

# SENATE BILL REPORT

## ESB 5758

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As of Third Reading, March 17, 1997

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

**Brief Description:** Implementing the recommendations of the land use study commission.

**Sponsors:** Senators McCaslin, Haugen, Hale, Swecker and Patterson; by request of Governor Locke.

**Brief History:**

**Committee Activity:** Government Operations: 3/4/97 [DP].  
Failed Senate, 3/17/97, 12-34.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS

**Majority Report:** Do pass.

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

**Staff:** Kathleen Healy (786-7403)

**Background:** The Land Use Study Commission was created by the 1995 Legislature as part of major regulatory reform legislation. The commission examined the consolidation of state land use and environmental laws and completed a report and recommendations with respect to the Growth management Act (GMA) and related state laws.

Since its passage in 1990, over 155 counties and cities have adopted comprehensive plans under the authority of the GMA. Concern has been expressed that clarification of some ambiguities in key elements of the GMA is needed.

**Summary of Bill:** Rural Intent. Local comprehensive plans and development regulations require counties and cities to balance priorities and consider local circumstances. The ultimate responsibility for planning and implementing a county's or city's future rests with that community. The growth management hearings boards ("boards") are to apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard.

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.

Standard of Review. The Legislature intends to change the standard of review that applies to board 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 changing the standard of review from "preponderance of the evidence" to "clearly erroneous."

Definitions. "Rural character" is defined to mean the patterns of land use and development established by a county where specified circumstances are present.

"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.

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 Rural Element. 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. 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.

Open Space Corridors. A county or city is allowed to restrict the use of open space corridors to agricultural or forest purposes if a nonprofit organization acquires sufficient interest to prevent development or to control resource development of the land.

Technical Assistance From CTED. The Department of Community, Trade, and Economic Development (CTED) may provide technical assistance to neighborhood and community groups to facilitate the adoption of comprehensive plans. CTED may also provide technical assistance to counties and cities to facilitate the evaluation and refinement of those plans.

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 posting property, publishing notice in newspapers and publications, notifying specific groups or individuals, 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 decisions, enacts an interim control, or is only technical in nature.

Amendments to Comprehensive Plans. A county or city may make more than annual amendments to its comprehensive plan if the amendment pertains to the capital facilities element and occurs simultaneously with the adoption of the county or city budget.

Compliance With the Administrative Procedure Act. The board must comply with the Administrative Procedure Act (APA), a uniform law governing conduct by agencies, hearings boards created by those agencies, and judicial review of hearing board decisions, 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.

Official Judicial Notice. A board is allowed to take official judicial notice of certain facts. A board may take official notice of any judicially cognizable facts, including adopted resolutions or ordinances of a county or city, technical or scientific facts within the board's specialized knowledge, and codes or standards that have been adopted by a federal or state agency or by a nationally recognized organization.

Limitations on Issues. The authority of the boards to render decisions is modified. The decision must be in writing and must articulate the basis for its 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. A board may certify a case directly to superior court for review if all parties to the case agree in writing to direct review to superior court. The parties have up to ten days from the time the petition is filed to file a written agreement with the board.

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. An order of invalidity is only prospective in effect, it does not affect a completed application filed prior to receipt of a board's determination of invalidity, and it does not affect vested rights. If a city or county wants an order lifted, it must only demonstrate that it has taken sufficient measures such that it is no longer "substantially interfering" with the goals of the GMA (the same standard that leads to invalidity). In addition, a county or city is explicitly allowed to take interim actions to which applications may vest if the board approves. A county or city may request clarification, modification, or rescission of the order. The board must expeditiously schedule a hearing on the motion, and a decision on the motion must be issued within 30 days.

A county or city subject to an order of invalidity issued prior to the effective date of the act may request the board to review its order in light of the changes to the invalidity provisions. If requested, the board must rescind or modify an order to make it consistent with these changes.

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.

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.

Monitoring and Evaluation of Plans. Six western Washington counties (Snohomish, King, Pierce, Kitsap, Thurston, Clark) and their cities are required to establish a monitoring and evaluation program to determine whether the countywide 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 county may only expand the urban growth boundary after three years of taking measures if it determines that those measure have not been successful. CTED must provide grants and technical assistance to the counties and to cities to implement these requirements, unless funding for this purpose is not provided in the 1997-98 biennial budget.

Planning and Environmental Review Fund. CTED is directed to encourage participation in the grant program by other public agencies through the provision of grant funds. CTED 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 and which encourage the use of GMA plans to meet the requirements of other state programs.

Tax Issues. The provisions governing access to the current use taxation program are modified to include land designated for long-term agriculture under the GMA or located outside an urban growth area and designated as agricultural land.

In valuing designated natural resource lands for property tax purposes, a county assessor may not include comparable sales that have been converted to nonagricultural or nonopen-space uses within five years after the sale.

Permit Assistance Center. The Permit Assistance Center is part of CTED. 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.

Annexation Requirements. An area contiguous to a city or town may petition for annexation 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.

A code city planning under the GMA may annex islands of unincorporated territory of over 100 acres surrounded by the city if at least 80 percent of the island's boundaries are contiguous to the city prior to July 1, 1994, and the island contains residential property

owners. Territory bounded by a water body 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. A code city planning under the GMA may annex larger islands in existence prior to July 1, 1994. Cities may annex property which is zoned industrial and contains no residential property owners.

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

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

Tax Exemptions. The program of tax incentives that allows cities with populations over 150,000 to provide a ten-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. If no city has a population of at least 100,000, the largest city in a county becomes eligible for the property tax exemption.

This bill is prospective in effect.

Standard of Review. 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. If a board issues an order of invalidity to a county or city, the county or city bears the burden of demonstrating that the ordinance or resolution it has enacted in response to that invalidity order will no longer "substantially interfere" with the fulfillment of the goals of the GMA.

Technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The various elements of the Land Use Study Commission were explained.

**Testimony Against:** None.

**Testified:** Ryan Durkin, Land Use Study Commission Chair (pro).