
Government Reform and Land Use Committee

BILL ANALYSIS 2ESB 5185

Title of the Bill: An act relating to growth management hearings boards.

What this Bill Does: Revises jurisdiction of growth management hearings boards and eliminates authority of boards to determine GMA compliance and to issue determinations of invalidity.

Sponsors: Senators Horn, McCaslin, Long, Benton, Prince and Deccio.

Hearing Date: 2/19/98

Fiscal Note: Not requested.

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BACKGROUND:

The Growth Management Act (GMA) requires certain counties, and the cities located in those counties, to plan according to the statutory requirements. Counties and cities subject to all the GMA requirements are typically referred to counties and cities that plan under the GMA. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county and the cities located in that county plan under all of the GMA requirements.

The basic GMA planning requirements are:

- Identification and protection of all critical areas;
- Designation and conservation of natural resource lands;
- Adoption of county-wide planning policies;
- Designation of urban growth areas;
- Adoption of a comprehensive plan with certain required elements; and
- Adoption of development regulations implementing the comprehensive plan.

Counties and cities that do not plan under the GMA must identify and protect critical areas and designate (but not conserve) natural resource lands.

Three Growth Management Hearings Boards (the Boards) hear and determine petitions within their jurisdictional boundaries which address GMA compliance issues and seek adjustment of the Office of Financial Management (OFM) growth management planning population projections. Petitions for review must be filed within 60 days after publication of a GMA plan or regulation by a county or city.

A Board must generally issue a final order within 180 days of receipt of a petition for review. The time period may be extended to attempt to achieve settlement under certain conditions. The Boards may appoint hearing examiners to assist with hearings, to make findings of fact and conclusions of law and to make recommendations on cases before the Boards.

GMA comprehensive plans and development regulations are presumed valid upon adoption. The burden is on the person challenging a GMA plan or regulation to prove it is clearly erroneous. If a Board does find noncompliance, the Board remands the GMA plan or regulation to the county or city and specifies a reasonable time (generally not more than 180 days) for the county or city to come into compliance with the GMA. A finding of noncompliance does not affect the validity of plans and regulations or the vesting of permit applications.

At the end of the remand period, the Board holds a hearing to determine if the county or city has taken actions sufficient to come into compliance with the GMA. The Board may recommend that the Governor impose sanctions if it finds continued noncompliance.

A Board may invalidate all or a portion of GMA plans and regulations if it finds noncompliance and determines the plans or regulations would substantially interfere with the fulfillment of GMA goals. The determination of invalidity does not affect the vesting of development permit applications vested prior to the determination of invalidity or of certain development permits filed after the determination of invalidity.

A county or city subject to a determination of invalidity may adopt interim controls which the Board determines do not substantially interfere with GMA goals for the purposes of vesting development permit applications affected by the invalidity determination. The Board must modify or rescind the invalidity determination if it finds the county or city has amended the invalidated plan or regulations (or the invalidated portions of the plan or regulations) such that the plan or regulations no longer substantially interfere with GMA goals.

According to the Department of Community, Trade, and Economic Development, the Boards issued invalidity determinations on 18 occasions involving 14 jurisdictions through November 1997 and have rescinded invalidity determinations in many cases.

SUMMARY:

The authority of the Boards to hear and determine petitions is revised, and the authority for the Board to determine GMA compliance, to consider adjustment of OFM population projections and to issue invalidity determinations is eliminated.

The authority of hearing examiners assisting the Boards to make conclusions of law is eliminated.

The allegations Boards may consider are revised. A Board may hear and determine only those petitions alleging:

- Shoreline master programs or amendments do not comply with the GMA or with the provisions of chapters 43.21C or 90.58 RCW relating to shoreline master programs;
- A county or city planning under the GMA has not taken an action required by the GMA by the time the action is required to have been taken;
- A county or city has not addressed relevant issues in a GMA plan or regulation; or
- A comprehensive plan is not coordinated or consistent with another comprehensive plan as required by the GMA.

The Boards may not determine whether a GMA plan or regulation complies with the GMA or whether OFM population projections should be adjusted. The Boards are to issue decisions, not final orders, containing their findings related to the allegations raised in petitions filed with the Board. Appeals of Board decisions are taken directly to the court of appeals.

The Boards may not issue determinations of invalidity. The Boards are authorized to mediate and to hire mediation staff or contract for mediation services for disputes between counties and cities regarding coordination and consistency of comprehensive plans.

Petitions for review alleging that a county or city has not taken an action required by the GMA may be filed at any time. All other petitions authorized must be filed no later than 60 days after publication of a GMA plan or regulation or a shoreline master program or amendment.

Any person may file a petition alleging that a county or city has not taken an action as required by the GMA. Any person with standing under the State Environmental Policy Act, chapter 43.21C RCW, may file a petition challenging the adoption of a shoreline master program or amendment. Petitions based on the other allegations specified in statute may be filed by:

- The state;
- A county or city planning under the GMA;
- A person who participated with the county or city regarding the action being challenged;
- A person who is certified by the governor; or
- A person who qualifies for standing under the Administrative Procedure Act's standing provisions, RCW 34.05.530.

An aggrieved party may file an action for equitable relief based on a county or city's alleged failure to comply with GMA requirements or to challenge actions taken pursuant to the GMA.