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## Local Government Committee

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### BILL ANALYSIS HB 2847

**TITLE OF THE BILL:** Providing sanctions when a local government fails to issue a final decision on a project permit application within the applicable time period.

**Brief Summary:**

- Authorizes project applicants to file a peremptory writ of mandamus action based on a local government's failure to issue a final permit decision within 120 days after a project permit application is deemed complete.
- Specifies the superior court has jurisdiction for all decisions regarding the project permit application when the mandamus action is filed and requires the superior court to issue the peremptory writ (which may include conditions of permit approval) unless the local government can demonstrate approval would violate a substantive provision of its comprehensive plan or land use regulations.
- Prohibits the local government from requiring a permit applicant to waive the 120-day period or the right to seek the peremptory writ as a condition for taking action on the permit application unless the application is filed concurrently with a comprehensive plan amendment.
- Repeals the June 30, 2000, expiration of the 120-day time permit requirement and the local government liability waiver provisions.

**SPONSORS:** Representatives Mulliken and Edwards.

**HEARING DATE:** Monday, January 31, 2000.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.

**FISCAL NOTE:** Requested on January 21, 2000.

**ANALYSIS PREPARED BY:** Caroleen Dineen (786-7156).

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## **BACKGROUND:**

In 1995, regulatory reform legislation was enacted (*see* ESHB 1724, enacted as chapter 347, Laws of 1995) requiring every county and city planning under RCW 36.70A.040 (GMA jurisdictions) to establish an integrated and consolidated development permit process for projects involving two or more permits and to provide for no more than one open record hearing and one closed record appeal. Among other changes, the 1995 legislation required GMA jurisdictions to issue a final permit decision within 120 days after the applicant is notified the application is complete. This 120-day permit requirement does not include:

- any period during which the applicant is requested to correct plans, perform required studies, or provide additional information;
- the period during which an environmental impact statement is prepared;
- any period for administrative appeals of permits, not to exceed ninety days for an open record appeal and sixty days for a closed record appeal; and
- a mutually agreed upon time extension.

The 1995 legislation also specified counties and cities are not liable for damages due to failure to make a final decision within this 120-day permit period.

The 120-day permit requirement does not apply to projects requiring an amendment of the comprehensive plan or development regulations, new fully contained communities, master planned resorts, or essential public facilities. If an applicant substantially revises the proposal, the 120-day permit period starts again.

The 120-day permit requirement and local government liability waiver enacted in the 1995 legislation were originally scheduled to expire on June 30, 1998. The 1995 legislation, however, directed the Land Use Study Commission to study the 120-day time line and report to the Legislature. 1998 legislation incorporating various Land Use Study Commission Recommendations (*see* ESHB 2830, enacted as chapter 286, Laws of 1998) extended the 120-day permit requirement and the local government liability waiver provisions until June 30, 2000.

A writ of mandamus is a directive from a court requiring the performance of a particular act.

## **SUMMARY:**

The expiration of both the 120-day permit requirement provision and the local government liability waiver provisions are repealed.

A permit applicant may file a peremptory writ of mandamus action in superior court if the local government fails to take final action on the project permit application within 120 days after the application is deemed complete. These actions are not authorized when any of the statutory bases for extension of the 120-day period applies to the application.

The applicant may choose to proceed with the application according to the applicable provisions of the comprehensive plan and land use regulations or to file a petition for a peremptory writ of mandamus.

The mandamus action may seek to compel the local government to issue an approval for the project permit application. Unless a project permit application is filed concurrently with a comprehensive plan amendment, a local government may not compel an applicant to waive the 120-day permit requirement or the right to file a mandamus action as a condition for taking action on a project permit application.

The person filing the action must give notice to all persons entitled to notice under the local project

review statutes (RCW 36.70B.110) and any person who participated orally or in writing in the local evidentiary hearing on the project permit application. Notice must be mailed or hand delivered on the same day the writ of mandamus petition is filed.

The superior court has jurisdiction for all decisions regarding the project permit application, including settlement, when the mandamus action is filed. The superior court must issue the peremptory writ of mandamus unless the local government shows that the approval would violate a substantive provision of its comprehensive plan or land use regulations. The peremptory writ of mandamus may specify conditions of permit approval that would otherwise be allowed by the comprehensive plan or land use regulations.