

HOUSE BILL ANALYSIS

SSB 5802

Title: Attempting to integrate planning, review, and terminology among growth management, environmental and ecological protection, and other related areas.

Brief Description: Makes numerous changes to ESHB 1974 (1995) relating to integrating growth management planning and environmental review.

Sponsors: Senators Jim Horn and Bob McCaslin

Hearing Date: April 2, 1997

Background:

I. LAND USE PLANNING LAWS

A number of state laws permit or require counties and cities to establish land use regulations or control land use activities.

A. Growth Management Act.

The Growth Management Act (GMA) requires certain counties, and the cities in those counties, to adopt comprehensive plans and development regulations consistent with the plans. A county plan must include designation of urban growth areas. All other counties and cities are required to take a few actions under the GMA.

B. State Environmental Policy Act.

The State Environmental Policy Act (SEPA) requires local governments and state agencies to consider environmental impacts when making decisions. A detailed statement, or environmental impact statement (EIS), must be prepared if proposed legislation or other major action may have a probable significant, adverse impact on the environment.

C. Shoreline Management Act.

The Shoreline Management Act (SMA) requires counties and cities to adopt local shoreline master programs regulating land use activities in shoreline areas of the state. Local master programs are submitted to the Department of Ecology (DOE) for its review and rejection or approval as meeting the requirements of the SMA and guidelines adopted by the department.

A shoreline substantial development permit is required for specified construction activity, with some exceptions. Time limits are set forth for construction activity to commence following issuance of a permit.

II. INTEGRATION OF LAND USE PROCEDURES

Following the 1994 report of the Governor's Task Force on Regulatory Reform, legislation was adopted in the 1995 session (ESHB 1724) to coordinate planning and environmental review, streamline local permitting and land use appeals, and make a number of other changes in land use procedures.

A. Local Project Review.

Counties and cities planning under all GMA requirements must have in place procedures combining environmental review with project review. Land use planning choices made in comprehensive plans and development regulations serve as the foundation for project review.

The procedures must provide for no more than one open record hearing and one closed record appeal. A county or city must make a final decision on a project permit in 120 days. Some exceptions are provided and some time periods excluded from the 120-day requirement.

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

A county or city planning under all of the GMA requirements must integrate its SMA local shoreline master program into its GMA comprehensive plan and development regulations.

Lead agencies that are also project applicants may complete the SEPA process before submitting a permit application.

B. Land Use Petition Act.

ESHB 1724 established a new land use petition procedure for court appeals of land use decisions by counties and cities and incorporated towns.

III. RELATED LAWS.

A. Platting and Subdivision Act.

The Platting and Subdivision Act specifies procedures for short subdivisions and subdivisions other than short subdivisions. Generally, a local government must take action on a preliminary

plat within 90 days and on a final plat within 30 days.

B. Other Laws.

In some counties and cities, boards of adjustment hear applications for variances, conditional uses, and other land use decisions.

Community councils may be formed when an area is annexed to a city.

Summary of Bill:

Local Project Review

The Department of Community, Trade and Economic Development (DCTED) is authorized to adopt criteria by rule for local governments planning under all the GMA requirements to analyze consistency. The criteria shall be jointly developed with the Department of Ecology.

Comprehensive plans and development regulations must be in compliance with the GMA to serve as the foundation for project review.

A decision by a county or city on a proposed project's consistency with a comprehensive plan or development regulations is part of project review.

A county or city's procedure for the local legislative body to make a decision following a recommendation constitutes a closed record appeal. A public hearing to accept comments on a draft EIS does not constitute an open record hearing. A local government may not provide for a closed record appeal of a procedural determination under SEPA.

In calculating the 120-day period for a local government to make a decision on a project, the following periods are excluded: any period during which a determination of significance is on appeal before the county or city; any period when an applicant fails to post the property, if required; and the time between the date of the hearing examiner recommendation on the application and the date of a final decision by the local government, not to exceed 60 days, with respect to consideration of an application by a community municipal corporation council. The 60-day exclusion for administrative appeals of project permits only applies to final decisions. Clarifying language is added that rezones are exempt from the 120-day requirement.

Provisions for giving notice of applications to the public are modified. Notice of decisions must be given in the same manner as notice of applications.

A county or city not planning under all the requirements of the GMA may adopt any of the provisions for project review.

Development agreements are in addition to any other authority of a local government to enter into an agreement with a person having ownership or control of real property. The limitations on the authority to enter a development agreement do not limit the power of the parties to contract for financial contributions or mitigation measures.

Procedures for boards of adjustment are made consistent with the project review procedures.

Other changes are made.

Land Use Petition Act

Several changes are made to the Land Use Petition Act.

The procedures apply to community councils, as well as counties, cities, and towns.

The persons who must be made parties to a land use petition are modified. Notice and a statement of the right to intervene must be mailed to each person identified as a party. If such a party is an association, the mailing need only be made to a representative. The provisions for joinder of parties are modified.

Platting and Subdivision Act

The provisions for hearings, public notice, and time limits for approval for counties and cities planning under all the requirements of the GMA are made consistent with other procedures for local project review.

State Environmental Policy Act

The time at which determinations of non-significance can be appealed is modified for appeals of procedural determinations made by an agency on a non-project action and for lead agencies that are also project applicants.

Shoreline Management Act

Language is added to clarify that shoreline master programs in effect when ESHB 1724 was enacted into law that are integrated into the GMA comprehensive plans and development regulations remain approved by the DOE unless altered.

Notice requirements are made consistent with local project review requirements.

The time limits for substantial development permits do not include the time during which a use or activity was not actually pursued due to administrative appeals or legal actions.

Many other technical and clarifying changes are made.

Fiscal Note: Available.

Comparison of SSB 5802 with HB 1897:

Section 8: Determination of mitigation under local project review. SSB 5802 restores language in current law (stricken in HB 1897) to provide that a local government may determine that the requirements for environmental analysis and mitigation measures in development regulations provide adequate mitigation. The determination may be made under other laws, as well as SEPA.

Section 10: DCTED consistency criteria. Under SSB 5802, the criteria the DCTED is directed to adopt to analyze consistency must be adopted as rules. The criteria must be jointly developed with the DOE.

Section 13: 120-day permit decision requirement. An additional time period is excluded from the 120-day time period: with respect to any application that is subject to the authority of a community municipal corporation council, the time between the date of the hearing examiner recommendation on the application and the date of a final decision by the local government, not to exceed 60 days.

Section 33: Department of Ecology rules. SSB 5802 restores the requirement in current law (stricken in HB 1897) that the rules jointly developed by the DOE and the DCTED provide for the integration of environmental review with project review. The rules must also include revisions to assure they are compatible with ESHB 1724 (1995) and this act.

Section 34: Short subdivisions. SSB 5802 retains current law with respect to short subdivisions. HB 1897 changes the definition of short subdivision to allow a county to increase the number of lots for a short subdivision in an urban growth area to nine.

Several cross-reference changes are made.