HOUSE BILL REPORT
ESHB 2279

As Passed House:
February 12, 1996

Title: An act relating to review of growth management decisions.

Brief Description: Specifying the status of challenged growth management regulations during a period of remand.

Sponsors: By House Committee on Government Operations (originally sponsored by Representatives Hargrove, Chappell, Goldsmith, Hymes, McMahan, Pelesky and Johnson).

Brief History:
Committee Activity:
Government Operations: 1/16/96, 1/31/96 [DPS].
Floor Activity:
Passed House: 2/12/96, 66-31.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Hargrove; Honeyford; Hymes; Mulliken and D. Schmidt.

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

Staff: Steve Lundin (786-7127).

Background: The Growth Management Act (GMA) was enacted in 1990 and 1991 to establish a few requirements for all counties and cities in the state and a larger number of requirements for counties and cities that plan under all GMA requirements.

Three separate Growth Management Hearings Boards (hearings boards) are established to hear appeals challenging the actions of state agencies, counties, and cities, to determine if their actions are in compliance with GMA requirements. The state is divided into three geographic areas and a separate hearings board is

established to hear appeals challenging the actions of counties and cities located within the geographic area associated with the particular hearings board. The three hearings boards are the Eastern Washington Board, the Western Washington Board, and the Central Puget Sound Board.

Among other subjects, a hearings board hears appeals of whether the actions of a county or city that are taken under the GMA are in compliance with GMA requirements. A hearings board does not review and approve the entire comprehensive plan and development regulations of a county or city. Instead, a hearings board hears only appeals that were timely filed with it challenging whether the actions of a county or city are in compliance with GMA requirements. An appeal must include a detailed statement specifically identifying the issue or issues being appealed and must be filed with the appropriate hearings board within 60 days of the date the county or city publishes notice that it has taken the action that is being appealed.

A hearings board must issue its final order on an appeal within 180 days after the appeal petition was received. The final order must find that the particular actions of the county or city that were appealed complied with the requirements of the GMA, or the SEPA as it relates to such requirements. The decision of a hearings board is appealable to Superior Court.

A strong presumption of validity exists for actions taken by a county or city under the GMA. The comprehensive plan and development regulations of a county or city are "presumed valid upon adoption." A hearings board must find compliance unless it finds by a "preponderance of the evidence" that the county or city "erroneously interpreted or applied" the GMA.

If a hearings board finds that a county or city is not in compliance with a GMA requirement specified in the appeal petition, it must remand the matter and specify a reasonable period not to exceed 180 days for the county or city to comply with the specified GMA requirement. After the specified time has expired, the hearings board holds a hearing on whether the state agency, county, or city has met the specified GMA requirement.

Legislation enacted in 1995 clarified that a finding of noncompliance and order of remand by a hearings board does not affect the validity of the comprehensive plan or development regulations during the period of remand. However, this legislation also allowed a hearings board to affect the validity of a comprehensive plan or development regulations during the period of remand if the hearings board's order

- includes a determination, supported by findings of fact and conclusions of law, that the continued validity of the comprehensive plan or development

regulations would "substantially interfere with the fulfillment" of GMA goals; and

- specifies that a particular part or parts of the plan or regulations are invalid and the reasons for their invalidity.

A determination of invalidity is prospective and does not extinguish vested rights. A development application that otherwise would vest after the determination of invalidity is subject to the revisions that the county or city adopts in response to the determination, if the revisions are determined by the hearings board to be in compliance with GMA requirements.

If the ordinance adopting the comprehensive plan or development regulations that were found to be not in compliance with GMA requirements includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the hearings board shall determine whether the prior polices or regulations are valid during the period of remand.

Summary of Bill: The authority of a hearings board to affect the validity of a comprehensive plan or development regulations during the period of remand is eliminated. All development permits vest under the comprehensive plan or development regulations that were found out of compliance until a new comprehensive plan or development regulations are adopted.

Any prior determination by a hearings board that a comprehensive plan or development regulations are invalid is null and void. This legislation is retroactive and applies to prior determinations of a hearings board.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Hearings boards are super-planners. Remove the authority of the hearings boards to handcuff local governments. The boards should be advisory. Their decision can result in moratoria.

Testimony Against: We have concerns. This allows a jurisdiction to continue bad plans. The hearings board work; they are excellent and affordable referees.

Testified: Representative Hargrove, prime sponsor; Ron Perkerewicz, Kitsap County; Mike Ryherd, American Planning Association; Scott Merriman, Washington Environmental Council; Elizabeth Schrag, Sierra Club; and Suzi Rao and Dick

Ducharme, Building Industry Association of Washington.