SENATE BILL REPORT

SSB 5802

As Passed Senate, March 17, 1997

Title: An act relating to making corrections to the omnibus 1995 legislation that integrates growth management planning and environmental review, and conforming the terminology and provisions of other laws to the provisions of the 1995 legislation.

Brief Description: Attempting to integrate planning, review, and terminology among growth management, environmental and ecological protection, and other related areas.

Sponsors: Senate Committee on Government Operations (originally sponsored by Senators Horn, McCaslin and Haugen).

Brief History:
Committee Activity: Government Operations: 2/25/97, 3/4/97 [DPS].
Passed Senate, 3/17/97, 49-0.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 5802 be substituted therefor, and the substitute bill do pass.

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

Staff: Kathleen Healy (786-7403)

Background: A number of state laws permit or require counties and cities to establish land use regulations or control land use activities.

Growth Management Act. The Growth Management Act (GMA) requires certain counties, and the cities in those counties, to adopt comprehensive plans and development regulations consistent with the plans. A county plan must include designation of urban growth areas. All other counties and cities are required to take a few actions under the GMA.

State Environmental Policy Act. The State Environmental Policy Act (SEPA) requires local governments and state agencies to consider environmental impacts when making decisions. A detailed statement, or environmental impact statement (EIS), must be prepared if proposed legislation or other major action may have a probable significant, adverse impact on the environment.

Shoreline Management Act. The Shoreline Management Act (SMA) requires counties and cities to adopt local shoreline master programs regulating land use activities in shoreline areas of the state. Local master programs are submitted to the Department of Ecology (DOE) for its review and approval as meeting the requirements of the SMA and guidelines adopted by the department. A shoreline substantial development permit is required for

specified construction activity, with some exceptions. Time limits are set forth for construction activity to commence following issuance of a permit.

ESHB 1724. Following the 1994 report of the Governor's Task Force on Regulatory Reform, legislation was adopted in the 1995 session (ESHB 1724) to coordinate planning and environmental review, streamline local permitting and land use appeals, and make a number of other changes in land use procedures.

Local Project Review. Counties and cities planning under all GMA requirements must have in place procedures combining environmental review with project review. Land use planning choices made in comprehensive plans and development regulations serve as the foundation for project review. The procedures must provide for no more than one open record hearing and one closed record appeal. A county or city must make a final decision on a project permit in 120 days. Some exceptions are provided and some time periods excluded from the 120 day requirement.

Counties and cities may enter into agreements with developers establishing development standards for a development and providing for the developer to be reimbursed over time for financing public facilities.

A county or city planning under all of the GMA requirements must integrate its SMA local shoreline master program into its GMA comprehensive plan and development regulations.

Lead agencies that are also project applicants can complete the SEPA process before submitting a permit application.

Land Use Petition Act. ESHB 1724 established a new land use petition procedure for court appeals of land use decisions by counties, cities, and towns.

Platting and Subdivision Act. A short division is a division of land into four or fewer lots. A city or town may allow a parcel of property to be divided into a maximum of nine lots under its respective short subdivision ordinance. Counties do not have authority to raise the number of lots which are regulated as short subdivisions.

Short subdivisions are summarily approved by administrative personnel. Subdivisions other than short subdivisions must be submitted to the legislative body of the city, town, or county for approval. A preliminary plat must be filed, notice given, and a hearing held on subdivisions which are not short divisions.

Miscellaneous. In some counties and cities, boards of adjustment hear applications for variances, conditional uses, and other land use decisions. Community councils may be formed when an area is annexed to a city. In implementing ESHB 1724, a number of technical problems were identified and some provisions determined to need clarification.

Summary of Bill: Local Project Review. The responsibility for rule-making for the integration of environmental review with project review is modified. The rules developed jointly by DOE and the Department of Community, Trade, and Economic Development (CTED) are limited. CTED and the Department of Ecology (DOE) may adopt criteria for local governments planning under all the GMA requirements to analyze consistency.

Comprehensive plans and development regulations must be in compliance with the GMA to serve as the foundation for project review. A decision by a county or city on a proposed project's consistency with a comprehensive plan or development regulations is part of project review. A county or city's procedure for the local legislative body to make a decision following a recommendation constitutes a closed record appeal. A public hearing to accept comments on a draft recommendation constitutes an open record hearing. A local government may not provide for a closed record appeal of a procedural determination under SEPA.

In calculating the 120-day period for a local government to make a decision on a project, the following periods are excluded: any period during which a determination of significance is on appeal before the county or city, and any period when an applicant fails to post the property, if required. The 60-day exclusion for administrative appeals of project permits only applies to final decisions. Clarifying language is added that rezones are exempt from the 120-day requirement. Provisions for giving notice of applications to the public are modified. Notice of decisions must be given in the same manner as notice of applications.

A county or city not planning under all the GMA requirements may adopt any of the provisions for project review.

Development agreements are in addition to any other authority of a local government to enter into an agreement with a person having ownership or control of real property. The limitations on the authority to enter into a development agreement do not limit the power of the parties to contract for financial contributions or mitigation measures.

Procedures for boards of adjustment are made consistent with the project review procedures.

Land Use Petition Act. The procedures of the act apply to community councils, as well as counties, cities, and towns. Modification is made to the necessary parties to a land use petition. Notice and a statement of the right to intervene must be mailed to each person identified as a party. If such a party is an association, the mailing need only be made to its representative. The provisions for joinder of parties are modified.

Platting and Subdivision Act. The provisions for hearings, public notice and time limits for approval for counties and cities planning under all the requirements of the GMA are made consistent with other procedures for local project review.

SEPA. The time at which determinations of nonsignificance can be appealed is modified for appeals of procedural determinations made by an agency on a nonproject action and for lead agencies that are also project applicants.

SMA. Language is added to clarify that shoreline master programs in effect when ESHB 1724 was enacted into law, and that are integrated into the GMA comprehensive plans and development regulations, remain approved by DOE unless altered. Notice requirements are made consistent with local project review requirements. The time limits for substantial development permits do not include the time during which a use or activity was not actually pursued due to administrative appeals or legal actions.

A number of technical and clarifying amendments are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and sections 1 through 20, 30 through 37, and 39 through 43 take effect immediately. Section 18 takes effect July 1, 1998.

Testimony For: This bill corrects a lot of technical deficiencies and represents a consensus. It will help local government address regulatory reform better. There should be no financial impact at all. This corrects conflicting timelines. This allows GMA requirements to be the check on consistencies, with SEPA as an overlay.

Testimony Against: This goes way beyond technical corrections. For instance, allowing counties to short plat up to nine lots is a big change in policy. There is concern about consistency. Until a local government has a good plan, an environmental impact statement is needed.

Testified: PRO: Sally Clarke, Weyerhaeuser; Faith Lumsden, Bellevue; Dave Williams, AWC; Jodi Walker, BIAW; Paul Parker, WACO; Mike Ryland, APA, 1000 Friends; Bob Mack, Belleuve; CON: Scott Merriman, WA Environmental Council.