

HOUSE BILL ANALYSIS

ESB 6094

Title: An act relating to growth management.

Brief Description: Amends and clarifies numerous provisions of the growth management act.

Sponsors: Senators McCaslin and Haugen

Background:

. *Growth Management Act*

Two categories of counties and cities are established under the Growth Management Act (GMA): those that are required to plan under all GMA requirements; and all other counties in the state. A county is required to plan under all GMA requirements if it meets one of two separate sets of population and 10-year growth criteria, or if the county legislative authority adopts a resolution placing the county under these requirements. A city follows the lead of the county in which it is located and is required to plan under all GMA requirements if the county plans under all of these requirements.

Under the GMA, each county uses a procedure that is agreed to by the cities and the county to adopt a *county-wide planning policy*. This policy establishes a "framework" from which the county and cities in the county develop and adopt *comprehensive plans*, which must be *consistent* with the county wide planning policy. The GMA requires counties to address certain issues in the comprehensive plan (land use, housing, capital facilities plan, utilities, rural element, transportation), and the GMA requires counties to protect critical areas, designate and conserve certain natural resource lands, and designate urban growth areas. Finally, each county and city adopts *development regulations* consistent with its comprehensive plan.

. *The Land Use Study Commission*

The Land Use Study Commission was created by the 1995 Legislature as part of major regulatory reform legislation. The commission examined the consolidation of state land use and environmental laws and completed a report and recommendations with respect to the GMA and related state laws.

Summary of Bill:

Section 1: Rural Intent

The Legislature recognizes the importance of agriculture, forestry, and rural lands and rural character to the state. In developing its rural element, a county should foster land use

patterns and develop a local vision of rural character that will help preserve rural-based economies and traditional rural lifestyles, foster opportunities for small-scale, rural-based employment and self-employment, be compatible with the use of the land by wildlife and for fish and wildlife habitat, will enhance the rural sense of community and quality of life, and other matters.

Further, the Legislature recognizes that there will be a variety of interpretations by counties of how best to implement their rural element, reflecting the diverse needs and local circumstances found across the state.

Section 2: Standard of Review Intent

The Legislature intends to change the standard of review that applies to the boards' review of county and city comprehensive plans and development regulations. The intent section refers to the broad range of discretion counties and cities are given under the GMA and increases the deference to local decisions by increasing the standard of review from preponderance of the evidence– to clearly erroneous.–

Section 3: Growth Management Act Definitions

New definitions pertaining to the rural element are created.

"Rural character" is defined to mean the patterns of land use and development established by a county where the following circumstances are present:

- Open space, the natural landscape, and vegetation predominate over the built environment;
- Traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- Visual landscapes that are traditionally found in rural areas and communities exist;
- Patterns of land use and development by the county are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- The county seeks to reduce conversion of undeveloped land into sprawling, low-density development;
- Extension of urban governmental services is generally not required; and
- Patterns of land use and development are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

"Rural development" is defined as development outside the urban growth area and outside lands that have been designated as agricultural, forest, or mineral resource lands. Rural development may consist of diverse uses and densities as long as they are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities in rural areas.

"Rural governmental services" means public services and public facilities typically delivered at an intensity customarily found in rural areas and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas.

In addition, the definition of urban growth– is amended to clarify the relationship with the rural element and natural resource lands and urban growth. The definition provides that a pattern of more intensive rural development is *not* urban growth.

Section 4: The Rural Element

The county must document in writing how the rural element harmonizes the planning goals of the GMA and the planning requirements in the GMA. Rural areas may provide for a variety of rural densities and uses. Generally, nonresidential rural development, other than cottage industries, shall be principally designed to serve and provide jobs for the rural population or serve existing nonresidential uses. Rural development must protect the rural character of the area by containing or controlling rural development, assuring visual compatibility with the surrounding rural area, reducing low-density sprawl, protecting critical areas, surface and ground water resources, and protecting against conflict with use of agricultural, forest, and mineral resource lands. Counties may provide for limited areas of more intensive rural development, including certain necessary public facilities and services. The county must adopt measures to minimize and contain the existing areas or uses of more intensive rural development. Dates are specified for existing areas and uses.

Section 5: Open Space Corridors

This section allows a county or city to restrict the use of open space corridors to agricultural or forest purposes if a non-profit organization acquires sufficient interest to prevent development or to control resource development of the land.

Section 6: Technical Assistance from the Department of Community, Trade and Economic Development

The Department of Community, Trade and Economic Development (DCTED) may provide technical assistance to neighborhood and community groups to facilitate the adoption of comprehensive plans. The DCTED may also provide technical assistance to counties and

cities to facilitate the evaluation and refinement of those plans.

Section 7: Public Participation Requirements

Counties and cities planning under the GMA must adopt procedures that are reasonably calculated to notify property owners and others affected by or interested in amendments to a comprehensive plan and development regulations. The procedures may include, but are not limited to, posting property, publishing notice in a newspaper of general circulation or in other publications, notifying specific groups or individuals, and sending notices to mailing lists.

A county or city that considers a change to an amendment to a comprehensive plan or development regulation must provide for public comment on the proposed change before its adoption if it has not been previously available for public comment. Additional public comment is not required if the proposed change has already been discussed, relates to a capital budget decision, enacts an interim control, or is only technical in nature.

Section 8: Amendments to Comprehensive Plans

A county or city may make more than annual amendments to its comprehensive plan if the amendment pertains to the capital facilities element and occurs simultaneously with the adoption of the county or city budget.

Section 9: Growth Management Hearings Boards Compliance with the Administrative Procedures Act

The board must comply with the Administrative Procedure Act (APA), a uniform law governing conduct by agencies, hearings boards created by those agencies (for example, the pollution control hearings board created by the Department of Ecology), and judicial review of hearings board decisions, unless the APA conflicts with a *specific* provision of the GMA.

The board is specifically directed to comply with the APA with respect to *ex parte* communications. *Ex parte* refers to actions by one party without notice to or challenge by an adverse party. The APA forbids any presiding officer from communicating, directly or indirectly, regarding any issue in the proceeding, without notice and opportunity for all parties to participate, with a list of specific exceptions.

Section 10: Official Judicial Notice

A new section enables a board to take official judicial notice of certain facts. Judicial notice is a rule of judicial convenience whereby a court or other tribunal takes note of certain facts that can be substantially verified by consulting sources of indisputable accuracy. Judicial notice provisions relieve a party or parties of the burden of producing evidence to prove

certain indisputable facts. (E.g., the sun rose at 6:58 a.m. yesterday; the temperature at noon on Sunday was 54 degrees Fahrenheit; Canada lies to the north of the United States).

A board may take official notice of any judicially cognizable facts, including adopted resolutions or ordinances of a county or city, technical or scientific facts within the board's specialized knowledge, and codes or standard that have been adopted by a federal or state agency or by a nationally recognized organization.

Section 11: Limitations on Issues the Boards May Address

The authority of the boards to render decisions is modified. The decision must be in writing and must articulate the basis for its holding on issues that have been presented to it in a petition. The board may not render advisory opinions on issues not presented to it for review.

Section 12: Direct Review to Superior Court

A new section permits a board to certify a case directly to superior court for review if all parties to the case agree in writing to direct review to superior court. The parties have up to 10 days from the time the petition is filed to file a written agreement with the board.

Section 13: Board Decisions

A board may extend the time for issuing a decision beyond the 180-day period currently provided by the GMA to allow settlement negotiations to proceed if the parties agree to the extension. The boards may allow up to 90 additional days, and the extension may be renewed. If a board determines that a plan or development regulation does not comply with the GMA, the board may establish a compliance schedule that goes beyond 180 days if the complexity of the case justifies. The board may also require periodic updates on progress towards compliance as part of the compliance order.

Aggrieved parties may appeal a board decision to the court of appeals, rather than the superior court.

Section 14: Invalidity

A new section modifies the provisions governing orders of invalidity in the following ways:

- An order of invalidity is only *prospective* in effect;
- An order of invalidity does not affect a completed application filed *prior* to receipt of a board's determination of invalidity;

- An order does not affect *vested* rights;
- An application filed after receipt of the board’s order is not affected by the order if it is for one of the following:
 - a single family residence for personal use on existing lot;
 - remodeling of an existing structure; or
 - a boundary line adjustment or division of land that does not increase the number of buildable lots.

In addition, a county or city must do specific things in order to have an order lifted. The county or city must only demonstrate that it has taken sufficient measures such that it is no longer substantially interfering– with the goals of the GMA, the same standard that leads to invalidity. In addition, a county or city is explicitly allowed to take interim actions to which applications may vest if the board approves.

Finally, a county or city may request clarification, modification, or rescission of the order. The board must expeditiously schedule a hearing on the motion. The board must issue its decision on the motion within 30 days.

Section 15: Cross-reference Corrections

Makes technical corrections with respect to expedited court review of board orders.

Section 16: Standard of Review

In reviewing the actions of a state agency, county, or city, the board must consider whether the action was clearly erroneous in light of the entire record before the board and in light of the goals and requirements of the GMA.

If a board issues an order of invalidity to county or city, the county or city has the burden of coming back and demonstrating that the ordinance or resolution it has enacted in response to that invalidity order will no longer substantially interfere– with the fulfillment of the goals of the GMA.

Section 17: Compliance Proceedings

The board may modify a compliance order and allow additional time for compliance in appropriate circumstances. The board is directed to take into account a county or city’s progress toward compliance in making its decision as to whether to recommend the imposition of sanctions by the Governor.

Section 18: Reconsideration of Invalidity Order

A county or city subject to an order of invalidity issued prior to the effective date of the bill may request the board to review its order in light of the changes to the invalidity provisions. If requested, the board must rescind or modify an order to make it consistent with these changes.

Section 19: Agricultural Zoning

A county or city may implement a variety of zoning techniques in designated rural areas. The techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Nonagricultural uses should be limited to lands with poor soil or otherwise not suitable for agricultural uses. Among the zoning techniques that may be considered are:

- agricultural zoning;
- clustering;
- large lot zoning;
- quarter/quarter zoning (one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land); and
- sliding scale zoning.

Section 20. Monitoring and Evaluation of Plans

Six western Washington counties (Snohomish, King, Pierce, Kitsap, Thurston, Clark) and their cities are required to establish a monitoring and evaluation program to determine whether the county-wide planning policies are meeting planned residential densities and uses. The evaluation must be conducted every five years. If the evaluation shows that the densities are not being met, the county and its cities must take measures designed to meet those objectives. The county may only expand the urban growth boundary after three years of taking measures if it determines that those measures have not been successful. The DCTED must provide grants and technical assistance to the counties and to cities to implement this requirement, unless funding for this purpose is not provided in the 1997-99 biennial budget (*Section 21*).

Section 22. Planning and Environmental Review Fund

The DCTED is directed to encourage participation in the grant program by other public agencies through the provision of grant funds. The DCTED must also develop the grant criteria, monitor the grant program, and select grant recipients in consultation with state agencies participating in the grant program. Grants from the planning and environmental review fund are to be provided for proposals designed to improve the project review process (environmental analysis) and that encourage the use of GMA plans to meet the requirements of other state programs.

Section 23. Current Use Taxation

The provisions governing access to the current use taxation program are modified to include land designated for long-term agriculture under the GMA or located outside an urban growth area and designated as agricultural land.

Section 24: Property Tax Assessment of Designated Agricultural Land

In valuing designated natural resource lands (agricultural, forest, or open space) for property tax purposes, a county assessor may not include comparable sales that have been converted to nonagricultural or nonopen-space uses within five years after the sale.

Section 25: Permit Assistance Center

The permit assistance center is part of the DCTED. Its responsibilities are expanded to include collecting and providing information on programs used by public agencies that use private professional expertise to assist in project review.

Section 26. Petition Annexation Requirements in Code Cities

An area contiguous to a city or town may petition for annexation (except where property is owned by a school district or is in an urban growth area) if the signatures of the owners of at least 75 percent of the property to be annexed are obtained. If the property is within an urban growth area, the petition must be signed by the owners of at least 60 percent of the value of the property to be annexed.

Section 27: Code City Island Annexations

In addition to the ability to annex islands— of unincorporated territory of less than 100 acres surrounded by the city without using the petition process, a code city planning under the GMA may also annex larger islands— under the following conditions:

- at least 80 percent of the island's boundaries were contiguous to the city prior to July 1, 1994; and
- the island contains residential property owners.

Territory bounded by a water body is considered to be contiguous for purposes of determining whether the territory is an island if the city is also bounded by the same river, lake, or other body of water.

Additionally, a code city planning under the GMA may annex larger islands in existence prior to July 1, 1994.

Section 28. Charter City Island Annexations

The annexation procedures for islands made available to code cities are also made available to charter cities planning under the GMA.

Section 29. Technical Correction

Provides authority for the legislative body of any city or town to fix date on which annexation election will be held.

Section 30. Boundary Review Board Review

A boundary review board reviewing a proposed annexation must consider GMA comprehensive plans, service agreements, and annexation agreements in reaching its decision.

Section 31. Multifamily Housing Property Tax Exemption

The program of tax incentives that allows cities with populations over 150,000 to provide a 10-year property tax exemption for multi-family housing in urban centers is expanded to allow cities with a population of at least 100,000 to be eligible. In addition, if no city has a population of at least 100,000, the largest city in a county becomes eligible for the property tax exemption.

Section 32. Appeals.

A provision of the APA is amended to be consistent with the change to have appeals heard by the court of appeals.

Section 33. Prospective Effect

The bill is prospective in effect.

Fiscal Note: Available for HB 1869.