

HOUSE BILL REPORT

HB 1544

As Reported by House Committee On: Environment & Energy

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: Representatives Mead, Fitzgibbon and Kloba.

Brief History:

Committee Activity:

Environment & Energy: 1/31/19, 2/21/19 [DPS].

Brief Summary of Substitute Bill

- Provides that the effective date of certain actions taken under the Growth Management Act (GMA) will be the later of the two following dates: 60 days after publication of notice of the action, or if a petition for review to the Growth Management Hearings Board (Board) is timely filed, the date on which the Board's final order is issued.
- Includes, in the list of actions under the GMA subject to the effective dates of the bill: expansion of an Urban Growth Area; 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.
- Exempts counties with populations of fewer than 200,000 from the provisions of the act.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

Staff: Robert Hatfield (786-7117).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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

Growth Management Act—Comprehensive Plans.

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.

Growth Management Act—Enforcement Provisions.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Growth Management Hearings Board (Board) established under the GMA is charged with hearing and determining petitions alleging noncompliance by state agencies, counties, or cities with the GMA and related statutory provisions. Final decisions and orders of the Board may be appealed to superior court.

Petitions that relate to whether an adopted comprehensive plan or development regulation is in compliance 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 or summary of the ordinance, which adopts the comprehensive plan or development regulations.

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 certain date. 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.

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.

Summary of Substitute Bill:

The initial effective date of certain actions under the Growth Management Act (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 Growth Management Hearings Board (Board) is timely filed, the date on which the Board's final order is issued.

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

- expansion of an urban growth area designated under RCW 36.70A.110;
- removal of the designation of agricultural, forest, or mineral resource lands designated under RCW 36.70A.170;
- creation or expansion of a limited area of more intensive rural development designated under RCW 36.70A.070(5)(d);
- establishment of a new fully contained community under RCW 36.70A.350; and
- creation or expansion of a master planned resort designated under RCW 36.70A.360.

The provisions of the act do not apply to a county with a population of fewer than 200,000.

Substitute Bill Compared to Original Bill:

A provision is added that the vesting provisions of the act do not apply to a county with a population of fewer than 200,000.

Appropriation: None.

Fiscal Note: Available.

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) The bill places a more realistic timeline on vesting timelines. All known facts should be considered in making land-use decisions. The bill helps to prevent action on permit applications that degrade the environment.

Under current state law, there is a loophole that makes it extremely difficult for local governments to achieve compliance with the Growth Management Act (GMA). The bill is a small targeted fix that addresses the loophole. When a local government adopts a new ordinance, permits can be filed before there is a chance to review the ordinance; those permits then vest, and the local government does not have a chance to address the legality of the ordinance. When one county expanded its Urban Growth Area (UGA) in 2013, many building permits vested based on the expanded UGA even though the expansion was later reversed. This created an obligation to extend costly infrastructure to developments in the expanded UGA, even though the UGA expansion was later reversed.

The current state of the law encourages the filing of placeholder applications; once a project is vested, it can remain on the books for several years even if no progress on the building is made. This can leave a patchwork of development that local governments then struggle to serve with urban services. The bill does not change the burden of proof or standard of review at the Growth Management Hearings Board (Board). The bill will make the planning process more predictable. The bill provides an opportunity for the Board to make a decision before an application vests.

(Opposed) The bill overturns the foundation of the GMA that once an ordinance has gone through the prescribed process, it is presumed to be compliant unless overturned by the Board. It is very easy to file an appeal under the GMA. Under this bill, anyone who files an appeal with the Board can overturn all the process that a local government has gone through to adopt an ordinance. Local governments work very hard to make sure their actions are compliant under the GMA.

This bill is an attempt to chip away at vesting protections in Washington. Instead, it would be good to expand vesting protections. This fight over vesting occurs every session. There have been stakeholder conversations on the broad topic of vesting. It would be good to have continued stakeholder meetings in order to develop a bipartisan approach to vesting rather than taking a piecemeal, one-sided approach.

There is a concern about the delays the bill would cause. The bill would make it hard to move forward in a fluctuating market. The bill would create confusion and delay, and would frustrate the goal of increasing the stock of housing.

Vesting is a long-standing tenet of law. This is the flat-out wrong time to make changes with this bill to this important doctrine. Under the GMA's comprehensive plan requirements, affordable housing is a required component. It is hard enough to build affordable housing under current law; a change to vesting law would make it even harder to build affordable housing. In the end, the bill would create more litigation instead of more affordable housing.

Persons Testifying: (In support) Representative Mead, prime sponsor; Elyette Weinstein, Washington League of Women Voters; Dave Andersen, Department of Commerce; and Bryce Yadon, Futurewise.

(Opposed) Paul Jewell, Washington Association of Counties; Mike Ennis, Association of Washington Business; Bill Stauffacher, Building Industry Association of Washington; and Scott Hazlegrove, Master Builders Association of King and Snohomish Counties.

Persons Signed In To Testify But Not Testifying: None.