

# FINAL BILL REPORT

## ESB 6094

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### PARTIAL VETO

C 429 L 97

Synopsis as Enacted

**Brief Description:** Changing growth management provisions.

**Sponsors:** Senators McCaslin and Haugen; by request of Governor Locke.

**Background:** The Land Use Study Commission was created by the 1995 Legislature. 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 GMA.

**Summary: *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 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.

In accordance with one of the GMA goals, the property rights of landowners must be protected from arbitrary and discriminatory actions.

***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 GMA and increases the deference to local decisions by changing the standard of review from preponderance of the evidence— to clearly erroneous.— In determining whether all or part of a comprehensive plan or development regulations are invalid, the standard of review is changed to arbitrary and capricious.—

A finding of substantial interference with GMA goals, which is necessary for the boards to find invalidity, requires evidence of actual interference and may not be based on hypothetical or speculative development potential.

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 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 GMA.

In reviewing board orders, a court may affirm, set aside, enjoin, remand, order the board to rescind or modify, or enter an order of compliance or noncompliance.

***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 of its comprehensive plan harmonizes the planning goals of GMA and meets the planning requirements in 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.

Small-scale businesses are included in rural development. Small-scale businesses and cottage industries are not required to serve the rural population. Intensified development of cottage industries and small-scale businesses is allowed. However, a major industrial development or a master planned resort is not allowed under these provisions, and are allowed only if specifically permitted under other statutes.

The requirement that residential and nonresidential uses shall not require urban services, and that nonresidential rural development shall serve and provide jobs for the existing and projected rural population, applies only to a county with a population of 95,000 or more and that has committed 5 percent or more of its land base to urban growth and that has no more than 80 percent of its land base in public ownership or resource lands.

Rural residential densities may include clustered residential developments.

***Public Participation Requirements.*** Counties and cities planning under 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 decision, 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 GMA. The board is specifically directed to comply with the APA with respect to *ex parte* communications.

***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 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.

More detailed procedures are added for direct review in superior court.

***Court of Appeals.*** Appeals of final board decisions are filed in the Court of Appeals for assignment by the chief presiding judge to the appropriate panel for review.

***Extension of Time for Board Decisions.*** A board may extend the time for issuing a decision beyond the 180-day period currently provided by 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 GMA, the board may establish a compliance schedule that goes beyond 180 days if the complexity of the case justifies an extension. 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. The order does not affect an application filed prior to receipt of a board's determination of invalidity, nor does the order 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 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 rescision 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 this 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 with GMA requirements in appropriate circumstances. The board is directed to take into account a county or city's progress toward compliance with GMA requirements 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 to increase consistency between what was envisioned and what has occurred. The county may only expand an urban growth boundary after three years of taking measures if it determines that those measures have not been successful. The Department of Community, Trade, and Economic Development (CTED) must provide grants and technical assistance to the counties and to cities to implement these requirements.

Other counties and their cities planning under GMA must continually renew and evaluate their comprehensive plans and development regulations to ensure that the plan and regulations are complying with GMA requirements. This review may be combined with the monitoring and evaluation program.

Cities, as well as counties, must include sufficient areas and densities to permit projected urban growth.

The Office of Financial Management (OFM) must prepare 20-year population forecasts every five years, instead of ten, or upon the availability of decennial census data, whichever is later.

***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.

Additional language is added to provide consistency with provisions relating to the fund and its purposes.

***Tax Issues.*** The provisions governing access to the current use taxation program are modified to include land designated for long-term agriculture under 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, nonforest, or nonopen-space uses within five years after the sale.

***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.

Cities may adopt low or moderate income occupancy requirements to allow tax exemptions for construction/renovation of multi-unit buildings in urban centers.

***Permit Assistance Center.*** The Permit Assistance Center's 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.*** A code city planning under GMA may annex islands of unincorporated territory 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. The annexation of the islands remains subject to referendum.

Any noncode city or town planning under GMA, by resolution, may implement the annexation procedures for islands made available to code cities without being subject to a referendum process.

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

***Land Use Study Commission.*** Eight members are added to the commission. Four are legislators, and the additional four are representatives of a modified list of interest groups, including livestock producers, irrigated agriculture, dryland farmers or major crop commodity producers, operators of small businesses and owners of small property holdings. The latter four members are appointed by the Governor.

***Duties of Land Use Study Commission.*** The commission is directed to study the continuing need for growth boards and to make recommendations for the implementation of a possible sunset of the boards, change of boards to an advisory role, or other changes. The commission is also directed to evaluate the standard of review and invalidity issues.

***Regulatory Reform.*** The responsibility for rule-making is modified with respect to the consistency of project actions. CTED, with the Department of Ecology (DOE), must develop criteria to assist local governments in analyzing project consistency.

A local government that is a project proponent or is funding a project to complete its State Environmental Policy Act review is allowed to appeal procedural determinations prior to submitting a project permit application.

Shoreline master programs adopted by DOE before the effective date of ESHB 1724 are deemed approved. Clarification is provided with regard to shoreline permit timelines.

***Wetlands.*** Counties and cities are allowed to exempt emergency activities, and activities with minor impacts on critical areas, from critical areas development regulations.

***GMA Flex.***– Counties planning under GMA are allowed, after conferring with their cities, to adopt alternative methods for achieving GMA planning goals.

***Adverse Possession.*** Plat greenbelts and open space areas dedicated to a public agency or bona fide homeowner's association are removed from adverse possession claims.

***Loans.*** An exception is provided to the requirement that a local government must have adopted its comprehensive plan and development regulations in order to qualify for loans or pledges for public work projects and water pollution facilities if there is a public health need or substantial environmental degradation.

This act is prospective in effect.

**Votes on Final Passage:**

Senate	47	1
House	62	36 (House amended)
Senate	30	18 (Senate concurred)

**Effective:** May 9, 1997 (Sections 29 and 30)  
July 27, 1997

**Partial Veto Summary:** Sections 1, 4, 5, 6, 8, 15, 17, 18, 19, 44, 45 and 52 of the bill were vetoed.

The changes to the rural intent section were vetoed.

Also vetoed was GMA flex,– which allowed counties planning under GMA to confer with their cities and adopt alternative methods for achieving GMA planning goals.

The wetlands provisions were eliminated. These provided that the goal of the state is to achieve no overall net loss of wetland functions. In adopting critical areas development regulation, counties and cities should balance all of the GMA goals, not giving any one goal precedence. Counties and cities could prioritize the goals in accordance with local history, conditions, circumstances, and choice. Counties and cities would have been allowed to exempt emergency activities, and activities with minor impacts on critical areas, from critical areas development regulations.

Section 8 was vetoed, which would have provided, for certain counties, that developments in rural areas shall not require urban services and shall be principally designed to serve and provide jobs for the local rural population.

Appeals of board decisions to the Court of Appeals was vetoed, along with section 52, which was a technical change to effectuate this section.

The arbitrary and capricious– standard of review was eliminated.

The requirement that a determination of substantial interference must be based on actual evidence with regard to determining invalidity was vetoed.

Also vetoed were provisions which would allow a court reviewing an order of invalidity to affirm, set aside, enjoin, or remand board orders, or to enter an order of compliance or noncompliance.

The addition of new members to the Land Use Study Commission was eliminated, as well as additional duties imposed on the commission.