

# SENATE BILL REPORT

## SB 6493

---

---

As Reported By Senate Committee On:  
Government Operations & Elections, January 28, 2008

**Title:** An act relating to appeals under the growth management act.

**Brief Description:** Providing loans to small cities for certain appeals under the growth management act.

**Sponsors:** Senators Hobbs, Fairley, Swecker, Pridemore, Shin, Hatfield, Rasmussen and Kline.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 1/22/08, 1/28/08 [DPS-WM, DNP].

---

### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6493 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline, McDermott, Pridemore and Swecker.

**Minority Report:** Do not pass.

Signed by Senator Roach.

**Staff:** Khalia Gibson (786-7460)

**Background:** The Growth Management Act (GMA) requires planning to occur in compliance with the goals and requirements of the Act. Three Growth Management Hearing Boards (GMHB) have been delegated the authority to hear and determine allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA, related provisions of the Shoreline Management Act (SMA), or the State Environmental Policy Act (SEPA). Plans and regulations will only be reviewed by a board when a specific Petition for Review that alleges non-compliance with the GMA is filed with, and accepted by, the appropriate hearings board.

A Petition for Review may be filed by the state, counties, cities, or persons who are aggrieved. The petition must identify the action that is being appealed.

**Summary of Bill (Recommended Substitute):** The Director of the Department of Community Trade and Economic Development (CTED) must develop a program for loans to cover city costs associated with the appeal of a critical areas ordinance. The one time loan is

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

for cities with populations under 30,000 and is limited to an appeal from a decision of a GMHB to a superior court.

The loan may not exceed 100,000 dollars, must be repaid within ten years, and is subject to a 4 percent interest rate. Repayment does not begin until a superior court renders its decision.

A growth management appeals legal assistance account is created in the custody of the State Treasurer where all receipts from fees imposed and moneys from the repayment of loans are kept. Only the Director of CTED, or the Director's designee may authorize expenditures from the account.

If the court declares the appeal frivolous, and the city has followed all of its requirements, the city may sue the complainant for twice attorney's fees. If successful, and the amount exceeds attorney's fees, one half of the award must be deposited into the loan account.

All requests for review of a GMHB decision are initiated by filing a petition and paying a 400 dollar filing fee. One hundred dollars must go to GMHB operation costs, the remaining 300 dollars must be deposited into the loan account. Indigent persons may file for a waiver of the filing fee.

The Director of CTED must report to the Legislature in November 2013 on the use of the loan program. The report must include data regarding the sufficiency and distribution of the filing fee.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS (Recommended Substitute):** Increases the filing fee and changes the possible award for frivolous claims. There is also an allowance for a fee waiver.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2008.  
[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Problems occur where cities try to plan and the plans are appealed. Small towns and cities cannot afford litigation fees, and this bill will allow small cities to obtain the funds to do so. The bill encourages local control and promotes communities taking control of their future. It is unfair for large cities to push their political agendas on small cities who cannot afford the hefty price tag. It is a good time to start talking about this issue because city and county review cycles are approaching under the GMA. This bill provides a fund for cities to borrow from, and establishes a fee to help fund the pot of money for the loans. There is currently no fee to file an appeal, but the 200 dollar fee does not seem unreasonable considering other related appeal fees.

CON: The general idea of instituting loans for small cities to fund litigation expenses is good, but it may encourage more litigation rather than fix the problem. The only enforcement mechanism built into the GMA is the citizen right to appeal to a GMHB, and the 200 dollar fee is unaffordable for some. The Legislature should be encouraging citizens to appeal, but a

bill like this discourages them. Additionally, the possibility of collecting three times attorney fees is an unnecessary burden to citizens. If citizens are afraid to file appeals regarding flood plains development, and other habitat infringements, we could see more flooding in the flood plains which is something no one would want. There are also constitutional violations if the bill were passed such as equal protection, due process, and the first amendment right to petition. Trying to use a financial approach is going to catch innocent people in the midst of trying to catch groups who are trying to bankrupt cities. The bill is an overall good idea with a bad approach. A possible alternative is to require complainants to have standing to challenge the appeal. The standing requirement would be fulfilled by owning property within the jurisdiction being challenged. Corporations, non-profit groups, and environmental groups that do not own property in the challenged jurisdiction will not have standing to bring the appeal. This would be a better way to approach the problem.

**Persons Testifying:** PRO: Senator Hobbs, prime sponsor; Dave Williams, Association of Washington Cities.

CON: April Putney, Futurewise; Steve Hammond, Citizens Alliance for Property Rights; Diana Kirchheim, Pacific Legal Foundation.