Davolio, American Planning Association (con); Mike Ryherd, 1000 Friends of Washington (con); and Scott Merriman, Washington Environmental Council (con).