

# SENATE BILL REPORT

## SB 5639

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As of February 13, 2019

**Title:** An act relating to the growth management hearings board.

**Brief Description:** Concerning the growth management hearings board.

**Sponsors:** Senators Brown, Becker and Wilson, L..

**Brief History:**

**Committee Activity:** Local Government: 2/12/19.

### Brief Summary of Bill

- Requires the Growth Management Hearings Board to allow the planning jurisdiction to retain and examine scientific experts or other expert witness to assist in reviewing a petition involving critical areas.

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## SENATE COMMITTEE ON LOCAL GOVERNMENT

**Staff:** Greg Vogel (786-7413)

**Background:** Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA sets forth three broad planning obligations for those counties and cities who plan fully under the GMA: the county legislative authority must adopt a countywide planning policy; the county, and the cities within the county, must designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations accordingly; and the county must designate and take other actions related to urban growth areas.

GMA—Critical Areas. All cities and counties in Washington are required to adopt critical areas regulations by the GMA. As defined by the GMA, critical areas include the following areas and ecosystems: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. Counties and cities are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas. All jurisdictions are required to review, evaluate, and, if necessary, revise their critical areas ordinances according to an update schedule.

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*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.*

Growth Management Hearings Board. A seven-member board established under the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA by state agencies, counties, or cities. Petitions relating to whether an adopted comprehensive plan or development regulation complies with the GMA must be filed within 60 days after publication of the action. For counties, the date of publication is the date the county publishes a notice it has adopted the comprehensive plan or development regulations. For cities, the date of publication is the date the city publishes the ordinance adopting the comprehensive plan or development regulations.

The board must issue its final decision and order within 180 days, with limited exceptions. In the final order, the board must either find the agency, county, or city in or not in compliance. If found not in compliance, the matter is remanded back to the agency, county, or city and it has 180 days to come into compliance.

If the board determines advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, the board may retain scientific or other expert advice to assist in reviewing a petition that involves critical areas.

Washington Rules of Evidence—Expert Witnesses. Under the Washington rules of evidence, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise. The rules also allow an expert to:

- base their opinion on inadmissible evidence and base opinion on facts or data perceived by or made known to the expert at or before the hearing; and
- testify on an ultimate issue the trier of fact must resolve.

Additionally, an expert need not disclose the facts on which their opinion is based, although the court may require disclosure, and the expert may be subject to cross-examination on them.

**Summary of Bill:** The board must allow the planning jurisdiction to retain and examine scientific experts or other expert witnesses to aid in understanding or determining facts in issue regarding policies or regulations. The board and any other party may retain and examine its own expert witnesses. All scientific or other expert witnesses must be established as experts by testifying to their knowledge, skill, experience, training, or education as required by the Washington Rules of Evidence.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: The bill is an effort to try to have a qualified board for making decisions. If they do not have subject matter expertise, jurisdictions should

be able to bring in experts to make qualified decisions. Given the broad scope of issues considered before the board, it is practical to have some type of standard and allowance of evidence before the board.

CON: Currently, the process is based on the record before the city or county. This bill would shift the record over to what is heard in front of the board. As a result, this would prevent individuals without lawyers and without money from bringing appeals.

**Persons Testifying:** PRO: Senator Sharon Brown, Prime Sponsor; Jan Himebaugh, Building Industry Association of Washington.

CON: Bryce Yadon, Futurewise.

**Persons Signed In To Testify But Not Testifying:** No one.