

# SENATE BILL REPORT

## SB 5012

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As of January 17, 2011

**Title:** An act relating to the standard of review utilized by the growth management hearings board when hearing appeals under the growth management act.

**Brief Description:** Revising the standard of review utilized by the growth management hearings board when hearing appeals under the growth management act.

**Sponsors:** Senators White and Kline.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/17/11.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Karen Epps (786-7424)

**Background:** The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA (planning jurisdictions), and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, are planning jurisdictions.

The GMA establishes the Growth Management Hearings Board (GMHB) which must consist of seven members qualified by experience or training in land use law or planning, and have experience in the practical application of those matters. The members must be appointed by the Governor to six-year terms, with six members from three specified regions of the state: two members each from (1) the Central Puget Sound area, (2) Eastern Washington, and (3) Western Washington. A seventh member must be appointed as an at-large member. At least three members of the GMHB, one from each region, must be admitted to practice law in the state. Additionally, at least three members of the GMHB, one from each region, must have been a county or city elected official.

GMHBs have limited jurisdiction and may only hear and determine petitions alleging:

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- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

The GMHB must give deference to local decisions. The standard of review that applies to board review is a clearly erroneous standard, such that a board cannot overturn a local decision unless the local decision was clearly erroneous. GMHB must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more GMHB members and upon being filed at the applicable board office. Final decisions of the GMHB may be appealed to the superior court. If all parties agree, the superior court may directly review a petition filed with a board.

**Summary of Bill:** GMHB must defer to a local decision unless the board determines that the local government has erroneously construed the law or concludes, after reviewing the evidence, that the weight of the evidence does not support the local decision. Additionally, reviewing courts must accord appropriate deference to GMHB expertise.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is designed to clarify the Legislature's intent regarding the standard of review utilized by the GMHB when hearing appeals under GMA. Courts have interpreted the intent section in a manner that diminishes the importance of facts in the record, and undermines the role of the GMHB in weighing the facts when an action is challenged. While the Legislature intended to change the standard of deference, some courts have used the intent section as a way to ignore the facts. This keeps the level of deference, but adds this new level in which courts also look at the facts when hearing decisions.

CON: This will cost local governments more money. This will result in more appeals. It is very hard to conduct planning when every move that a local government makes has to be defended in court. There is some certainty in the clearly erroneous standard. This is a bad bill for local governments. This tilts the standard too much in favor of the GMHB at the expense of local decision-making. This bill would allow the GMHB to supplant the decision of the local government. Local governments have the duty to balance the equal and competing goals of the GMA to consider the impact on the local economy and best available, scientific practices and they can depart from that in order to meet the goals in GMA and satisfy local concerns. This bill transfers the deference from the local government to the GMHB.

OTHER: The statute that is being amended in this bill works in concert with RCW 36.70A.320, which is the main statute that sets up the standard of review. RCW 36.70A.320 talks about a clearly erroneous standard. This bill incorporates a new term, erroneously construed, so it seems to add a new standard of review. It also adds an additional apparent standard of review, weight of the evidence, but it is unclear what that standard of review is. Anything that takes deference or power from a local government and gives more power to the GMHB is of concern.

**Persons Testifying:** PRO: Michael Shaw, American Planning Association; April Putney, Futurewise.

CON: Josh Weiss, Washington Association of Counties; Jerry Smedes, City of La Center; Dan Wood, Washington Farm Bureau.

OTHER: Chris McCabe, Association of Washington Business.