

SENATE BILL REPORT

ESHB 2023

As of March 27, 2017

Title: An act relating to the effective date of certain actions taken under the growth management act.

Brief Description: Addressing the effective date of certain actions taken under the growth management act.

Sponsors: House Committee on Environment (originally sponsored by Representative Fitzgibbon).

Brief History: Passed House: 3/07/17, 50-47.

Committee Activity: Local Government: 3/23/17.

Brief Summary of Bill

- Provides that the effective date of certain GMA actions will be the later of the two following dates: (1) 60 days after publication of notice of the action, or (2) the date on which the Growth Management Hearings Board issues its final order if a petition has been filed.
- Provides that if a county is required to update its comprehensive plan to comply with requirements to protect surface and groundwater resources, the effective date of the plan is the date it is adopted.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Staff: Alex Fairfortune (786-7416)

Background: The Growth Management Act (GMA). The GMA is the comprehensive land use planning framework for counties and cities in Washington. Jurisdictions fully planning under the GMA must adopt comprehensive land use plans that are implemented through locally adopted development regulations. Each comprehensive plan must include a number of specified elements, including a mandatory rural element for counties. This rural element must protect rural character by, among other things, protecting surface water and groundwater resources.

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.

Growth Management Hearings Board (Board). A seven-member Board established under the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA by state agencies, counties, or cities. Petitions that relate to whether an adopted comprehensive plan or development regulation complies with the GMA must be filed within 60 days after publication of the action. For counties, the date of publication is the date that the county publishes a notice that it has adopted the comprehensive plan or development regulations. For cities, the date of publication is the date the city publishes the ordinance adopting the comprehensive plan or development regulations.

The Board must issue its final decision and order within 180 days, with limited exceptions. In the final order, the Board must either find the agency, county, or city in compliance or not in compliance. If found not in compliance, the matter is remanded back to the agency, county, or city and it has 180 days to come into compliance.

Determination of Invalidity. Under the GMA, 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 unless the Board makes a determination of invalidity. The Board may issue a determination of invalidity for all or part of a comprehensive plan or development regulation that it determines is invalid. A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before the Board's order. A development permit application not vested before receipt of the Board's order vests to the local ordinance or resolution that the Board determines does not substantially interfere with the GMA, with some exceptions. The Board may modify or rescind a determination of invalidity if the invalidated parts of a plan or regulation are amended.

Summary of Bill: The initial effective date of certain actions under the GMA is the later of the two following dates:

- 60 days after publication of notice of the action; or
- if a petition for review to the Board is timely filed by a person with standing, the date on which the Board's final order is issued.

The actions under the GMA subject to these effective dates are:

- expansion of an urban growth area (UGA);
- removal of the designation of agricultural, forest, or mineral resource lands;
- creation or expansion of a limited area of more intensive rural development;
- establishment of a new fully contained community; and
- creation or expansion of a master planned resort.

If a county is not in compliance with the rural element requirement to protect surface and groundwater resources, and it updates its comprehensive plan to address this noncompliance, the updated comprehensive plan is effective upon adoption.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 20, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: If the Growth Management Hearings Board issues a determination of invalidity, it does not retroactively extinguish rights that vested before the determination was made. This creates a challenge for counties to come back into compliance, and it leaves citizens without a remedy. Currently, jurisdictions must build out facilities to a patchwork of land that vested before noncompliance was found. These ongoing obligations are difficult to serve. This bill will prevent a rush to the permit counter to vest and will protect local jurisdictions. It does not affect any existing zoning, change any property rights the owner already has, or make changes to the hearings board process.

CON: This fundamentally alters the ability of a legislative action to be considered valid, making it so an action isn't valid until an unelected growth board says it is. That change in law is not appropriate. The actions listed are not small actions, and they entail a long and expensive public process. These actions need to be given deference by the board. Appeals can also take a long time to resolve, so this could extend for years, not just 180 days. This could lead to loss of economic development.

Persons Testifying: PRO: Representative Joe Fitzgibbon, Prime Sponsor; Bryce Yadon, Futurewise; Dave Andersen, Washington Department of Commerce.

CON: Jan Himebaugh, Building Industry Association of Washington; Laura Berg, WA State Assoc. of Counties.

Persons Signed In To Testify But Not Testifying: No one.