HOUSE BILL REPORT
SSB 6637

As Passed House - Amended:
March 1, 1996

Title: An act relating to limitations on growth management hearings board discretion.

Brief Description: Limiting growth management hearings board discretion.

Sponsors: Senate Committee on Government Operations (originally sponsored by Senators Haugen, Sheldon, Winsley, Hale, Wood and Long).

Brief History:
Committee Activity:
Government Operations: 2/21/96, 2/23/96 [DPA].
Floor Activity:
Passed House - Amended: 3/1/96, 66-30.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass as amended. Signed by 9 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, 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; 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.

The GMA includes a series of 13 goals to guide the development and adoption of comprehensive plans and development regulations that counties and cities are required to adopt. It is expressly stated that the goals are not listed in any order of priority.

Three separate Growth Management Hearings Boards (hearings boards) are established to hear appeals challenging the actions of state agencies, counties, and cities taken under the GMA, to determine if these 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.

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.

The authority of a hearings board to affect the validity of comprehensive plans and development regulations during the period of remand is eliminated. Any determination of invalidity by a hearings board made prior to this act is null, void, and of no effect.

The standard by which a board makes its decisions is altered. Instead of finding compliance with the GMA unless it finds by a preponderance of the evidence that the state agency, county, or city erroneously interpreted or applied the GMA, a hearings board must find compliance with the GMA if it finds that the interpretation or application of the GMA by the state agency, county, or city is supported by substantial evidence in the record developed by the state agency, county, or city. A

hearings board may not substitute its own interpretation of the GMA for the interpretation made by a county or city.

Summary of Bill: GMA goals are not established in any order of priority. A hearings board has no discretion to prioritize, balance, or rank these goals.

Additional evidence may not be provided at a hearings board's hearing on a matter. A hearings board's discretion is limited to issuing a decision based solely on the record and additional evidence may not be considered.

A hearings board shall find compliance unless the petitioner has demonstrated the interpretation or application of the GMA is not supported by substantial evidence when reviewed in light of the whole record before the city or county.

The authority is removed for a hearings board to affect the validity of a comprehensive plan or development regulations during remand. It is stated that as a consequence, all development permits vest under the comprehensive plan or development regulations until a new comprehensive plan or development regulations are adopted. A prior decision of a hearings board determining that a plan or regulations are invalid is null and void, and of no effect. This act has a retroactive effect.

The matters that a hearings board may hear appear to be altered. Instead of hearing petitions alleging that actions taken under the GMA or the Shorelines Management Act, or SEPA as it relates to such actions, are not in compliance with those acts, a hearings board hears petitions alleging that actions taken by a state agency, county, or city that plans under the GMA or the Shorelines Management Act, and SEPA as it relates to such actions, are not supported by substantial evidence in the record developed before the state agency, county, or city.

Standing to file a petition before a hearings board is narrowed, and a hearings board may consider only petitions filed by a state agency, county, or city that plans under the GMA, or a person, if the petitioner demonstrates that (1) it has participated in the public adoption process of the county or city regarding the matter; (2) each issue presented for review was presented by the petitioner on the record during the public adoption process; and (3) it will suffer specific and perceptible harm if the action of the county or city is not reviewed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is a step in limiting the discretion of hearings boards. Hearing board decisions have resulted in moratoria. This gives more weight to local decisions. Hearings boards have interfered with local prerogatives. I have cash flow problems due to a moratoria in Kitsap County. No one thought the invalidation power would be used very often.

Testimony Against: Keep the standard as it is, which is pretty tough. The retroactive application of the changes was ruled to be beyond the scope and object of the title in the Senate. Kitsap County and Whatcom County are still issuing building permits and the claims of moratoria are exaggerated.

Testified: Senator Mary Margaret Haugen, prime sponsor; Matt Ryan, Kitsap County; Suzi Rao and John Piazza, Building Industry Association of Washington; Mike Ryherd, American Planning Association; Scott Merriman, Washington Environmental Council; Paul Parker, Washington State Association of Counties; Steve Wells, Department of Community, Trade and Economic Development; Scott Hazelgrove, Washington Realtors Association; Ken Johnson, Association of Washington Business; and Dick Ducharme, Utility Contractors Association.