

***Local Government & Housing
Committee***

HB 2097

Brief Description: *Establishing that churches and private schools are not urban growth.*

Sponsors: *Representatives Mulliken, Mielke, Campbell, Pearson, Ahern and Pflug.*

Brief Summary of Bill

- *Specifies churches and private schools as defined are not to be considered urban growth.*
- *Requires Growth Management Act plans and regulations to include a process for siting churches and private schools.*

Hearing Date: *2/19/01*

Staff: *Caroleen Dineen (786-7156).*

Background:

Growth Management Act

The Growth Management Act (GMA) requires a county and its cities to plan if the county meets specified population and growth criteria. Counties not meeting these criteria may choose to plan under the GMA. Currently 29 of Washington's 39 counties plan under the GMA.

The GMA requires all counties and cities in the state to designate and protect critical areas and to designate natural resource lands. The GMA imposes additional requirements on counties and cities planning under RCW 36.70A.040 (GMA jurisdictions), including identification and protection of critical areas; identification and conservation of agricultural, forest, and mineral resource lands; and adoption of county-wide planning policies to coordinate comprehensive planning among counties and their cities.

GMA jurisdictions must designate urban growth areas (UGAs), within which urban growth is encouraged and outside of which urban growth is prohibited. "Urban growth" is defined in the GMA to mean growth making intensive use of land to an extent creating incompatibility with natural resource uses. GMA jurisdictions also must adopt a comprehensive plan which contains planning policies and incorporates these UGA designations. A GMA jurisdiction's comprehensive plan must include certain required elements, including: (1) a land use element, designating proposed general distribution, location and uses of land; (2) a housing element, inventorying available housing and identifying sufficient land for housing; (3) a capital facilities plan element, identifying existing capital facilities and forecasting future capital facilities needs and funding; (4) a utilities element, describing the general location and capacity of existing and proposed utilities; (5) a rural element, specifying policies for land development and uses for lands that are not designated for urban growth, agriculture, forest or mineral resources; and (6) a transportation element, implementing the land use element and identifying facilities and service needs, level of service standards, traffic forecasts, demand-management strategies, intergovernmental coordination, and financing.

A GMA jurisdiction must adopt development regulations to implement the comprehensive plan policies. By September 1, 2002, and every five years thereafter, GMA jurisdictions must review their comprehensive plans and development regulations for consistency with GMA requirements and must revise their plans and regulations if necessary.

Legislation enacted in 1997 (i.e., ESB 6094, enacted as Chapter 429, Laws of 1997) added new standards for the rural element of GMA comprehensive plans. Among other changes, the 1997 legislation: (1) defined "rural character," focusing on predominance of natural landscape, fostering traditional rural lifestyles and providing rural landscapes, and being compatible with habitat and prevention of sprawl; (2) defined "rural development" to include a variety of uses and densities other than agriculture and forestry that are consistent with rural character; (3) amended the definition of urban growth– to provide that a pattern of more intensive rural development is not urban growth; (4) added "rural development" provisions allowing "infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas" subject to the requirement to "minimize and contain" the existing areas so as not to extend beyond their logical outer boundaries; and (5) added "intensification" provisions for rural nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses not principally designed to serve the rural population but offering jobs for rural residents.

Churches and Private Schools

The free exercise of religion is guaranteed by the federal and state constitutions. The state constitution declares freedom of conscience relating to religious sentiment, belief, and worship may not be disturbed in person or property but specifies this freedom does not justify practices inconsistent with state peace and safety.

The state constitution authorizes local governments to make and enforce all local police, sanitary, and other regulations not in conflict with state general laws. This "police power" includes authority to adopt and enforce ordinances to regulate property development and to impose fines for violation of ordinances. Last year the Washington Supreme Court

determined the constitutional guarantee of religious freedom does not preclude a county from requiring a religious institution to apply and pay the application fee for a conditional use permit as required by county regulations; the Court did not consider the issue whether a denial of the conditional use permit would raise constitutional concerns. In earlier cases the Washington Supreme Court had determined that designation of a religious institution's structure under a city's landmarks preservation ordinance for aesthetic and cultural purposes or applying a waiting period for demolition of religious structures may violate constitutional religious freedoms.

In 2000 a new federal law was enacted addressing land use regulations in the context of free exercise of religion. With respect to land use regulation, the Religious Land Use and Institutionalized Persons Act of 2000 prohibits government from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government can demonstrate that the burden: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering the compelling governmental interest. The federal law prohibits discriminating through regulation against any religious assembly or institution and mandates that land use regulations may not treat a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. Further, the federal law specifies a government may not impose a land use regulation totally excluding religious assemblies or unreasonably limiting religious assemblies, institutions, or structures within a jurisdiction.

The federal law applies in any case in which a burden on religious exercise:

- is imposed in a program or activity receiving federal financial assistance;*
- affects interstate commerce; or*
- is imposed in implementing a land use regulation under which a government makes or has procedures to make individualized assessments of proposed uses for the property involved.*

Private schools are subject to less regulation than public schools, although private schools must be approved by the State Board of Education and comply with certain statutory requirements. For example, private schools must file an annual certification with the Superintendent of Public Instruction regarding satisfaction of the minimum statutory requirements and develop a process to correct any deficiencies. Private schools also must report information on their students required by the Superintendent of Public Instruction and must comply with rules relating to private schools promulgated by the State Board of Education.

Summary of Bill:

For purposes of Growth Management Act (GMA) requirements, churches and private schools may not be considered urban growth. A church is identified as a structure operated by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. A private school is any school regulated under the state private schools statutes.

Counties and cities planning under the GMA must include in their comprehensive plans and development regulations a process for siting churches and private schools.

Appropriation: *None.*

Fiscal Note: *Not Requested.*

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