SENATE BILL REPORT

ESHB 1724

As Reported By Senate Committee On:
Ecology & Parks, March 30, 1995
Ways & Means, April 3, 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: 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: Ecology & Parks: 3/21/95, 3/30/95 [DPA-WM].
Ways & Means: 4/3/95 [DPA].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means. Signed by Senators Fraser, Chair; C. Anderson, Vice Chair; McAuliffe, McDonald, Spanel and Swecker.

Staff: Cathy Baker (786-7708)

Background: In August 1993, Governor Lowry created the Task Force on Regulatory Reform. Among other subjects, the Task Force was asked to develop recommendations on integrating the state's environmental and growth management requirements and processes. The Task Force was also asked to recommend improvements in land use project approval, permitting, and appeal processes.

The Task Force submitted its interim report to the Legislature in December 1993. Legislation to implement the interim recommendations was introduced in the 1994 Legislature and enacted into law. After the 1994 legislative session, the Task Force created a SEPA/GMA Subcommittee to study further measures necessary to integrate the State Environmental Policy Act (SEPA), the Growth Management Act (GMA), the Shoreline Management Act (SMA), and other land use and environmental laws. The final report of the Task Force recommends extensive statutory changes in order to accomplish the integration of these laws, improve the permitting process, and streamline land use appeals.

Summary of Amended Bill: Planning and Environmental Review. It is clarified that, under the GMA, local government decisions on development permit applications are to be based on adopted development regulations, or in the absence of development regulations, on adopted comprehensive plans. Comprehensive plans are to determine the type of land use permitted at a site; the density of residential development within urban growth areas; and

system improvements that are required. If deficiencies are found in a GMA comprehensive plan during project review, the identified deficiencies are to be docketed for future plan amendments. The local government must develop a procedure by which interested parties can suggest plan amendments.

For local governments planning under GMA, review of individual development projects does not require additional environmental analysis or mitigation if the comprehensive plan or development regulations already address the project's probable, site-specific adverse environmental impacts. If the impacts are not adequately addressed in the development regulations, environmental review under SEPA may occur, but only for those impacts that are not addressed in the regulations. The Department of Ecology is directed to develop rules jointly with the Department of Community, Trade, and Economic Development (CTED) for guiding local governments in conducting integrated project review and environmental analysis.

"Planned actions" do not require a threshold determination under SEPA or the preparation of an environmental impact statement (EIS). Planned actions are defined as project actions that: are designated by ordinance; have had significant impacts addressed in a previous EIS or environmental analysis of a comprehensive plan; are located within an urban growth area; and are consistent with a comprehensive plan.

In designating critical areas under GMA, local governments are to include the best available science in developing policies and regulations to protect the functions and values of critical areas. Local governments are also to give special consideration to the protection measures necessary to preserve anadromous fisheries.

Funding for Integrated Planning and Environmental Review. A Growth Management Planning and Environmental Review Fund is created. The fund is managed by CTED and is used for making grants to local governments for integrated planning and environmental analysis. Local governments must be making substantial progress toward compliance with the GMA in order to qualify for a grant.

Shoreline Management Act. Shoreline master programs are to be included as an element of GMA comprehensive plans. The wetlands definition under the SMA is amended to conform with the wetlands definition under GMA. The Department of Ecology is to administratively approve local shoreline master programs, but is no longer required to adopt these programs by rule.

Local Government Permit Process. All local governments are required to adopt ordinances by March 31, 1996: providing procedures for combining environmental review and project review; providing for no more than one open record hearing and one closed record appeal; and requiring a uniform 21-day appeal period.

Each local government planning under GMA shall establish an integrated and consolidated development permit process for all projects which involve two or more permits. The process must include a single report which combines the agency's threshold determination under SEPA with its decision on all development permits and any required mitigation.

Local Government Permit Timelines. Local governments planning under GMA must issue a "notice of completion" within 28 days after receiving a development permit application. The notice must state whether the application is complete or that it is incomplete and specify what information is necessary to make it complete.

Local governments planning under GMA are required to issue a final permit decision within 120 days after the local government notifies the applicant that the application is complete. The following time periods shall not be included in the calculation of the 120 days: a period during which additional studies are required; any period during which an EIS is being prepared (but only if the local government has established time periods for completion of EISs); a period no longer than 60 days to decide closed record appeals. These time limits sunset in 1998.

Local governments are not liable for damages due to failure to make a final decision within these time limits. This waiver of liability sunsets in 1998.

Development Agreements. Counties and cities are authorized to enter into development and/or mitigation agreements with project applicants. Such agreements may set forth development standards (i.e., permitted uses and density, impact fees required, mitigation measures) and other provisions that will apply to the project.

State Permit Coordination. A permit assistance center is established within the Department of Ecology. The center is to provide information to the public on state and federal permits. Applicants may request, through the center, the assistance of a project facilitator to assist in determining which regulatory requirements and processes apply to a given project.

By January 1996, the center is to develop a process for designation of a consolidated permit agency that will act as the lead agency and permit manager for applicants who choose to use the consolidated process.

If a request is made by the permit applicant, the consolidated permit agency must convene a meeting with the applicant and the various participating permit agencies in order to discuss the applicable permit requirements and determine timelines that will be used by all of the agencies to make permit decisions. The consolidated permit agency may charge the applicant a fee to recover the costs incurred in carrying out its coordinating role.

The Environmental Coordination Procedures Act is repealed.

Appeals Procedures:

(1) Judicial Review of Local Land Use Decisions. A single process is established for the obtaining and conducting judicial review of land use decisions by local governments. The procedures replace the statutory writ of certiorari.

The court review procedures are specified, including the method of commencing review, the contents of the petition, time limits for filing the petition, and the method for and upon whom notice must be served. Standards for determining who has standing to bring a petition are provided. An initial hearing is required within 50 days on jurisdictional and preliminary matters. The hearing on the merits must be set within 60 days of submission of the record.

Provisions are made for requesting a stay of the decision below, for paying the costs for record preparation, and for supplementing the record made at the local level in exceptional circumstances. The standards for obtaining relief are specified. The Court of Appeals or Supreme Court may award attorneys' fees to a substantially prevailing appeal where the party both substantially prevailed in all prior judicial proceedings and before the local government.

(2) SEPA Appeals. SEPA is amended to require a single, consolidated hearing on (a) procedural issues and substantive determinations under SEPA and (b) the underlying governmental action.

(3) Growth Management Hearings Boards. The Growth Management Hearings Boards (GMHBs) may hear cases involving appeals of shoreline master programs for jurisdictions planning under GMA. For jurisdictions not planning under GMA, such appeals will continue to be filed with the SHB. Appeals of decisions by the GMHBs may be appealed to the superior court in the county where the dispute arose or in an adjacent county, rather than exclusively to Thurston County Superior Court.

A finding of noncompliance by the GMHBs does not affect the validity of local comprehensive plans or development regulations unless the board includes a determination that continued validity of the plan would interfere with fulfilling the goals of the GMA, and the board specifies the particular part of the plan or regulation that are determined to be invalid. Development applications submitted after a determination of invalidity are subject to ordinances that are enacted in response to the board's remand.

(4) Shoreline Hearings Board. With respect to appeals of shoreline permits, the Shoreline Hearings Board (SHB) must issue a decision within 180 days after a petition is filed. Appeals of SHB decisions may be appealed to the local superior court, rather than exclusively to Thurston County Superior Court.

Study. A land use study commission is created to evaluate the effectiveness of current state land use laws. Membership is specified and staff is to be provided by CTED. The commission is also to monitor the effectiveness of state and local government efforts to implement a consolidated permit process; identify revisions needed in state laws; and draft a consolidated land use procedure following certain guidelines. An annual report must be submitted to the Legislature. The commission will conclude its work in 1998.

Amended Bill Compared to Substitute Bill: The substitute bill authorizes local governments to impose environmental analysis fees on certain types of development in order to partially finance the costs of conducting integrated environmental analysis and comprehensive planning. These provisions have been removed in the striking amendment. The striking amendment also does not include provisions allowing local governments to issue bonds for the purpose of funding environmental analysis.

With respect to local government permitting timelines, the substitute bill requires that projects be deemed approved if the local government does not issue a decision on a permit within 120 days of receiving a complete application. This provision is removed from the striking amendment. The substitute bill prohibits local governments from requesting additional information from an applicant once the application has been deemed complete. This provision has also been removed from the striking amendment.

The striking amendment creates a grant program, rather than a loan program, to provide financial assistance to local governments in conducting integrated planning and analysis.

The striking amendment removes provisions in the substitute bill dealing with GMA urban growth areas, sewer and water service in GMA jurisdictions, and provisions dealing with local improvement districts. The substitute bill changed the wetlands definition in the GMA. The striking amendment retains the current wetlands definition.

With respect to judicial review of local land use decisions, the striking amendment adopts different standards for testing standing and granting relief. In the striking amendment, attorney's fees are not available to parties at the trial court level, but instead are limited to prevailing parties on appeal who also prevailed at the trial court and local government level.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Sections 801 through 806 which take effect June 1, 1995.

Testimony For: The bill was the result of many months of work by the Regulatory Reform Task Force to develop recommendations on simplifying and integrating land use and environmental procedures. It is a major step forward in regulatory reform.

Testimony Against: A number of the changes made in the substitute bill depart from the recommendations of the Task Force. The Senate striking amendment is preferable because it is truer to the Task Force recommendations that were developed by a diverse group of interested parties. The striking amendment also incorporates more technical improvements.

Testified: Representative Bill Reams, prime sponsor; Tom Goeltz, Karen Lane, Task Force on Regulatory Reform (pro); John Hempelman, Assoc. of Washington Business (pro); Dick McCann, The Boeing Company (pro); Sally Clarke, Weyerhauser (pro); Lucy Steers, 1000 Friends of Washington; Karen Verrill, League of Women Voters (con); Scott Merriman, Washington Environmental Council (con); Chris Leman, Coalition of Washington Communities (con); Mayor Tim Douglas, City of Bellingham; Faith Lumsden, City of Bellevue; Dave Williams, Assoc. of WA Cities; Paul Parker, WA Assoc. of Counties (pro); Roger Wagoner, American Planning Association (con).

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Drew, Finkbeiner, Fraser, Gaspard, Hargrove, Hochstatter, Long, McDonald, Pelz, Quigley, Roach, Snyder, Spanel, Strannigan, West, Winsley and Wojahn.

Staff: Tracy Cox (786-7437)

Ways & Means Amended Bill Compared to Substitute Bill: The appropriations to the Department of Ecology ($70,000 from General Fund-State; $90,000 from State Toxics Account; $55,000 from the Air Pollution Control Account) and fund transfers are removed. The bill is made contingent on funding in the budget.

Testimony For: None.

Testimony Against: None.

Testified: No one.