

HOUSE BILL REPORT

SB 5507

As Passed House - Amended:

April 10, 2003

Title: An act relating to standing before growth management hearings boards.

Brief Description: Clarifying who has standing regarding growth management hearings board hearings.

Sponsors: By Senators T. Sheldon and Mulliken.

Brief History:

Committee Activity:

Local Government: 3/31/03, 4/3/03 [DPA].

Floor Activity:

Passed House - Amended: 4/10/03, 95-0.

Brief Summary of Bill
(As Amended by House)

- Clarifies who has "participation standing" to raise a matter before the Growth Management Hearings Board.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended. Signed by 11 members: Representatives Romero, Chair; Upthegrove, Vice Chair; Schindler, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Ahern, Berkey, Clibborn, Edwards, Ericksen, Mielke and Moeller.

Staff: Amy Wood (786-7127).

Background:

The Growth Management Act (GMA) established three regional Growth Management Hearings Boards (Boards) to review compliance with statutory deadlines, and the sufficiency of plans and development regulations adopted by cities and counties pursuant to the Act. The Boards are limited to hearing only those petitions alleging that a city, county, or state agency has not complied with the goals and requirements of the GMA,

and related provisions of the Shoreline Management Act, and the State Environmental Policy Act.

The Legislature's goals for "broad and continuous" public participation during the development and adoption of plans and regulations are distinct from the Legislature's requirements for review of the GMA actions by the Boards. Under the GMA, any person may participate in the local government's GMA plan development and adoption process. But, only those persons who qualify under the Legislature's statutorily prescribed conditions set out in RCW 36.70A.280(2) may acquire "standing" to file a petition for review with the Boards. "Standing" means that a party has a sufficient stake in a controversy to obtain judicial resolution of that controversy.

The GMA provides four different methods to obtain standing before the Boards. Three of these methods do not require participation before the local government. The only method that requires participation before the local government is found under RCW 36.70A.280 (2)(b). This GMA provision states that, "A petition may be filed only by . . . (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is requested."

"Participation standing" means a party acquires standing by participating before the local government. The Washington State Court of Appeals held that to establish "participation standing" before a Growth Management Hearings Board, as the GMA requires, a person must show that his or her "participation" before the local government was "*reasonably related*" to the issues raised before the local government regarding the matter on which review is requested. *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000).

As stated in *Wells*,

"If a petitioner's participation is reasonably related to the petitioner's issue as presented to the Board, then the petitioner has standing to raise and argue that issue; if the petitioner's participation is not reasonably related to the petitioner's issue as presented to the Board, then the petitioner does not have standing to raise and argue that issue."

The *Wells* court concluded that this approach would further the GMA's goals of encouraging meaningful public participation in the local government planning process, helping to achieve local government compliance with the Act.

Summary of Amended Bill:

An intent section is provided specifying the Legislature's intent to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000). The GMA "participation standing"

requirement is clarified by adopting the holding in *Wells* that a person must show that his or her participation before the local government is reasonably related to the person's issue as presented to the Board.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill codifies existing caselaw and will help to insure that planning and development concerns are raised at the local government level. This will allow local governments to have the opportunity to address planning and development issues before an appeal to the Growth Management Hearings Boards.

The GMA requires "broad and continuous" public participation during the planning process. By adopting the Division I Court of Appeals decision in *Wells*, public participation will be encouraged at the local government level, as the GMA requires. Public participation should not occur after the local government decisions are made. As the Boards have stated, to avoid "blind-siding" local governments and unnecessary appeals, members of the public must first raise their land use concerns to their local government.

Testimony Against: Current court precedent sufficiently provides the requirement that matters be raised at the local government level. Use of the word "argument" is confusing and will further complicate matters, causing increased litigation. The Boards are in the better position to determine whether an issue is "reasonably related" to the matter before the local government.

Although encouraging public participation early on in the process is positive, the bill as written will actually limit a citizen's ability to participate by requiring that they raise legal arguments. Even if the Legislature is intending to codify the decision in *Wells*, if it is not specific in its intent, a court may read meaning into new or different language.

Testified: (In support) Senator T. Sheldon, prime sponsor; Jayni Kamin, Mason County Commissioner; Robert Fink, Mason County; and Heather Ballash, Department of Community, Trade, and Economic Development.

(Against) Genesee Adkins, 1000 Friends of Washington; Chris Towne; Peter Marshall; Mike Ryherd, American Planning Association; Nina Carter, Audobon Society; and Bruce Wishart, People for Puget Sound.