

SENATE BILL REPORT

ESHB 2023

As Passed Senate - Amended, April 12, 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, 3/28/17 [DPA].

Ways & Means: 4/03/17, 4/04/17 [DPA(LGOV), DNP].

Floor Activity:

Passed Senate - Amended: 4/12/17, 27-22.

Brief Summary of Bill (As Amended by Senate)

- Provides that the effective date of certain land use 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.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended.

Signed by Senators Short, Chair; Angel, Vice Chair; Takko, Ranking Minority Member; Palumbo and Sheldon.

Staff: Alex Fairfortune (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Local Government.

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.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey, Becker, Fain, Miloscia, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: Do not pass.

Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Billig, Carlyle, Conway, Darneille, Hasegawa, Keiser and Pedersen.

Staff: Amanda Cecil (786-7460)

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.

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 Amended Bill: The initial effective date of certain land use actions 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.

Land use actions subject to these effective dates are actions that:

- amend a locally adopted critical areas ordinance;
- amend a locally adopted shoreline master program;
- add the designation of agricultural, forest, or mineral resource lands;
- reduce a limited area of more intensive rural development; or
- reduce density or increase minimum lot size requirements.

Appropriation: None.

Fiscal Note: Available.

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 Engrossed Substitute House Bill (Local Government): *The committee recommended a different version of the bill than what was heard.* 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 (Local Government): 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 (Local Government): No one.

Staff Summary of Public Testimony on Bill as Amended by Local Government (Ways & Means): CON: This bill makes the due dates for local governments inconsistent with the Shorelines Management Act.

Persons Testifying (Ways & Means): CON: Denise Clifford, WA Dept of Ecology.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.