

HOUSE BILL REPORT

HB 1519

As Reported by House Committee On:
Local Government

Title: An act relating to local project review.

Brief Description: Concerning local project review.

Sponsors: Representatives Barkis, Bateman, Fitzgibbon, Chapman, Gregerson, Graham, Macri, Reed and Tharinger.

Brief History:

Committee Activity:

Local Government: 2/7/23, 2/8/23, 2/10/23 [DP].

Brief Summary of Bill

- Provides that a project permit application is complete if it meets the procedural submission requirements of the local government as outlined on the project permit application.
- Provides default permit processing deadlines for local governments that do not, by ordinance or resolution, adopt different deadlines.
- Provides for the calculation of time periods related to permit processing deadlines and determinations of completeness.
- Requires local governments to provide refunds of permitting fees if permitting deadlines are missed, with a refund of either 10 percent or 20 percent of the fee, depending on by how long the deadline was missed.
- Provides optional additional project review provisions which, if at least three provisions are adopted, exempt the local government from the requirement to provide refunds if a permit processing deadline is missed.

HOUSE 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 part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Kellen Wright (786-7134).

Background:

Permitting and the Growth Management Act.

The Growth Management Act (GMA) requires that certain counties, and the cities within those counties, engage in planning for future population growth. Currently, 28 counties fully plan under the GMA, and 11 do not. The centerpiece of the planning process is the comprehensive plan. Comprehensive plans must be reviewed and, if necessary, revised every 10 years. The city or county (local government) must also adopt development regulations to implement the comprehensive plan. Development regulations include zoning ordinances, official controls, subdivision ordinances, and other regulations.

In enforcing these regulations, local governments generally require that a developer obtain one or more permits before development or redevelopment of land is allowed to occur. These permits can be building permits, land use permits, environmental permits, or other permits, and are collectively known as project permits. The development regulations often provide for how each type of project permit is processed. When a county or city planning under the GMA is reviewing a project, its comprehensive plan and development regulations must serve as the basis for the project permit review. These regulations determine the types of land use permitted at a site, the density of residential development in urban growth areas, and the availability of public facilities identified in the comprehensive plan.

In determining if a proposed project is consistent with the development regulations, the local government must consider the type of land use; the level of development or density proposed; the infrastructure needed to service the development; and the characteristics of the development.

Local governments can generally determine which permitting processes are applicable to which project permit types. All local governments, however, including those not planning under the GMA, are required to combine the environmental review process with the project permit review process, and to hold no more than one open record hearing and one closed record appeal on a project permit application, excluding a determination of significance determined under the State Environmental Policy Act. An open record hearing is a hearing that creates a record through testimony and submission of evidence. An open record hearing can be held prior to the local government's decision on a project permit, or held after the decision if the decision is appealed. A closed record appeal is an administrative appeal from the decision on the project permit application that is held on the record established in the open record hearing with little or no new evidence allowed.

Local governments planning under the GMA must comply with additional project permit processing requirements, including establishing an integrated or consolidated permit process that:

- provides for an optional consolidated process for reviewing two or more project permit applications relating to a proposed action as part of a single process, with a designated permit coordinator and no more than one open record hearing and one closed record appeal on the project;
- provides for a single report containing all of the decisions made on all project permits included in the consolidated process, any recommendations on project permits that do not require an open record predecision hearing, and any mitigation required under the State Environmental Policy Act; and
- requires no more than one consolidated open record hearing on appeal if the local government allows appeals.

Determination of Completeness.

Another component of the consolidated permit process is the determination of whether an application is complete. An application is complete when it meets the procedural submission requirements of the local government and is sufficient for continued processing, even though additional information or modifications may be subsequently required. A determination that an application is complete does not preclude the local government from requesting additional information or studies at the time of the determination, or later if new information is required or if there are substantial changes in the proposed action. The local government must also identify any other local, state, or federal agencies that the local government knows may have jurisdiction over some aspect of the project.

The local government must provide a written determination of whether the application is complete to the applicant by mail or in person within 28 days of the of the submission of the application. If the local government does not provide the written determination by the deadline, then the application is deemed complete. If the local government notifies the applicant that the application is incomplete, the local government must identify what is necessary to make the application complete. Once an applicant provides additional information to the local government, the local government has 14 days to notify the applicant that the application is complete or that some specified additional information is necessary.

Notice of Application.

Once an application is determined to be complete, local governments planning under the GMA must provide notice of the application to the public and to agencies that may have jurisdiction over some part of the application. This notice must be provided within 14 days of the application having been found complete, and at least 15 days prior to an open record predecision hearing. This notice must include:

- the date of the application, the date the determination of completeness was made, and the date of the notice;
- a description of the proposed project action, a list of the project permits included in

- the application, and a list of any studies requested during the determination of completeness;
- if the local government knows of any, the identification of other permits not included in the application;
 - the identification of environmental documents evaluating the proposed project, and the location where the application and any studies can be reviewed;
 - details on the public comment period, which must be between 14 and 30 days from the notice of application, and a statement that any person can comment on the application; receive notice of, and participate in, any hearings; and request a copy of the final decision; and detailing any appeal rights available;
 - the date, time, place, and type of hearing, if applicable and known;
 - the development regulations involved in the determination of whether the project is consistent with adopted development regulations; and
 - any other information the local government deems appropriate.

The required notice can be provided in various ways, as determined by the local government through an ordinance or resolution, and different types of permits can utilize different methods of providing notice. In the absence of an ordinance or resolution governing how notice will be provided, it must be, for proposals related to a property, posted at the property, and notice must be published in a newspaper of general circulation. A local government cannot issue a decision on a project permit until the expiration of the public comment period. Any hearing on the application may be combined with any hearing held by a federal, state, or local agency, as long as the hearing is held within the local government's jurisdiction. Hearings must be combined if requested by an applicant and the applicant agrees to a revised schedule if additional time is necessary to coordinate the hearing.

Permit Processing Timelines.

After the application is determined to be complete, the application must be processed. As part of the consolidated permit process required of local governments planning under the GMA, the local government must establish deadlines for processing each type of project permit application. These deadlines cannot exceed 120 days unless the local government makes written findings that additional time is necessary to process specific permit applications or certain project types. The development regulations must specify what is required of a completed project permit application for the deadline to be met.

Notice of Decision, Exclusions, and Other Permitting Requirements.

Once an application is processed, a local government planning under the GMA must provide a notice of decision. The notice must include any appeals rights available to the applicant. The notice must also include any threshold determination made under the State Environmental Policy Act that determines whether the project is likely to have any significant adverse environmental impact. The notice must be provided to the applicant as well as to anyone who requested notice.

A local government does not need to provide for administrative appeals, but, if an administrative appeal is provided, it must be requested within 14 days of a decision.

Local governments can, by ordinance or resolution, exclude certain project permits from the required permitting processes. These project permits include street vacations, landmark designations, approvals related to the use of public areas or facilities, lot line adjustments, building or construction permits, permits related to the construction of less than four residential dwelling units, permits related to the construction of commercial buildings of less than 4,000 square feet and fewer than 20 parking spaces, other permits subject to administrative approval, and other project permits that the local government has determined warrant a different review process.

Certain counties, based on their population and location to the west of the Cascades, are subject to additional reporting requirements under the GMA. These requirements are applicable to Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties. These counties, and the cities within them with populations of more than 20,000, are also subject to permit reporting requirements. These local governments must prepare an annual performance report that includes, among other things, the total number of complete project permit applications received during the year and the number of these applications for which the local government met the deadline for issuing a final decision on the application.

Local governments can impose fees on project permit applications. These fees often correspond to the nature of the project, the valuation of the project, and the type of permit. These fees must be reasonable, and are limited to the recovery of the costs of processing applications, inspecting or reviewing plans, or preparing detailed statements under the State Environmental Policy Act.

Local governments are encouraged to adopt additional project review provisions to provide prompt, coordinated review, and to ensure accountability to applicants and to the public. Providing expedited review for project permit applications that are consistent with development regulations and that are within the capacity of systemwide infrastructure improvements is one such provision that may be adopted.

The Growth Management Hearings Board.

The Growth Management Hearings Board (GMHB) hears petitions and resolves disputes concerning the GMA. If the GMHB finds that a city or county is out of compliance with the GMA, it must give the city or county a reasonable time, not to exceed six months in a normal case, to come into compliance. The GMHB will then hold another hearing to determine whether the city or county has achieved compliance. If the city or county is still out of compliance, the Governor is authorized to impose sanctions. These sanctions can include the withholding of tax revenue until compliance is achieved.

Summary of Bill:

Project permits do not include building permits.

Determination of Completeness.

An application is complete if it meets the procedural submission requirements of the local government as outlined on the project permit application. When determining whether the local government has met the deadline to provide a written determination of completeness within 28 days, the time is computed by counting five days per week, excluding holidays. Written notification of a determination of completeness may be made by email.

Permit Processing Timelines.

For project permits submitted after January 1, 2025, the default deadline for processing a permit depends on the processing requirements applicable to the permit. For permits that do not require public notice of the application to be provided, the deadline is 45 days from the determination of completeness. For permits that do require public notice, but do not require a public hearing, the deadline is 70 days from the determination of completeness. For permits that require both public notice and a public hearing, the deadline is 120 days from the determination of completeness.

The time that a permit takes to process is calculated by counting five days a week and excluding holidays. The following time periods are excluded from the calculation:

- any time period between the day that the local government notifies the applicant in writing that additional information is needed and the day that the applicant provides the information;
- any time period between when an applicant informs the local government in writing that they would like to temporarily suspend review of the application until the applicant notifies the local government that it would like to resume the application; and
- any period after an administrative appeal is filed until the appeal is resolved and any additional time period provided through the appeal has expired.

Local governments may, by ordinance or resolution, amend these deadlines, including by providing for different deadlines or permit categories, adding new permit types, and addressing how two or more permits consolidated for processing may change the time needed for processing. If a local government does not amend the deadlines, then the default deadlines apply.

If the deadlines are not met when processing a permit, a portion of the permitting fee that the local government charged must be refunded. If the deadline was missed by less than 20 percent of the original time frame, then 10 percent of the permitting fee must be refunded. If the deadline was missed by more than 20 percent of the original time frame, then 20 percent of the permitting fee must be refunded.

The adoption of permitting deadlines by a local government is not subject to appeal under the GMA, unless a deadline longer than 120 days is adopted.

Additional Project Review Provisions.

Local governments are encouraged to adopt additional project review and code provisions to provide prompt, coordinated permit review, and to ensure accountability to the applicant and the public by:

- providing expedited review for project permit applications that are consistent with development regulations;
- imposing reasonable fees to cover the cost to the local government of processing applications, inspecting and reviewing plans, or preparing detailed statements under the State Environmental Policy Act;
- entering into an interlocal agreement with another jurisdiction to share permitting staff and resources;
- maintaining, and budgeting for, on-call permitting assistance for when staffing levels or permit volumes change rapidly;
- having new permitting positions budgeted that are contingent on increased permit revenue;
- adopting development regulations that only require a public hearing for a permit application when one is required by statute;
- adopting development regulations that make preapplication meetings optional;
- adopting development regulations that make housing types an outright permitted use in all zones where the housing type is permitted;
- adopting a program for outside licensed professionals to certify components of applications consistent with their license; and
- meeting with an applicant to resolve outstanding issues during the application process, with any meeting scheduled within 14 days of a second request for corrections on a permit, and providing that, if the meeting does not resolve the issues and there is a further request for information, a decision will be made on the application once the responsive information is received.

A local government that adopts at least three of these options is not required to provide a refund if it misses a permitting deadline. A local government can again become subject to the refund requirement if:

- it is not meeting its permitting deadlines at least half of the time since its most recent comprehensive plan update;
- it adopted at least three of the options five or more years ago; and
- it fails to adopt additional optional measures at the time of its next comprehensive plan update.

The Department of Commerce (Commerce) must develop and provide technical assistance and guidance to local governments in setting fee structures and in ensuring they are reasonable and sufficient to recover the true costs of permitting. Commerce must also provide guidance for increasing these fees over time to reflect cost increases. Local governments that have adopted at least three of the optional project review provisions must be prioritized by Commerce when providing technical assistance.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is an important bill to address the supply side of our housing needs. Without taking multiple actions, we will not get to where we need to be, and this is one of the big actions needed. The bill represents multiple groups coming together to come up with solutions. The bill will help to alleviate issues with permit processing on projects that can stretch on for months or years. There has been research done on permitting delay in Washington, and it takes about 6-1/2 months for permits to be processed, resulting in around \$31,000 in added carrying costs per home. Permitting delays are very costly and can jeopardize an entire project, including both market rate and low-income supportive housing. This bill is a comprehensive relook at how permitting works and how to improve it, and it works in tandem with other permitting reform bills. This bill creates better timelines and will result in better affordability. We need to improve timelines for permit processing, and this update will make it more effective. This bill is a compromise, as it gives local governments flexibility but also incentivizes compliance. This bill is the result of many discussions among stakeholders. Permitting has changed significantly in the last couple of decades, and no permitting requirements have been taken away, but only added. The bill might not be what everyone is looking for, but it goes a long way to address differences between jurisdictions and to recognize that not all permits should be on the same timelines.

(Opposed) None.

(Other) There are concerns about processing permits quickly enough as it is, and it may be difficult to get the staffing to comply with all of the permitting changes. There should be additional time to get prepared before the requirements go into effect in order to implement all the different bills.

Persons Testifying: (In support) Representative Andrew Barkis, prime sponsor; Josie Cummings, Building Industry Association of Washington; Paul Jewell, Washington State Association of Counties; and Scott Hazlegrove, Master Builders Association of King and Snohomish Counties.

(Other) Nick Federici, City of Mercer Island.

Persons Signed In To Testify But Not Testifying: None.