

HOUSE BILL REPORT

HB 2891

As Reported By House Committee On:

Government Reform & Land Use

Title: An act relating to determinations of invalidity under the growth management act.

Brief Description: Removing the authority of a growth management hearings board to declare a development regulation invalid.

Sponsors: Representatives Mulliken, Cairnes, Johnson, Mielke, Thompson, Sherstad, McMorris, Bush, Talcott, Chandler, Zellinsky and D. Sommers.

Brief History:

Committee Activity:

Government Reform & Land Use: 2/2/98, 2/6/98 [DP].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Minority Report: Without recommendation. Signed by 4 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Fisher and Gardner.

Staff: Joan Elgee (786-7135).

Background: The Growth Management Act (GMA) establishes requirements for all counties in the state, and imposes additional requirements for the faster growing counties. A city follows the lead of the county in which it is located. Counties and cities subject to all the requirements of the GMA are typically referred to as counties and cities planning under the GMA. A county may also choose to plan under the GMA.

The basic GMA planning requirements are the:

- Identification and protection of **critical areas**;
- Designation and conservation of **natural resource lands**;
- Adoption of a **county-wide planning policy**;
- Designation of **urban growth areas**;

- Adoption of a **comprehensive plan**; and
- Adoption of **development regulations** implementing the comprehensive plan.

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

Three separate Growth Management Hearings Boards (boards) have authority to hear complaints that counties and cities are not in compliance with the GMA. An action of a county or city under the GMA is presumed valid and the person requesting review has the burden to prove that an action was clearly erroneous.

If a board finds that a county or city is not in compliance with the GMA, the board specifies a reasonable time for the county or city to come into compliance, generally not more than 180 days. The board holds a subsequent hearing at the end of this period and determines if the county or city has taken action sufficient to come into compliance with the GMA. If it finds continued noncompliance, the board may recommend that the Governor impose sanctions or may continue jurisdiction with no direct consequences. In addition, the Legislature in 1995 authorized a board to invalidate a part or parts of the plan or regulations if the board finds noncompliance and also determines that the plan or regulations would "substantially interfere with the fulfillment of the goals" of the GMA.

A determination of invalidity, unlike a finding of noncompliance, affects some permit applications. Permit applications completed prior to the determination are unaffected. Before the enactment of ESB 6094 in 1997, an order of invalidity applied to any permit application filed after the determination of invalidity was issued. However, ESB 6094 narrowed the effect of an invalidity determination so that it does not apply to applications for smaller types of development, including single-family residences.

The board must modify or rescind the invalidity determination if it finds that the county or city has amended the invalidated part or parts of the plan or regulation or has established interim controls such that the plan or regulation no longer substantially interferes with the fulfillment of the GMA goals.

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

Summary of Bill: The authority of Growth Management Hearings Boards to issue a determination of invalidity is eliminated. If a county or city is subject to a determination of invalidity, the board must rescind the order.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill contains an emergency clause and takes effect immediately.

Testimony For: Counties go through a long process to adopt their plans and regulations, and then they go before unelected boards with no accountability. It's demeaning and frustrating. Eliminating invalidity offers some relief. The cloud of invalidity is distracting to jurisdictions trying to comply with the GMA. It's a hardship for builders when their projects can't vest.

Testimony Against: Invalidity is the only enforcement mechanism the boards have. The boards have exercised their ability to make invalidity decisions wisely and reasonably. Look at the changes in ESB 6094 instead.

Testified: Representative Joyce Mulliken, prime sponsor (pro); Paul Parker, Washington State Association of Counties (pro); Leroy Allison, Grant County Commissioner (pro); Steve Clagett, 1,000 Friends of Washington (con); Ron Schultz, National Audubon Society (con); Jodi Walker, Building Industry Association of Washington (pro); Stan Biles, Department of Natural Resources (con); Karla Kay Fullerton, Washington Cattlemen's Association (pro); Larry Kwarsick, Island County (pro); and Pat Hamilton, Island County and Association of Counties (pro).