

SENATE BILL REPORT

2ESB 5185

As Passed Senate, February 2, 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 Operations: 2/6/97, 3/4/97 [DP, DNP].

Passed Senate, 3/17/97, 27-22.

Passed Senate, 2/2/98, 27-21.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass.

Signed by Senators McCaslin, Chair; Hale, Vice Chair; Anderson and Horn.

Minority Report: Do not pass.

Signed by Senators Haugen, Patterson and Swanson.

Staff: Genevieve Pisarski (786-7488)

Background: The Growth Management Act (GMA) was enacted in 1990 and 1991, establishing a variety of requirements for counties and cities. A few requirements are established for all counties and cities, and additional requirements are established for those counties and cities that are required to plan under all GMA requirements.

Two sets of population and growth factors are established to determine whether a county, and the cities within such a county, are required to plan under all GMA requirements.

Each county planning under all GMA requirements, in cooperation with the cities located within its boundaries, develops a countywide planning policy to guide the comprehensive plans that the county and those cities develop. Counties are recognized as being regional governments. Cities are recognized as the primary providers of urban government services within urban growth areas.

Among other requirements, a county planning under all GMA requirements must designate urban growth areas within the county inside of which urban growth must occur and outside of which urban growth must not occur. Every city must be included within an urban growth area. Other areas may be included in an urban growth area if they are already characterized by urban growth or are adjacent to such areas. The county uses a 20-year population forecast prepared by the Office of Financial Management (OFM) as the basis for designating its urban growth areas.

A county planning under all GMA requirements must adopt a comprehensive plan with a rural element that includes lands not located within an urban growth area and which have not been designated for agriculture, forest, or mineral resources. The rural element must permit land uses compatible with the rural character of these lands and must provide for a variety of densities.

Every county and city in the state is required to designate agricultural lands with long-term commercial significance for agriculture, forest lands with long-term commercial production of timber, and mineral resource lands with long-term significance for mineral extraction. Counties and cities planning under all GMA requirements are required to adopt development regulations assuring the protection of each of these types of designated lands.

Three separate growth management hearings boards, covering different geographic areas, are established to hear appeals on challenges that actions of state agencies, counties and cities are not in compliance with the GMA. A board may appoint one or more hearing examiners to assist the board in hearing petitions, which hearing examiners may make conclusions of law and findings of fact, and recommendations to the board for decisions before the board.

Summary of Bill: Hearing examiners may only make findings of fact, not conclusions of law, if assisting a growth management 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 OFM population forecasts should be adjusted. A board may determine 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 a decision, not a final order.

A party aggrieved by a board's final decision may appeal the decision directly to the Court of Appeals. The court's chief presiding officer will assign the appeal to the appropriate panel.

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

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.

Technical corrections are made.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Lawsuits can be taken directly to court, where they belong. It will be cheaper for the disputes to be resolved in court. Parties should not come to the growth board hearings without attorneys. Mediation is a good role for the growth boards, since their function will be limited fairly soon.

Testimony Against: The issue of invalidity only arises if the determination has been made that the county or city plan or regulation is not in compliance with the GMA. There is a minority vested right doctrine when applicants file for permits. This is not a matter of land use law, but law enforcement.

Testified: Jodi Walker, BIAW (pro); Bob Mack, AWC; Lucy Steers, LWV-WA; Tom Bjorgen, Washington Environmental Council; Bob Hart, Skagit County Commissioner (con).