HOUSE BILL REPORT
ESHB 1724

As Passed House:
March 15, 1995

Title: An act relating to implementing the recommendations of the governor's task force on regulatory reform on integrating growth management planning and environmental review.

Brief Description: Revising provisions relating to growth management.

Sponsors: By House Committee on Government Operations (originally sponsored by Representatives Reams, Rust, L. Thomas, Goldsmith, Ogden, Patterson, Poulsen, Scott, Regala, Mastin, Valle and Chopp; by request of Governor Lowry).

Brief History:
Committee Activity:
Government Operations: 1/18/95, 1/20/95, 2/3/95, 2/14/95, 2/21/95, 2/28/95 [DPS];
Appropriations: 3/4/95 [DPS(GOVT-A APP)].
Floor Activity:
Passed House: 3/15/95, 70-28.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Reams, Chairman; Goldsmith, Vice Chairman; L. Thomas, Vice Chairman; Hargrove; Honeyford; Hymes; Mulliken; D. Schmidt and Van Luven.

Minority Report: Do not pass. Signed by 6 members: Representatives Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Chopp; R. Fisher; Sommers and Wolfe.

Staff: Steve Lundin (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Government Operations be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass. Signed by 24 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky; Vice Chairman; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; G. Fisher; Foreman; Grant; Hargrove; Hickel; Jacobsen; Lambert; Lisk; McMorris; Poulsen; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 5 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Rust; Thibaudeau and Wolfe.

Staff: Susan Nakagawa (786-7145).

Background: A number of state laws permit or require counties and cities to establish land use regulations or control land use activities.

1. State Environmental Policy Act.

The State Environmental Policy Act (SEPA) requires local governments and state agencies to prepare a detailed statement, or environmental impact statement, if proposed legislation or other major action may have a probable significant, adverse impact on the environment.

The determination whether a detailed statement must be prepared involves a threshold determination and use of an environmental checklist. Some matters are categorically exempted from a threshold determination. If it appears that a probable significant adverse environmental impact may result, the proposal may be altered, or its probable significant adverse impact mitigated, to remove the probable significant adverse impact. If the probable significant adverse environmental impact remains then a detailed statement, or environmental impact statement, is prepared addressing the matter or matters that are determined under the threshold determination process to have a probable significant adverse environmental impact.

2. Shorelines Management Act.

The Shorelines Management Act requires counties and cities to adopt local shoreline master programs regulating land use activities in shoreline areas of the state. Local master programs are submitted to the Department of Ecology (DOE) for its review and rejection or approval as meeting the requirements of the Shorelines Management Act and guidelines adopted by the DOE. The decision of the DOE approving or rejecting a master program is appealable to the Shorelines Hearings Board. A county or city enforces its approved local shoreline master program.

Most development activity within the shoreline area with a value in excess of $2,500, other than single family dwellings, may only be constructed if a shoreline substantial development permit is issued by the county or city. The approval or rejection of a substantial development permit is appealable to the Shorelines Hearings Board.

3. General planning authority.

Counties and cities possess the general authority to adopt comprehensive plans and zoning ordinances.

4. Growth Management Act.

The Growth Management Act (GMA) requires certain counties, and the cities in those counties, to adopt a series of land use regulations culminating in the adoption of a comprehensive plan and development regulations. All other counties and cities are required to take a few actions under the GMA.

With input from cities located within its boundaries, each county planning under all of the requirements of the GMA adopts a countywide planning policy guiding the development of the county's and cities' comprehensive plans. Each of these counties designates urban growth areas in which the urban growth is to be located that is projected over the next 20 years for the county. The comprehensive plans that counties and cities planning under all of the requirements of the GMA are required to adopt must include a number of specific items, be internally consistent, and be consistent with the comprehensive plans of nearby jurisdictions. Development regulations must be adopted that are consistent with the comprehensive plan.

Three separate Growth Management Hearings Boards are created, with jurisdiction over varying geographic areas in the state, to hear appeals over whether the actions taken by counties and cities are consistent with the requirements of the GMA.

5. Regulatory Reform Task Force.

Governor Lowry created the Governor's Task Force on Regulatory Reform in August, 1993, by executive order and charged the task force to find ways of simplifying rules and regulations in the state.

Summary of Bill: This proposed legislation is part of the recommendations of the Governor's Task Force on Regulatory Reform.

1. Enhanced environmental review up front when adopt comprehensive plan and development regulations.

A county or city planning under all of the requirements of the GMA must provide enhanced environmental review, or a programmatic environmental impact analysis, of its comprehensive plan and development regulations. This enhanced environmental review must be extensive enough to reduce or eliminate much of the environmental analysis of permit applications or project environmental impact analysis. Environmental analysis and mitigation measures should be included in development regulations.

The Department of Community, Trade, and Economic Development (DCTED) and the DOE jointly develop rules and procedures for the integration of environmental review and project review.

Counties and cities planning under all of the requirements of the GMA may impose environment analysis fees on development to finance up to 75 percent of the costs of preparing the enhanced environmental review. Environmental analysis fees may not be imposed on development that is categorically exempt from a threshold determination under the SEPA.

The growth management planning and environmental review loan fund is established to make low-interest loans to counties and cities for enhanced environmental review of comprehensive plans and development regulations.

2. State Environmental Policy Act hearings and appeals.

If an agency has a procedure for appealing its environmental determinations under the SEPA, it shall provide for both: (a) A single simultaneous hearing before a hearing officer or body on the underlying permit or government action and both the procedural and substantive environmental considerations under the SEPA; and (b) a consolidated appeal over these matters.

The number of days allowed to challenge a determination under the SEPA is reduced from either 30 or 90 days to 21 days after the last date a notice of the action is published.

3. Miscellaneous Growth Management Act changes.

Counties and cities are required to include the "best available science" in designating and protecting critical areas under the GMA. The definition of wetlands is altered to the definition in the federal Clean Water Act. A wetland does not include inadvertent wetlands unintentionally created after July 1, 1990.

It is clarified that responses taken by a county or city, to a determination by a Growth Management Hearings Board that the comprehensive plan or development regulations

of the county or city are not in compliance with the GMA, are subject to the public participation provisions of the GMA.

Except in certain circumstances, a determination by a Growth Management Hearings Board of noncompliance with the GMA shall not affect the validity of a comprehensive plan and development regulations during the remand period. A person with standing to challenge a county's or city's actions in response to a Growth Management Hearings Board's determination of noncompliance with the GMA may participate in the hearing by the board on whether the response is in compliance with the GMA.

Counties and cities planning under all of the requirements of the GMA may impose environmental analysis fees on development to finance up to 75 percent of the costs of preparing the enhanced environmental review. Environmental analysis fees may not be imposed on development that is categorically exempt from a threshold decision under the SEPA.

A city planning under all of the requirements of the GMA that operates public facilities and services shall serve within its service area if service is technically feasible and in compliance with local regulations. Such a city providing water or sewer beyond its boundaries may not require, as a condition of providing this service, that the property owner agree to lot sizes or design standards different from those required by the county or city in whose planning jurisdiction the property to be served is located.

Sanitary sewer systems and public domestic water systems designed for and serving rural uses may be provided in rural designated areas.

Urban growth areas shall include transition areas designed to eventually have urban growth but which temporarily are zoned to lower densities and intensities of land use.

4. Shorelines Management Act.

Each county and city planning under all of the requirements of the GMA must include its shorelines master program as a shoreline element in its comprehensive plan and in development regulations implementing its comprehensive plan. The DOE reviews, and approves or rejects, the shoreline element of the comprehensive plan in the same manner as it reviews, and approves or rejects, a local shoreline master program. However, the appropriate Growth Management Hearings Board hears an appeal over the shoreline element of a comprehensive plan of a county or city planning under all of the requirements of the GMA rather than the Shorelines Hearings Board.

Appeals over the issuance or denial of a shoreline substantial development permit by a county or city planning under all of the requirements of the GMA is still made to the

Shorelines Hearings Board. The period of time to appeal a decision by the Shorelines Hearing Board on a shoreline substantial development, is reduced from 30 to 21 days. Final orders by the Shorelines Hearings Board on a shoreline substantial development permit must be made within 180 days of the date the petition for review is filed.

An appeal of the decision of the Shorelines Hearings Board is filed in superior court as provided for appeals under the Administrative Procedures Act.

5. City LID's

A city may use special assessments imposed in a local improvement district to finance connection charges, capacity charges, and acquiring rights to use property.

6. New permitting processes.

By December 31, 1996, every county and city that does not plan under all of the GMA requirements must establish an integrated process for reviewing each type of development permit that combines environmental review process with the procedure to review the permit, provides for a single open record hearing and a single closed record hearing appeal, and establishes a 21-day judicial appeal period.

By December 31, 1996, every county and city planning under all of the GMA requirements must establish an integrated and consolidated development permit process with a variety of requirements, including a consolidated permit procedure with a single review process. Except in extraordinary circumstances, if a project is not denied within 120 days after an applicant is notified that a complete application has been submitted, the project is deemed to have been approved. The 120-day period does not include time to prepare an environmental impact statement or up to a 60-day closed record appeal, unless the parties voluntarily agree to an extension.

7. Development agreements.

Counties and cities planning under all of the requirements of the GMA may enter into development agreements with owners of property that vest certain development standards for a specified development.

8. Hearing examiners.

A county or city may allow its hearings examiners to make decisions that have the effect of a final decision of the governing body on subdivisions, variances, conditional use permits, and other development permits, but not including rezones.

9. State consolidated permit procedure.

The DOE is required to establish a consolidated permit center creating a new procedure to assist business and public agencies in complying with environmental laws in an expedited fashion. By January 1, 1996, the center must establish by rule an administrative process for the designation of a consolidated permit agency for a project. The permit assistance center and its powers terminate June 30, 1999.

10. New procedure for lawsuits challenging local government land use decisions.

A new procedure is established for lawsuits challenging local government land use decisions. This new procedure is used in lieu of the writ of certiorari procedure. The new procedure applies to: (a) Applications for development permits, but not including area-wide rezones and annexations; (b) interpretations or declaratory judgements regarding the application of a particular zoning or other ordinance to a specified property; and (c) enforcement of ordinances regulating the development, maintenance, or use of real property.

11. Land use study commission.

A land use study commission is established to evaluate the effectiveness of the GMA, SEPA, Shorelines Management Act, and other land use and environmental laws. The commission consists of not more than 13 members, seven of whom are appointed by the Governor, two of whom are appointed by the Speaker of the House of Representatives, and two of whom are appointed by the President of the Senate. The director of the DCTED, or a designee, and the director of the DOE, or a designee, are nonvoting members of the commission. A final report is due no later than November 1, 1997.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Government Operations) This is a balanced approach. This is a compromise. This has resulted from a cooperative effort. This is not the end of the work, but the start. This is an integrated package of proposals. This is a delicate package.

(Appropriations) This legislation is the consensus legislation for growth management. The fiscal impact is limited entirely to the appropriations in the bill.

Testimony Against: (Government Operations) None.

(Appropriations) None.

Testified: (Government Operations) Chris Vance, King County Council; Mary Lynn Myer, Dept. of Community, Trade and Economic Development; Matt Ryan, Keith Dearborn, and Win Granlund, Kitsap County; Sylviann Frankus, League of Women Voters of Wash.; Paul Parker, Wash. State Assn. of Counties; Bob Mack, Bellevue; Davidya Kasperzyk, Wash. Council of American Architects; Chris Leman, Coalition of Wash. Communities; John Woodring, Wash. Assoc. of Realtors; Mike McCormick, 1000 Friends of Wash.; Naki Stevens, People for Puget Sound; Scott Merriman, Wash. Environmental Council; Robert Dryfus; Susie Rao, Building Industry Association of Washington; Harry Reinert, Task Force on Regulatory Reform; and Don Chance, Association of Washington Business.

(Appropriations) Representative Bill Reams, prime sponsor.