

HOUSE BILL REPORT

HB 2245

As Reported by House Committee On:
Local Government

Title: An act relating to vesting in urban growth areas with recently added territory.

Brief Description: Addressing vesting in urban growth areas with recently added territory.

Sponsors: Representatives Ormsby, Riccelli, Ryu and Pollet.

Brief History:

Committee Activity:

Local Government: 1/29/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Authorizes a petition to stay or suspend vesting under a comprehensive plan, development regulation, or amendment to a plan or regulation, to be filed in superior court when a petition for review meeting specified criteria is submitted to the Growth Management Hearings Board (Board).
- Establishes eligibility criteria for filing a petition to stay or suspend vesting (i.e., the petition must allege that the challenged measure adds territory to a UGA and that it is not in compliance with the goals and requirements of the GMA, or other applicable statute).
- Establishes criteria that the court must find in order to grant a petition to stay or suspend vesting.
- Limits the length of time that vesting may be stayed or suspended by a court.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Takko, Chair; Gregerson, Vice Chair; Farrell, Fitzgibbon and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Overstreet, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Pike and Taylor.

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.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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.

Urban Growth Areas.

Counties that fully plan under the GMA must designate urban growth areas (UGAs) areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Fully planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Growth Management Act - Enforcement Provisions.

The GMA includes enforcement and penalty provisions for public entities. The 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. Petitions relating to whether an adopted comprehensive plan, development regulation, or amendment to a plan or regulation complies with the GMA must be filed with the Board within 60 days after an adopted measure is published.

The Board must make findings of fact and, in general, prepare its final order within 180 days of receipt of a petition for review. The Board may extend the period of time for issuing a final order for up to 90 days per extension to achieve a settlement of the dispute. 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. 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 Growth Management Act.

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 a period of remand. Rights that vest prior to a finding of noncompliance are not affected, and rights may continue to vest under comprehensive plans and development 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 by a city or county; however, after the date of receipt, rights can no longer vest to the invalidated plans or regulations.

A determination of invalidity does not apply to, and does not prevent vesting of rights, for certain permits, including for example, a completed development permit application or related construction permits for a project that vested under state or local law before receipt of the Board's order.

Summary of Substitute Bill:

When territory is added to a UGA, a petition for a stay or suspension of vesting may be filed in superior court. Petitioners who submit certain petitions for review to the Board may petition superior court for a stay or suspension of vesting under challenged regulations or plans to be effective during pendency of the Board's review.

A petition for review must meet specified criteria before a petition to stay or suspend vesting may be filed with superior court. The petition for review must allege that the measure being challenged (i.e., a comprehensive plan, development regulation, or amendment to a comprehensive plan or development regulation) adds territory to a UGA and is not in compliance with the GMA, or other applicable statute.

To grant a petition to stay or suspend vesting, a court must find that:

- the petitioner is likely to prevail on the merits;
- without the stay the petitioner will suffer irreparable harm;
- the stay will not substantially harm other parties to the proceedings; and
- the request for the stay is timely.

The court may grant the stay on such terms and conditions as are necessary to prevent harm to other parties. Also, any stay or suspension of vesting granted by the court may not exceed the latest of two dates: (1) the date when the Board issues a final order finding the challenged measure to be in compliance; or (2) if the Board finds the challenged measure to be not in compliance, the date when the Board, upon subsequent review, finds that the jurisdiction is in compliance.

Substitute Bill Compared to Original Bill:

The substitute bill removes all provisions of the original bill, and creates a new section in the GMA, Chapter 36.70A RCW.

Under the original bill, vesting of certain development rights is delayed when territory is added to a UGA. The delay of vesting lasts: (1) until 60 days after adoption of a comprehensive plan, development regulation, or amendment that added territory to a UGA by modifying its boundaries; or (2) until resolution of any petition for review to the Board challenging the adopted comprehensive plan, development regulation, or amendment.

In contrast, the substitute bill authorizes certain parties to petition the superior court for a stay or suspension of vesting when territory is added to a UGA. When certain petitions for review are submitted to the Board, parties may request a stay or suspension of vesting under the challenged regulations or plans to be effective during pendency of the Board's review. The substitute bill specifies criteria a petition for review must meet in order for a party to be able to seek a stay or suspension in superior court, as well as sets out what a court must find in order to grant a petition to stay or suspend vesting.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Developers and property owners should not be allowed to vest in areas added to an urban growth area (UGA) when the UGA expansion was not justified or in compliance with the law. Under current law, rights may vest in the time between when territory is added to a UGA by expanding its boundaries and when that action is found to be invalid or unjustified by the Board. As a result, development projects are able to vest outside of valid UGAs. This is a vesting loophole that needs to be removed from the law.

Certainty and vesting in land use law is important; however, property owners should not be able to benefit from an illegal law. Allowing this to occur is unfair to other property owners and communities.

For developments that vest in areas outside of a UGA, property owners in those areas do not have the certainty of receiving basic essential facilities and governmental services. Also, extending services outside of the UGA to these areas creates greater costs for communities. We have limited resources to pay for basic government facilities, and we need to be wiser about how we spend them. At times there may be a greater cost in allowing a development project to move forward under an invalid or inconsistent measure, than to delay vesting of that project. Development should be occurring, but in the right areas. The purpose of the GMA was to direct growth and development into the UGAs where services can be more efficiently provided. Redirecting services into the fringe draws development away from urban areas and hurts our cities.

The GMA provides a process for citizens to appeal the decisions and actions of local governments, and thereby recognizes that local governments sometimes make mistakes. Most local government officials are trying to do the right thing, but land use law is complicated and sometimes mistakes occur. When this happens, anomalies should not be allowed to move forward.

Property owners should have a remedy that means something. Under current law, vesting renders the Board review process useless. If projects are allowed to vest to invalid or inconsistent plans or regulations, the Board's determination essentially has no effect on the ultimate outcome. Projects are allowed to move forward anyway, and citizens' time and money spent appealing local jurisdictions' actions are wasted.

The type of vesting changed by this bill is very specific; it only concerns vesting in areas where a UGA has been expanded. Property owners affected by a UGA expansion generally have had their land changed to a more intense use. In delaying vesting, these property owners simply maintain the designation they had before the UGA expansion. This bill only delays vesting during pendency of a Board review, not during court appeals. Waiting 180 days for a project to vest is not an undue burden, particularly when the impacts of allowing a project to go forward could be significant.

There are counties that have abused vesting and the GMA process in modifying their UGAs. For example, Spokane has expanded its UGA twice despite significant opposition. Although appeals were successful, vesting occurred in areas prone to landslides and stormwater run-off and where levels of government services are inadequate.

(With concerns) Vesting is an issue of deep concern. There have been several instances of projects in the state that have been permitted and approved in areas where UGA expansions occurred, but were later determined to be invalid. When this happens, urban development occurs in rural areas and creates problems. Although there are good things about the bill, there are elements that could be tweaked to better address issues of concern (e.g., the retroactive impact of a Board determination and the effect its on development permit applicants.)

(Opposed) Washington has some of the most protected vested rights in the country. The vested rights doctrine is a longstanding doctrine that should not be set aside lightly for any purpose. Vesting is important in the building industry, because it provides certainty and helps projects move forward. Land use policies fluctuate and change over time, and for land use developments that take time to move forward, knowing which laws will govern a project is of great concern. We need to be able to move development forward in this state, and this bill will hinder that.

The work of implementing the GMA is intense and complicated for counties. Jurisdictions already act carefully and try to anticipate challenges and appeals when adopting plans and regulations. The adoption of a comprehensive plan or development regulation is the culmination of a substantial, expensive, multi-year public process. This bill will add even more time and delay to that process. While there may be a few bad apples, most counties act with due diligence. Cities and counties are given the presumption of validity under the GMA. This bill erodes that presumption.

As the bill is drafted, it is unclear whether the delay of vesting can extend to subsequent, multi-year appeals to the courts. If so, property owners could be in limbo for an extended period of time. Also, this bill will impact citizens on a direct, personal level by extending and delaying the application process for land use developments.

In looking at vesting, we need to look at how vesting, appeals, and standing all work together. Although this is an issue that needs to be addressed, it needs a broader look than this bill gives it. We need to understand how changing vesting will affect counties across the state.

While there may have been some bad actors in the case of the Spokane UGA expansion, as a matter of statewide policy, the existing system works well in most jurisdictions. A statewide solution to the problem is not necessary. Also, we have a system that works for this state and we do not need to import ideas from other states.

The Legislature can direct the Department of Commerce to fine-tune rules or educate local governments on tools that are already in place.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; Hilary Franz, Futurewise; Dennis Dellwo and Rick Eichstaedt, Center for Justice.

(With concerns) Jeff Wilson, Department of Commerce.

(Opposed) Art Castle, Building Industry Association of Washington; Laura Merrill, Washington State Association of Counties; Heather Burgiss, Association of Washington Business; and Jeanette McKague, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.