

HOUSE BILL REPORT

HB 1639

As Reported by House Committee On:
Local Government

Title: An act relating to considering water quality when preparing and reviewing growth management plans and regulations.

Brief Description: Requiring consideration of water quality during growth management planning.

Sponsors: Representatives Upthegrove, Dickerson, Moeller, Dunshee, Sells, B. Sullivan, Simpson, Lantz, Williams, O'Brien, Hunt and Chase.

Brief History:

Committee Activity:

Local Government: 2/15/05, 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Specifies new water-related planning requirements for qualifying counties and cities.
- Requires qualifying jurisdictions to implement the new requirements according to the comprehensive plan and development regulation review and revision schedule of the Growth Management Act.
- Includes legislative intent language.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Simpson, Chair; Clibborn, Vice Chair; B. Sullivan and Takko.

Minority Report: Do not pass. Signed by 3 members: Representatives Schindler, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Woods.

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act

Enacted in 1990 and 1991, the Growth Management Act (GMA) establishes a comprehensive land use planning framework for county and city governments in Washington. The GMA specifies numerous provisions for jurisdictions fully planning under the Act (GMA jurisdictions) and establishes a reduced number of compliance requirements for all local governments.

The GMA requires all local governments to 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.

The GMA jurisdictions must adopt internally consistent comprehensive land use plans (comprehensive plans), which are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must satisfy requirements for specified "elements," each of which is a planning subset of a comprehensive plan. The *land use* and *rural* elements include requirements for the protection of certain ground and surface waters. The GMA jurisdictions also must adopt development regulations that are consistent with and implement the comprehensive plan.

The adopted comprehensive plans and the corresponding development regulations must be consistent with 14 planning goals established in the GMA. The planning goals, which are listed in a non-prioritized order, must be used for the purpose of guiding the development of comprehensive plans and development regulations. The goals include provisions for protecting the environment, including water quality and the availability of water.

Comprehensive plans and development regulations are subject to continuing review and evaluation by the adopting county or city. The GMA jurisdictions must review and, if needed, revise their comprehensive plans and development regulations according to a cyclical seven-year statutory schedule. Jurisdictions that are not fully planning under the GMA must satisfy requirements pertaining to critical areas and natural resource lands according to this same schedule.

In addition to other planning requirements, counties that comply with the major requirements of the GMA must designate urban growth areas or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. "Urban growth," as described in the GMA, refers, in part, to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for certain agricultural, mineral, and resources uses.

Three regional Growth Management Hearings Boards (Boards) are established in the GMA. The quasi-judicial bodies are charged, in part, with hearing petitions alleging noncompliance with the GMA.

Summary of Substitute Bill:

Counties whose territory includes Hood Canal, Puget Sound, the Strait of Juan de Fuca, or the Pacific Ocean and the cities and towns within those counties (qualifying saltwater jurisdictions) must satisfy new water-related planning requirements. Qualifying saltwater jurisdictions must consider land use measures to maintain and, when required, enhance water quality and habitat as recommended by public agency plans or programs.

When designating and protecting critical areas according to the GMA, qualifying saltwater jurisdictions must consider measures to maintain, and when required, enhance water quality at a level allowing water bodies to support fish and wildlife conservation areas, wetlands, and any aquifers used for potable water to which the surface water body contributes.

Qualifying saltwater jurisdictions may not designate in a comprehensive plan urban growth areas on marine shorelines that are not already occupied by urban growth unless the designation is necessary for water-dependent or water-related uses.

Qualifying saltwater jurisdictions must implement the new water-related planning requirements according to the seven-year review and revision schedule of the GMA.

Nothing in the provisions prescribing the new water-related planning requirements are intended to affect the requirements or provisions of specified state and federal water laws. Additionally, nothing within the provisions prescribing these new requirements may create a new cause of action before growth management hearings boards for plans or programs not adopted under the GMA.

Legislative intent language is included.

Substitute Bill Compared to Original Bill:

The water quality planning provisions are revised. Qualifying saltwater jurisdictions must consider land use measures to maintain and, when required, enhance water quality habitat as recommended by public agency plans or programs. Language specifying that measures to maintain or improve water quality and habitat may include provisions of plans adopted according to delineated state laws is removed. Provisions applicable to qualifying saltwater jurisdictions pertaining to hydrologic functions are removed. A provision requiring qualifying saltwater jurisdictions to consider measures to maintain water quality at a level allowing water bodies to support desirable and feasible existing and future uses is removed. Qualifying saltwater jurisdictions must, when designating and protecting critical areas, consider measures to maintain and, when required, enhance water quality at a level allowing water bodies to support certain areas to which the surface water body contributes. Nothing in the bill may create a new cause of action before a Growth Management Hearings Board for any plans or programs not adopted under the GMA. Makes technical changes. Modifies intent language.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support of original bill) The objective of this bill is to improve water quality in the state through planning requirements in the GMA. Water protection requires responsible land use management. This bill will help ensure the responsible stewardship of our state's waters. Healthy water is a value worth protecting and clean water is also an economic asset.

Saving Hood Canal and Puget Sound are top legislative priorities for the environmental community in 2005. This bill will address environmental and land use issues that are leading to a decline in water quality. This bill is part of a package of bills and is designed to ensure that local governments consider other programs that affect water quality when developing land use management plans. The package of legislation is tied together through an emphasis on conserving vegetation and forest lands, as this is critical to recovering water bodies and restoring water quality. Storm water runoff is the primary source of pollution to Puget Sound. This issue cannot be effectively addressed through retention ponds as these ponds do not address issues of vegetation. This bill needs to be clarified, but it should be supported as a modest step forward.

Many of the problems facing Hood Canal exist in other parts of the state. Washington's population growth further illustrates the need for appropriate and timely water quality planning. The legislative package is endorsed by many elected officials. Support exists for amending the bill to clarify that it is not intended to affect a previously agreed upon shoreline settlement. This bill does not conflict with the Shoreline Management Act, but rather it clarifies and amplifies existing water quality protection requirements of the GMA.

(With concerns on original bill) The objectives of the bill are laudable, but concerns exist about the provisions of the bill. Regulatory requirements pertaining to hydrologic functions are already included in the shoreline rules of the Department of Ecology. This bill could appear to mandate parallel planning and regulatory requirements and could result in a blurring or duplication of efforts. Significant details of the bill need to be modified.

Testimony Against: (Original bill) This bill will require local governments to consider numerous statutes with existing regulatory requirements and mechanisms and may result in an increased potential for litigation. This bill would establish unreasonable requirements for local governments. Concerns exist about requirements in the bill, including those pertaining to urban growth areas on marine shorelines. The bill is unclear and does not provide implementation directives to cities. The bill will not stop urban development on shorelines. Elected officials support the concept of the legislative package, not the legislation. This bill could be perceived as an approach to bring additional jurisdictions into compliance with the GMA.

Persons Testifying: (In support of original bill) Representative Uptegrove, prime sponsor; Josh Baldi, Washington Environmental Council; Bruce Wishart, People for Puget Sound;

Genesee Adkins and Tim Trohimovich, Futurewise; Beth Dolio; Tom Holtz; and Bryan Flint, Tahoma Audubon.

(With concerns on original bill) Paul Parker, Washington State Association of Counties; and Tom Clingman, Department of Ecology.

(Opposed to original bill) Kristen Sawin, Association of Washington Business; Andy Cook, Building Industry Association of Washington; and Dave Williams, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.