FINAL BILL REPORT
ESHB 1724

PARTIAL VETO
C 347 L 95
Synopsis as Enacted

Brief Description: Revising provisions relating to growth management.

Sponsors: 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).

House Committee on Government Operations
House Committee on Appropriations
Senate Committee on Ecology & Parks
Senate Committee on Ways & Means

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 (EIS), if proposed legislation or other major action may have a probable significant, adverse impact on the environment.

The determination whether an EIS must be prepared involves a threshold determination and use of an environmental checklist. Some matters are categorically exempted from a threshold determination. If a threshold determination indicates 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 an EIS 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. A local master program is 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.

Within the shoreline area, most development activity 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 GMA requirements 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 GMA requirements 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 GMA requirements.

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: This proposed legislation is part of the recommendations of the

Governor's Task Force on Regulatory Reform.

1. Integrated project and environmental review process.

An integrated project and environmental review process is established for counties and cities planning under all GMA requirements. Decisions on permit applications are to be based on adopted development regulations, or the comprehensive plan in the absence of development regulations. Comprehensive plans and development regulations determine the types of land use permitted, level of development allowed, and availability and adequacy of public facilities.

The environmental review of a project should not re-analyze land use decisions that have been made in the comprehensive plan and development regulations and does not require additional environmental analysis or mitigation, if the comprehensive plan and development regulations already address the project's probable specific, adverse environmental impacts. If the probable significant, adverse environmental impacts are not adequately addressed, environmental review under SEPA may occur, but only for those impacts that are not addressed in regulations. The DOE is to develop rules jointly with the Department of Community, Trade and Economic Development (DCTED) to guide counties and cities in conducting integrated project review and environmental analysis.

A county or city planning under all GMA requirements may determine that development regulations provide adequate environmental analysis and mitigation measures for some or all of a project's specific adverse environmental impacts under SEPA. In addition, a county or city planning under all GMA requirements may designate "planned actions" in urban growth areas that have had significant impacts addressed in a previous environmental analysis of a comprehensive plan that do not require a threshold determination under SEPA or the preparation of an EIS.

While reviewing permit applications, counties and cities planning under all GMA requirements are to identify deficiencies in their comprehensive plans and docket these deficiencies for future plan amendments.

2. Financing of integrated environmental analysis.

The Growth Management Planning and Environmental Review Fund is created to make grants to assist counties and cities planning under all GMA requirements in preparing SEPA environmental analyses that are integrated with comprehensive plans or subarea plans and development regulations. A county or city must be making substantial progress toward compliance with GMA to be eligible for a grant.

3. Critical areas.

In designating and protecting critical areas, counties and cities are to use the best available science. In addition, special consideration shall be given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

4. Growth management hearings board decisions.

A finding of noncompliance by a growth management hearings board, and an order of remand, does not affect the validity of regulations during the period of remand unless the board makes a specific finding of invalidity. A specific order of invalidity is prospective and does not extinguish rights vested prior to the board's order, but a development application that otherwise would vest after the date of the board's order is subject to the county's or city's subsequently adopted regulations in response to the order, if these subsequently adopted regulations are found to be in compliance with the GMA.

The procedure for determining the superior court in which an appeal from a decision of a growth management hearings board may be filed is altered to follow the provisions for appeals from contested decisions under the Administrative Procedures Act.

5. Shorelines Management Act.

Various clarifications are made to the Shorelines Management Act, including how DOE reviews local shoreline master programs and adopts new guidelines controlling local shoreline master programs.

A county or city planning under all GMA requirements must include its shoreline master program as an element in its comprehensive plan. The authority remains for DOE to review and approve or reject the shoreline master program portion of such a comprehensive plan, but appeals from such a decision are made to a growth management hearings board instead of to the shorelines hearings board. Appeals on shoreline substantial development permits still are made to the shorelines hearings board.

Appeals to the shorelines hearings board concerning a substantial development permit must be filed within 21 days of filing a notice of the action with DOE and the board shall issue a final order within 180 days of the date the petition is filed with the board. The procedure for determining the superior court in which an appeal from a decision of the shorelines hearings board on a substantial development permit or non-GMA county or city master program may be filed, is altered to follow the provisions of appeals from contested cases under the Administrative Procedures Act.

6. New permitting processes for counties and cities.

By March 31, 1996, all counties and cities must adopt procedures combining environmental review with project review and must provide for no more than one open record hearing and one closed record appeal.

By March 31, 1996, every county and city planning under all GMA requirements must establish an integrated and consolidated development permit process for all projects involving two or more permits and must provide for no more than one open record hearing and one closed record appeal. The process must include notice of the completeness of the application within 28 days of submission and a single report combining the threshold determination under SEPA with the decision on all development permits and any required mitigation. The applicant is allowed to elect to use the consolidated permitting process that covers all project permits.

A final permit decision by a county or city planning under all GMA requirements must be made within 120 days after the applicant has been notified the application is complete. The 120-day period does not include: (a) Any period during which the applicant is requested to correct plans, perform required studies, or provide additional information; (b) the period during which an EIS is prepared; (c) a period for administrative appeals of permits; and (d) a mutually agreed upon time extension. This 120-day permitting period does not apply to projects that require an amendment of the comprehensive plan or development regulations, new fully contained communities, master planned resorts, or essential public facilities. If an applicant substantially revises the proposal, the 120-day period starts again. Counties and cities are not liable for damages due to failure to make a final decision within this 120-day period. Requirements for the 120-day period expire on June 30, 1998.

The provisions of the Platting and Subdivision Act are altered to incorporate these changes in the permitting process.

DCTED provides training and technical assistance to assist counties and cities in fulfilling these changes in the permitting process.

A county or city that does not plan under all GMA requirements may incorporate some or all of the integrated and consolidated development permit process that is provided for counties and cities planning under all GMA requirements.

8. Hearings examiners.

A county or city may adopt an ordinance providing that the decisions of its hearings examiners, on matters other than rezones, have the effect of a final decision of the legislative body.

9. Development agreements.

Counties and cities planning under all GMA requirements may enter into development agreements with developers establishing development standards for a development and providing for the developer to be reimbursed over time for financing public facilities.

10. State permit coordination procedure.

The state permit assistance office is created within DOE to maintain a list and explanation of permitting laws and to provide a consolidated state permitting procedure that applicants may use at their option and expense. A consolidated permit agency is designated to act as the lead agency and permit manager for the applicant. The Environmental Coordination Procedures Act is repealed. The new consolidated permit procedure must be established by January 1, 1996, and expires on June 30, 1999.

11. Land use petition act.

A new land use petition procedure is established for court appeals of land usedecisions and laws. This new procedure is to be used in lieu of the writ of certiorariappeals procedure. An initial hearing on jurisdiction and preliminary matters is required to be held within 50 days of service on parties. The hearing on the merits must be set within 60 days of submission of the record. Provisions are made for staying the decision, paying costs of preparing the record, and supplementing the record in exceptional circumstances. The Court of Appeals or Supreme Court may award attorney's fees to a substantially prevailing party if the party substantially prevailed in all prior judicial proceedings and before the local government. A county or city is considered the prevailing party if its decision is upheld at superior court and on appeal.

12. Study commission.

A 14-member land use study commission is created to: (a) Study the effectiveness of state and local government efforts to consolidate and integrate GMA, SEPA, Shoreline Management Act, and other environmental laws; (b) identify needed revisions; and (c) draft a consolidated land use procedure. DCTED provides staff for the commission. The commission expires on June 30, 1998.

13. Null and void provision.

The act is null and void unless specific funding is provided by June 30, 1995, in the omnibus appropriations act, that references the act.

Votes on Final Passage:

House	70	28	
Senate	44	0	(Senate amended)
House			(House refused to concur)
Senate			(Senate insists)
House			(House insists)
Senate			(Senate insists)
House	94	0	(House concurred)

Effective: July 23, 1995
June 1, 1995 (Sections 801-806)

Partial Veto Summary: The sections were vetoed that amended the definition sections of the GMA and Shorelines Management Act. These sections were amended similarly in other legislation. The null and void section was vetoed.