
Local Government Committee

HB 2234

Brief Description: Addressing vesting under comprehensive plans or development regulations determined to be invalid by the growth management hearings board.

Sponsors: Representatives Fitzgibbon and Pollet.

Brief Summary of Bill

- Modifies provisions in the Growth Management Act to provide that, with certain exceptions, permit applications or permits based on an invalidated part or parts of a comprehensive plan or development regulation are void and do not confer vested rights.

Hearing Date: 1/29/14

Staff: Michaela Murdock (786-7289).

Background:

Growth Management Act - Introduction.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally-adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

GMA - Enforcement Provisions.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Growth Management Hearings Board (Board) established in the GMA is charged with hearing and determining petitions alleging noncompliance by state agencies, counties, or cities with the GMA and related statutory provisions. The Board must make findings of fact and prepare a written decision. Final decisions and orders of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

In issuing final decisions and orders, the Board must find the state agency, county, or city identified in the petition to be either in compliance or not in compliance with the GMA and any related and applicable statutory provisions. If the agency or local government is found to be not in compliance, the Board must generally remand the matter to the agency or local government for 180 days, within which time it must comply with applicable requirements. If, following a hearing to determine whether the agency or local government has satisfied the requirements of the remand, the Board may find that the agency, county, or city is in compliance or that it remains not in compliance. The Board may also issue a determination of invalidity for all or part of a comprehensive plan or development regulation that it determines is invalid.

The Vested Rights Doctrine.

Vested rights in the context of land use law refers to the right of a property owner to use his or her property in accordance with the laws and regulations governing the division, use, or development of real property in effect on a date certain. Washington's "vested rights doctrine," which was developed by courts under the common law, is applicable if a permit application is sufficiently complete, complies with existing ordinances and codes, and is filed at a time when the ordinance or regulation the applicant seeks to develop under is in effect. If requirements are met, the application must be processed according to the laws in effect at the time of the application, regardless of subsequent changes in the law.

The Legislature has codified the vested rights doctrine, in various forms, as it pertains to land use, property development, and construction permitting. For example, the State Building Code Act requires that a valid and fully complete building permit application for a structure, which is permitted under applicable zoning or other land use control ordinances, be considered under the ordinances in effect at the time of the application. Similarly, a proposed division of land must be considered under the subdivision or short subdivision ordinances in effect at the time a fully completed application for preliminary approval is submitted.

Vesting Under the GMA.

Under the GMA, unless the Board makes a determination of invalidity, a finding of noncompliance and an order of remand does not affect the validity of comprehensive plans and development regulations during the period of remand. Not only are rights that vested prior to a finding not affected, but also rights may continue to vest in plans and regulations subject to a finding of noncompliance, unless or until they are amended or repealed by a county or city.

For determinations of invalidity issued by the Board, the effect on vested rights is prospective. The Board's determination does not extinguish rights that vested prior to receipt of the board's order; however, after the date of receipt, rights can no longer vest to the invalidated plans or regulations. Also, for a development permit application that did not vest before receipt of the

Board's order, the application may still vest to local ordinances or resolutions determined by the Board not to substantially interfere with the fulfillment of the goals of the GMA.

A determination of invalidity does not apply to, and does not prevent vesting of rights, for the following: (1) a completed development permit application, or related construction permit, for a project that vested under state or local law before receipt of the board's order; and (2) a development permit application for:

- permits for construction of certain single-family residences on a lot existing before receipt of the Board's order, except as otherwise required to protect public health and safety;
- permits for remodeling, tenant improvements, or expansion of an existing structure on lots existing before receipt of the Board's order; and
- boundary line adjustments or division of lands that do not increase the number of buildable lots existing before receipt of the Board's order.

Summary of Bill:

Determinations of invalidity issued by the Board are no longer only prospective in effect. When a determination of invalidity has been issued, the vesting of development rights is affected in the following ways:

- rights do not vest in the part or parts of a plan or regulation determined to be invalid by the Board; and
- a permit application or permit submitted or issued under the invalidated plan or regulation prior to the Board's determination is void and confers no vested rights.

A provision that authorized a development permit application that did not vest before receipt of the Board's order to vest to the local ordinance or resolution determined not to substantially interfere with the fulfillment of the goals of the GMA is eliminated.

Appropriation: None.

Fiscal Note: Not requested.

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