# SENATE BILL REPORT

# SB 5489

As Reported By Senate Committee On:
Ecology & Parks, March 1, 1995
Ways & Means, March 6, 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:** Senators Sheldon, A. Anderson, Fraser, Drew, Hale, Haugen, Gaspard, Spanel, Snyder, Loveland and Winsley; by request of Governor Lowry.

**Brief History:**
**Committee Activity:** Ecology & Parks: 1/31/95, 3/1/95 [DPS-WM].
Ways & Means: 3/6/95 [DPS (ECP)].

## SENATE COMMITTEE ON ECOLOGY & PARKS

**Majority Report:** That Substitute Senate Bill No. 5489 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fraser, Chair; C. Anderson, Vice Chair; McAuliffe, 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. In 1994, 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 Substitute 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. Funding is provided by a transfer of $4 million from the public works trust fund, and $2 million from the transportation fund.

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. It is to be managed by the Washington Independent Regulatory Affairs Commission (created by SB 6037). 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) Court Review of Local Government 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 local superior court, 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.

**Substitute Bill Compared to Original Bill:** Numerous technical changes are made.

The Growth Management Planning and Environmental Review Loan Fund is converted to a grant program. Additional eligibility criteria are specified; CTED is to accord a preference to those grant applications that have a local match and those which emphasize a public/private partnership.

The local funding mechanisms proposed in the original bill (environmental analysis fees, local bonding authority, and authorization to use a portion of real estate excise tax revenues) have been removed from the substitute.

Provisions requiring a 120-day time limit for processing local land use permits sunset in 1998. The waiver of local government liability for failure to meet the time limits also sunsets in 1998.

The permit assistance center is to be located within the Washington Independent Regulatory Affairs Commission, rather than within the Dept. of Ecology. Appropriations for the permit assistance center are modified.

Provisions authorizing local government entities to contract with developers for the construction of various public facilities have been removed from the substitute.

With respect to judicial review of local land use decisions, the required show cause hearing in the original bill is replaced by an initial hearing at which initial issues may be raised by motion. Changes are made in the criteria to test standing and in the standard of review by the court. The record may, upon the parties' agreement, be shortened to avoid duplication or irrelevant portions.

Minor changes are made in the composition of the land use study commission. The commission is provided additional guidance on issues to review in its first year.

**Appropriation:** The following appropriations are made to the Washington Independent Regulatory Affairs Commission: $70,000 from General Fund-State; $90,000 from State Toxics Account; $55,000 from the Air Pollution Control Account.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed, except for Sections 401 through 406 which take effect June 1, 1995.

**Testimony For:** The bill is the result of many months of work by the Regulatory Reform Task Force. It represents an agreement among diverse interests on ways in which the land use planning and permitting process can be better coordinated and streamlined. It is a major step forward in simplifying the regulatory maze and providing more certainty in land use decisions.

**Testimony Against:** The bill will result in less environmental protection. It is important to retain SEPA in its present form. The attorney's fees provisions are inherently unfair.

**Testified:** PRO: Senator Betti Sheldon, prime sponsor; Tom Goeltz, Rod Brown, Task Force on Regulatory Reform; Paul Parker, WA Assn. of Counties; Faith Lumsden, City of Bellevue; Paul Roberts, City of Everett; Dave Williams, Assn. of WA Cities; Tom Bjorgen, WA Assn. of Prosecuting Attorneys; Mike McCormick, American Planning Association; Mike Ryherd, 1000 Friends of Washington; Steve Wells, CTED; Jerry Alb, WSDOT; Scott Merriman, Washington Environmental Council; Naki Stevens, People for Puget Sound; Dee Arntz, Seattle Audubon Society; Maryanne Tagney Jones, Coalition of Washington Communities; Chris Leman, Eastlake Community Council; Glenn Hudson, Mike Spence, John Woodring, Assn. of Realtors (with concerns); NEUTRAL: Susie Rao, Building Industry Assn. of WA; CON: Jim Olmsted.

## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5489 as recommended by Committee on Ecology & Parks be substituted therefor, and the substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Fraser, Gaspard, Hargrove, Hochstatter, Long, McDonald, Moyer, Pelz, Sheldon, Snyder, Spanel, Sutherland, West, Winsley and Wojahn.

**Staff:** Tracy Cox (786-7437)

**Testimony For:** There is a critical need to integrate SEPA/GMA/SMA. Without funding, the concept will not be able to be implemented.

**Testimony Against:** None.

**Testified:** Don Chance, Association of Washington Business; Dave Williams, Washington Association of Cities; Scott Merriman, Washington Environmental Council; Paul Parker, Washington Association of Counties; Mike McCormick, Planning Consultant; Harry Reinert, Governor's Office.