

SENATE BILL REPORT

ESSB 6574

As Amended by House, March 6, 2020

Title: An act relating to clarifying the respective administrative powers, duties, and responsibilities of the growth management hearings board and the environmental land use and hearings office.

Brief Description: Clarifying the respective administrative powers, duties, and responsibilities of the growth management hearings board and the environmental land use and hearings office.

Sponsors: Senate Committee on Local Government (originally sponsored by Senators Takko and Short; by request of Office of the Governor).

Brief History:

Committee Activity: Local Government: 1/30/20, 2/04/20 [DPS-WM, w/oRec].

Ways & Means: 2/10/20 [w/oRec, DNP].

Floor Activity:

Passed Senate: 2/18/20, 41-6.

Passed House: 3/06/20, 97-0.

Brief Summary of Engrossed First Substitute Bill

- Reduces the number of Growth Management Hearings Board members to five.
- Amends requirements relating to the Growth Management Hearings Board and Environmental Land Use and Hearings Office, including director appointment; board member experience requirements; term length; administrative duties and responsibilities; and availability of rulings, decisions, and orders.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: That Substitute Senate Bill No. 6574 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Takko, Chair; Short, Ranking Member; Lovelett.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Salomon, Vice Chair; Honeyford.

Staff: Greg Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Billig, Carlyle, Conway, Darneille, Dhingra, Hunt, Keiser, Liias, Muzzall, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Minority Report: Do not pass.

Signed by Senator Hasegawa.

Staff: Jed Herman (786-7346)

Background: Environmental Land Use and Hearings Office. The Environmental and Land Use Hearings Office (ELUHO) is the umbrella administrative agency for the Pollution Control Hearings Board (PCHB), the Shorelines Hearings Board, and the Growth Management Hearings Board (GMHB). Each board hears appeals of certain land use and environmental decisions in Washington. Each of these boards operates independent of one another, hearing appeals and deciding cases within their separate areas of jurisdiction. The Governor must designate one of the members of the PCHB or GMHB to be the director of ELUHO during the term as Governor.

The ELUHO director must ensure that timely and accurate GMHB rulings, decisions, and orders are made available to the public through searchable databases accessible through the ELUHO websites. To ensure uniformity and usability of searchable databases and websites, the director must coordinate with GMHB, the Department of Commerce, and other stakeholders to develop and maintain a rational system of categorizing GMHB board rulings, decisions, and orders. All rulings, decisions, and orders issued before January 1, 2019, must be published by June 30, 2021.

Growth Management Hearings Board. The GMHB is charged with hearing and determining petitions alleging noncompliance with the GMA by state agencies, counties, or cities. Petitions that relate 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 that 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.

GMHB must issue its final decision and order within 180 days, with limited exceptions. In the final order, GMHB must either find the agency, county, or city in compliance 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 become compliant.

In 2010, what had been three regional GMHBs were abolished and consolidated into a single GMHB. The consolidated board consists of seven members qualified by experience in the practical application of land use law or planning. The members must be appointed by the Governor to six-year terms from three specified regions in the state, with two members each from the Central Puget Sound area, Eastern Washington, and Western Washington. At least three members of the consolidated board, one from each region, must be admitted to practice law in the state. At least three members of the consolidated GMHB, one from each region, must have been a county or city elected official.

No more than four members of the consolidated GMHB may be members of the same major political party. No more than two members at the time of their appointment or during their term may reside in the same county.

Petitions for review filed with the consolidated board must be heard and decided by a regional three-member panel, with membership for the regional panels selected from among full membership of the GMHB. With some exceptions, a majority of the regional panel members selected to hear and decide a case must reside within the region in which the case arose. Except in cases of emergency, the presiding officer in each case must reside within the region in which the case arose.

The three regional panels are as follows:

- Central Puget Sound regional panel decides matters pertaining to the cities and counties in King, Pierce, Snohomish, and Kitsap counties;
- Eastern Washington regional panel decides matters pertaining to the planning jurisdictions that are east of the crest of the Cascade Mountain Range; and
- Western Washington regional panel decides matters pertaining to the cities and counties that are west of the crest of the Cascade Mountain Range that are not included within the Central Puget Sound region.

The consolidated GMHB must annually elect one of its members to be the administrative officer. The administrative officer is responsible for the administrative, budget, and personnel matters of the consolidated GMHB. The administrative officer is responsible for making member case assignments, subject to the consolidated GMHB's rules of procedure, to achieve a fair and balanced workload among members.

Summary of Engrossed First Substitute Bill: The number of GMHB members is reduced to five.

The GMHB is specified to be created within the Environmental and Land Use Hearings Office. The word "pertinent" is added to describe matters pertaining to land use law or land use planning and experience in the practical application of those matters, as applied to the experience requirements of board members.

Board members must operate full-time and are subject to ethics in public service requirements.

GMHB members are appointed for a term of six years and until their successors are appointed. Provisions governing the transition from the previous three GMHBs to the consolidated GMHB are removed.

The board shall annually elect one of its members to be the board chair. The duties and responsibilities of the chair include developing board procedures and managing board meetings. The chair's duties and responsibilities no longer include handling day-to-day administrative, budget, and personnel matters on behalf of the board. The provision allowing the administrative officer of the board to carry a reduced caseload to allow time for performing the administrative work functions is removed. ELUHO shall be responsible for all other administrative functions pertaining to GMHB, including making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all members.

The principal office of the board shall be located in Thurston County, and the board may hold hearings at any other place in the state.

The Governor shall appoint a director of ELUHO during the term of the Governor. Consent from the chair of the GMHB is no longer required when the director of ELUHO appoints one or more hearing examiners in cases before the GMHB.

The ELUHO director must ensure that timely and accurate rulings, decisions, and orders of all the boards be made available to the public through searchable databases accessible through the ELUHO websites. To ensure uniformity and usability of searchable databases and websites, the director must coordinate with the relevant boards to develop and maintain a rational system of categorizing all board rulings, decisions, and orders.

Each regional panel must consist of a majority of members from the region unless the member cannot sit on the case due to recusal or disqualification, or unless the director determines otherwise due to caseload management determinations or the unavailability of a board member due to illness, absence, or vacancy.

Appropriation: None.

Fiscal Note: Available.

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 on Original Bill (Local Government): *The committee recommended a different version of the bill than what was heard.* PRO: This is a Governor request bill and follows a conversation since last session about how to make boards more efficient and operate better. After nine years, we have found inefficiencies the bill is looking to solve. The statutory authorization created a dual role in authority. Currently, there are some workload disparities between specific regions and between attorney and non-attorney members. Overall, the caseload has dropped, but the cases that do come before the board require complicated legal analysis.

Persons Testifying (Local Government): PRO: Senator Dean Takko, Prime Sponsor; John Flanagan, Governor's Office; Bill Hinkel, Growth Management Hearings Board.

Persons Signed In To Testify But Not Testifying (Local Government): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Requires the chair of the GMHB to be responsible for making case assignments to board members.
- Requires the chair to be one of the attorney members.