

SENATE BILL REPORT

SB 6154

As of January 25, 2012

Title: An act relating to the filing of appeals with the growth management hearings board.

Brief Description: Changing filing fees and standing provisions relating to the growth management hearings board.

Sponsors: Senators Hobbs, Pridemore, Swecker, Hargrove, Benton, Hatfield and Schoesler.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/19/12.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Karen Epps (786-7424)

Background: The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under GMA (planning jurisdictions), and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA establishes the Growth Management Hearings Board (GMHB). The GMHB, which is situated within the Environmental and Land use Hearings Office, is comprised of three panels for the purposes of hearing and deciding cases within the following regions: central Puget Sound; eastern Washington; and western Washington. The GMHB consists of seven members qualified by experience or training in matters pertaining to land use law or land use planning. The Governor may reduce the GMHB to six members if warranted by caseload. All GMHB members are appointed for six-year terms, with two each residing in the geographic regions of the panels, three admitted to practice law, and at least three to have been a city or county elected official. Additionally, no more than four members of the GMHB may be from the same political party.

GMHBs have limited jurisdiction and may only hear and determine petitions alleging:

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- that a state agency or planning jurisdiction is noncompliant with GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

Petitions may only be filed by:

- the state, or a county or city that plans under GMA;
- a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested;
- a person who is certified by the Governor within 60 days of filing the request with the GMBH; or
- a person who has standing.

GMHB must give deference to local decisions. The standard of review that applies to board review is a clearly erroneous standard, such that a board cannot overturn a local decision unless the local decision was clearly erroneous. GMHB must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more GMHB members and upon being filed at the applicable board office. Final decisions of the GMHB may be appealed to the superior court. If all parties agree, the superior court may directly review a petition filed with a board.

Summary of Bill: A filing fee of \$400 is established for appeals filed with GMHB. The filing fees must be used to cover the costs of the operation of GMHB. A person who participated orally or in writing before the county or city regarding the matter on which a review is being requested is no longer eligible to file an appeal.

Appropriation: None.

Fiscal Note: Requested on January 12, 2012.
[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: PRO: This bill is designed to help with the current budget problem. It is important to have these appeals and to have the boards, but in a time when budgets are shrinking, there needs to be some way to pay for this. This bill provides a way to reign in costs while carrying on the intent of the GMA. It is important to get participation from citizens early in the process. The challenge comes when some of those people who make appeals are not impacted by those decisions. This bill makes the standing provisions consistent with the Administrative Procedures Act. Appeals are extremely expensive at the local level under the GMA. There is a clear distinction between participating in the process and public participation; this is not about restricting participation.

CON: After the GMA was instituted in 1990 without any enforcement mechanism, citizens circulated an initiative that would have put in a top down approach where an agency would

approve GMA plans and regulations. To keep the bottom up approach to manage growth, the three boards were created. In keeping with this bottom up approach, challenges to local government depend on citizens who care enough about managing growth in their community to originate challenges. Eliminating participation standing guts the goal of citizen participation. The filing fee is unnecessary and will only raise \$48,000. The estimated amount is high, especially if participation standing is eliminated, which will have a chilling effect on the number of petitions filed. When the GMA was passed, the decision was made that it would be enforced through citizen actions. This bill makes it so the GMA would largely go unenforced.

Persons Testifying: PRO: Senator Hobbs, prime sponsor; Todd Mielke, County Commissioner, Spokane County; Josh Weiss, WA Assn. of Counties.

CON: Holly Gadbow, citizen; April Putney, Futurewise.