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## Local Government Committee

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### HB 1135

**Brief Description:** Ensuring that local government planning complies with the growth management act.

**Sponsors:** Representatives Duerr, Parshley, Berry, Fitzgibbon, Doglio, Peterson, Wylie, Berg, Davis, Lekanoff and Hill.

#### Brief Summary of Bill

- Provides that, if a local government repeals a plan or regulation that has been invalidated by the Growth Management Hearings Board (GMHB), the determination of invalidity may only be modified or rescinded if the GMHB finds that the plan or regulation that is in effect after the repeal will not substantially interfere with the goals of the Growth Management Act (GMA).
- Provides that a local government that has been found by the GMHB to be out of compliance with the requirements of the GMA may not be found to be in compliance after it repeals the noncompliant plan or regulations unless the plan or regulations that will be in effect after a repeal are themselves compliant with the requirements of the GMA.

**Hearing Date:** 1/17/25

**Staff:** Kellen Wright (786-7134).

#### **Background:**

##### The Growth Management Act.

The Growth Management Act (GMA) requires that certain counties, and the cities within those

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counties, engage in planning for future population growth. The central part of the planning process is the comprehensive plan. The Legislature has established 14 goals that should act as the basis of all comprehensive plans. Examples of goals include reducing sprawl, providing for affordable housing, and protecting property rights. The comprehensive plan must address these goals and set out the policies and standards that are meant to guide the city or county's actions and decisions in the future. These plans are required to be updated every 10 years and must contain certain elements, such as a land use element, a housing element, and a capital facilities plan. These elements must satisfy the requirements for each individual element while fitting within the overall comprehensive plan. The comprehensive plan is implemented through the adoption of development regulations.

#### The Growth Management Hearings Board.

A city or county's (local government's) comprehensive plan and development regulations can be challenged as out of compliance with GMA requirements. These challenges are generally heard before the Growth Management Hearings Board (GMHB) though they may, with the agreement of the parties, be heard directly in superior court.

The GMHB consists of five members appointed by the Governor. At least three of the members must be lawyers and two members must have been elected officials in a city or county. The members must be drawn from across the state, and no more than three members may be a part of the same political party. The GMHB is divided into regional panels to hear petitions for review. The subject matter jurisdiction of the GMHB is limited. As is most relevant here, it can hear petitions related to a local government's compliance with GMA requirements.

Only certain individuals, organizations, or entities may file petitions for review before the GMHB. One of these is the state, though a petition for review from the state or a state agency may only come directly from the Governor, from the head of an agency with the consent of the Governor, or from the Commissioner of Public Lands. In order for another person, organization, or government entity to file a petition, they must satisfy one of three criteria:

- they must have participated orally or in writing before the local government on the matter on which they are now seeking review;
- they must be certified by the Governor to bring the petition within 60 days of filing it; or
- they must have been adversely affected by the local government's action.

Petitions must be filed within 60 days of the local government publishing notice of its action. After a valid petition is received, the GMHB must set a hearing date at which the parties can present arguments. Plans and regulations are presumed to be valid, and the burden of proof is on the petitioner to show that the plan or regulations are clearly erroneous and not in compliance with the GMA. After holding the hearing, the GMHB must issue a written final order. Final orders must generally be issued within 180 days of the receipt of the petition for review.

#### Findings of Noncompliance.

If the GMHB finds that the local government is not in compliance with the requirements of the GMA, then it must remand the matter back to the local government to allow the local government a reasonable amount of time, generally not more than 180 days, to come into compliance.

If the GMHB determines that the continued validity of the noncompliant plan or regulation would substantially interfere with the goals of the GMA, then it may determine the noncompliant portions of the plan or regulation to be invalid. A finding of invalidity is prospective, and does not disallow completed development project permit applications that were completed under the invalid plan or regulation. With some limited exceptions, an application that was not completed prior to the GMHB determining that a plan or regulation is invalid must instead be evaluated under a plan or regulation that the GMHB finds will not substantially interfere with the goals of the GMA. A noncompliant plan or regulation that is not determined to be invalid remains in effect after the matter has been remanded back to the local government.

If a plan or regulation is found invalid, then the local government may adopt interim controls to be in place until a compliant plan or regulation is adopted. If a plan or regulation is amended or if interim controls are adopted, then the GMHB must modify or rescind the finding of invalidity if the amended plan, regulations, or adopted interim controls will no longer substantially interfere with fulfilling the goals of the GMA. Once a finding of invalidity has been made, the local government has the burden of demonstrating that a new or changed plan or regulation will no longer substantially interfere with the goals of the GMA. A plan or regulation may contain a savings clause that automatically revives a prior plan or regulation if the new plan or regulation is found invalid. If a plan or regulation does contain such a clause, then the GMHB must determine if those revived policies and regulations are valid during the period of remand.

Once the time for a local government to come into compliance has elapsed, or upon the motion of a local government subject to a finding of invalidity, the GMHB must hold a hearing to determine if the local government is now in compliance. If the local government is found to still be noncompliant, the GMHB must determine whether to schedule additional compliance hearings or to recommend sanctions. If additional hearings are scheduled, the GMHB may also refer the matter to the Department of Commerce to provide the local government with technical assistance and training to facilitate resolution of the noncompliance. Alternatively, the GMHB may recommend to the Governor that sanctions be imposed on the local government. Sanctions can include the revision of appropriation allotment levels for the local government, or the withholding of revenues from the local government from one or more of the motor vehicle fuel tax, the Transportation Improvement Account, the Rural Arterial Trust Account, local government sales and use taxes, the liquor excise tax, the liquor profit tax, or from a local government real estate excise tax that would otherwise be due to the local government.

In addition to sanctions that may be directly imposed by the Governor, eligibility for various sources of local government funding, such as the Department of Ecology's Water Quality Combined Funding Program, are conditioned on being in compliance with the GMA.

**Summary of Bill:**

When a local government's plan or regulation has been found to be noncompliant and invalid, and the local government has repealed the plan or regulation, the finding of invalidity may only be rescinded or modified if the GMHB determines that the plan or regulation in place after the repeal will not substantially interfere with the fulfillment of the goals of the GMA.

The GMHB may only find a local government that has repealed an invalid plan or regulation in compliance if the plan or regulation that will be in effect after the repeal is compliant with the requirements of the GMA.

**Appropriation:** None.

**Fiscal Note:** Available.

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