
Local Government Committee

HB 2077

Brief Description: Allowing for the adoption of example critical areas policies or regulations.

Sponsors: Representatives Simpson and Chase.

Brief Summary of Bill

- Allows cities and counties to satisfy Growth Management Act requirements regarding the protection of designated critical areas by adopting example critical area policies or regulations developed by specified state agencies.
- Provides designated state agencies with procedural guidelines for the development and review of example critical area policies or regulations.
- States procedural rules and regulations governing appeals to Growth Management Hearings Boards pertaining to the development or implementation of example critical area policies or regulations.

Hearing Date: 2/28/05

Staff: Thamas Osborn (786-7129).

Background:

Growth Management Act Planning Requirements.

The Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. Counties and cities meeting specific population and growth criteria are required to comply with the major requirements of the GMA. Counties not meeting these criteria may choose to plan under the GMA. Twenty-nine of 39 counties, and the cities within those 29 counties, are required or have chosen to comply with the major requirements of the GMA.

Critical Areas and Best Available Science.

In addition to other GMA requirements, all local governments must designate and protect critical areas. Critical areas are defined by statute to include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Each county and city must include the "best available science" in developing policies and development regulations to protect the functions and values of critical areas. The GMA does not define "best available science."

Growth Management Hearings Boards.

The GMA established three regional Growth Management Hearings Boards (Boards) to review compliance with statutory deadlines, and the sufficiency of plans and development regulations adopted by cities and counties pursuant to the Act. The Boards are limited to hearing only those petitions alleging that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act, and the State Environmental Policy Act.

Public participation in the GMA Process.

The statutory provisions controlling the GMA planning process contain many public notice provisions and explicitly require that GMA planning jurisdictions encourage public participation in the planning process. One of the key GMA planning goals is to ensure citizen participation. The act explicitly requires that each participating county and city "...broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans."

Summary of Bill:

Best Available Science and the Development of Critical Areas Policies and Regulations

Adoption of "Example" Critical Areas Policies and Regulations.

Cities and counties may satisfy the requirements of the GMA for protecting designated critical areas including the implementation of the "best available science" (BAS) requirement by adopting *example* critical area policies or regulations (EPRs) that meet specified criteria. An adopted set of EPRs must be one that is prepared by one of the following state agencies:

- the Department of Community, Trade, and Economic Development (CTED);
- the Department of Fish and Wildlife; or
- the Department of Ecology.

The policies or regulations developed by these state agencies must comply with specified GMA planning goals and must otherwise be consistent with GMA provisions regarding the protection of critical areas. However, the fact that a policy or regulation is developed and adopted in accordance with the EPR process does not necessarily mean that the EPR meets the BAS requirement.

Requirements for the Development of Example Critical Areas Policies and Regulations.

In preparing and approving the EPRs, the following requirements must be met by the designated state agencies:

- The public, as well as interested groups, must be given ample opportunity to become involved in the regulation development process. This opportunity for public participation must be consistent with other GMA provisions regarding public notice requirements and the encouragement of citizen involvement;
- The proposed EPRs must be subject to a peer review process involving scientists and other experts in the pertinent fields. Such peer review must include experts who are not employed by the agency;
- Following final approval by the state agency of the EPRs, the agency must comply with specified public notice requirements. Such notice must include publication of the fact that EPRs have been adopted, the date of final approval, and how a copy of the EPR can be obtained by members of the public;

- EPRs that otherwise meet the requirements of this act, but which are developed before the effective date of the act, may be implemented through the 1) reapproval of the EPR by the state agency and 2) compliance with the requisite notice requirements;
- A state agency adopting EPRs must review them at least once every seven years and, if necessary, update them in accordance with the *best available science* that has been developed since the original adoption of the EPRs. Whether or not the state agency decides to update its EPRs following the seven year review requirement, the state agency must comply with stringent public notice requirements that include publication of specified details regarding the agency decision.

Review of EPRs by the Growth Management Hearings Board

Jurisdiction of the Growth Management Hearings Board Regarding the Review of EPRs.

A Growth Management Hearings Board (GMHB) is granted authority to hear petitions alleging that EPRs approved by a state agency are not in compliance with the various development procedures and public notice requirements specified in this act. Any such petition must be filed with the GMHB that has jurisdiction over Thurston County.

Time Limitations Regarding GMHB Petitions Regarding the Adoption of EPRs.

GMHB petitions alleging noncompliance by EPRs with the requirements of this act, the State Environmental Policy Act, or the Shoreline Management Act, must be filed within 90 days after specified public notice requirements of this act have been met.

Limits on Grounds for Appeal

If EPRs are not subject to a GMHB appeal within 90 days of the notice requirements required under the act, or if an appellate decision by either the GMHB or the courts determines the EPRs to be in compliance with the requirements of this act, then the validity of an EPR may only be appealed on the ground that its adoption was not consistent with GMA public participation rules or comprehensive plan review requirements.

Appropriation: None.

Fiscal Note: Requested on February 27, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.