
Local Government Committee

2SSB 5290

Brief Description: Concerning consolidating local permit review processes.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet, Kuderer, Fortunato, Lias, Nobles, Saldaña and Wilson, C.; by request of Office of the Governor).

Brief Summary of Second Substitute Bill

- Provides default permit processing time frames applicable January 1, 2025, to local governments that do not, by ordinance or resolution, adopt different time frames.
- Requires local governments to issue a written determination of completeness on a project permit application within 20 days, and provides that an application is complete if it meets the local government's procedural submission requirements as outlined on the application.
- Requires local governments to provide refunds of permitting fees if permitting time frames are missed, and provides optional additional project review provisions which, if adopted, can exempt the local government from the refund requirement.
- Beginning January 1, 2025, replaces current permit processing reporting requirements applicable to certain counties and cities with new reporting requirements, and requires the Department of Commerce (Department) to produce an annual report using the new information.
- Requires local governments to exclude interior alterations from site plan review, except under certain conditions.
- Requires the Department to establish a Consolidated Permit Review Grant Program to administer grants to local governments that agree to

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comply with a specified residential permit application time frame and that establish a fee structure to enable the local government to continue providing review within that timeline.

- Requires the Department to administer a grant program for local governments that are transitioning from paper permit review systems to digital systems, and to convene a Digital Permitting Process Work Group to examine aspects of digital permitting systems, with a report to the Legislature and the Governor due August 1, 2024.

Hearing Date: 3/21/23

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.

One aspect of the permitting process may be site plan review. Site plan review generally involves the review of the physical details and the type of use of a proposed project for compliance with site-specific requirements. These requirements can deal with subjects like building design, landscaping, parking, compatibility with adjacent land uses, access to and from the development, and utility standards. Site plan review may be required prior to, or concurrent with, other types of review. It is generally required on projects involving commercial or industrial uses, or on residential projects involving multifamily housing. Site plan review can apply to new developments as well as to the remodeling or expansion of existing developments.

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 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 them, 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 and Exclusions from the Permitting Process.

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, or other project permits that the local government has determined warrant a different review process.

Permit Application Reporting Requirements.

Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and the cities within those counties, are subject to additional requirements under the GMA. These counties and cities are required to establish a review and evaluation program to determine whether a county and its cities are achieving urban densities within urban growth areas and to identify reasonable measures to reduce the differences between the assumptions that went into the comprehensive plan and the growth and development that has actually occurred. Part of the review and evaluation involves identifying land suitable for development, and this program is often referred to as the Buildable Lands Program.

Counties subject to the Buildable Lands Program, and cities within those counties that have a population of 20,000 or more, are also subject to additional project permit application reporting requirements. These local governments must prepare an annual permitting performance report that includes:

- the total number of complete project permit applications received during the year;
- the number of these applications for which the local government met the deadline for issuing a final decision on the application;
- the number of these applications for which the government issued a final decision after the deadline;
- the number of these applications which had an extension of time that was mutually agreed upon by the applicant and the local government;

- the variance of the local government's actual performance, excluding applications which had a mutually-agreed extension of time, from the deadline; and
- the mean processing time and the standard deviation from the mean.

The county or city must provide notice of, and access to, the annual reports through the local government's website, or, if the local government does not have a website, by other reasonable means.

Permit Application Fees and Additional Permit Provisions.

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 within the capacity of systemwide infrastructure improvements is one such provision that may be adopted.

International Residential Code.

The International Residential Code (IRC) is a comprehensive building code published by the International Code Council that applies to new one- and two-family dwellings and townhouses of up to three stories. It has been adopted by Washington through the State Building Code.

Substantial Improvements and the Federal Emergency Management Agency.

The Federal Emergency Management Agency (FEMA) defines substantial improvement as any improvement of a structure that costs equal to or more than 50 percent of the market value of the structure.

Summary of Bill:

Determination of Completeness.

A determination of completeness must be provided in writing to an applicant within 20 days of the local government's receipt of the application. An application is complete if it meets the procedural submission requirements of the local government as outlined on the project permit application. The determination must state that the application is complete, or that the application is incomplete and that the procedural submission requirements of the local government have not been met. A determination that the application is incomplete must outline what is necessary to make the application procedurally complete. Additional information and studies may be required after the determination of completeness, and project modifications may subsequently be undertaken, but the need for additional information or studies may not preclude a determination of completeness.

When determining whether the local government has met the deadline to provide a written determination of completeness within 20 days, the time is computed by counting five days per week, excluding holidays.

If a written determination is not provided by the twenty-ninth day after the project permit application was received by the local government, then the application is deemed procedurally complete. The local government may still seek additional information or studies after an application is deemed complete in this way.

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, 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, excluding holidays and the following time periods:

- any time period between when 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 in which an applicant informs the local government in writing that they would like to temporarily suspend review of the application; and
- any period after an administrative appeal is filed that extends the time period to issue a final decision.

If an applicant informs the local government in writing that the applicant would like to suspend the review of the application for more than 60 days, or if the applicant is not making demonstrable progress or responding to the local government for 60 consecutive days after the local government has requested, in writing, additional information needed to process the application, an additional 30 day may be added to the time period for the local government to issue a final decision. Any written notice from the local government to the applicant seeking additional information must inform the applicant of the possibility of the 30-day extension if the applicant does not make demonstrable progress or respond within 60 days.

Local governments may exclude certain permit types and timelines, provide for different timelines if special circumstances warrant it, add new permit types not identified, change permit names or types in each category, address how two or more permits consolidated for processing may change the time needed for processing, and differentiate projects of a certain size or type. If a local government does not adopt an ordinance or resolution modifying the timelines, then the default timelines apply.

If the time frames are not met when processing a permit, a portion of the permitting fee that the local government charged the applicant 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 must be refunded.

The adoption of permitting time frames and related regulations by a local government is not subject to appeal, unless a permit type is included for which more than 120 days are provided.

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 on permit or other government approval applicants 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 permit applications 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;
- offering a 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 time frame. When a local government has adopted additional project review provisions, and permit time frames are not being met at least 50 percent of the time, the local government must adopt new measures to reduce permit time frames at the time of its next comprehensive plan update.

Local governments that have adopted at least three of the optional project review provisions must be prioritized by the Department of Commerce (Department) when providing technical assistance. The Department's technical assistance must include guidance to local governments in setting fee structures and ensuring they are reasonable and sufficient to recover the true

permitting costs. The Department must also provide guidance for increasing these fees over time to reflect cost increases.

Permit Reporting Requirements.

The permit reporting requirements applicable to the counties subject to the buildable lands requirements of the GMA, and cities within those counties of 20,000 or more, are repealed. Instead, beginning in 2025, those counties and cities must provide a new annual permitting performance report to the Department including information about the time frames for certain permit types associated with housing. The report does not need to demonstrate the total time for a project to receive final approval, but must include:

- the time frames for certain permit processes as compared to the statutory time frames;
- ongoing information to applicants, the local government, and the state regarding permit time frames for permits related to housing;
- the total number of decisions issued during the year for preliminary subdivisions, final subdivisions, binding site plans, multifamily housing permit processes, and construction plan review for each permit type when it has been submitted separately;
- the total number of decisions for each permit type that included consolidated permit review;
- the total number of days from the determination of completeness to the issuance of a decision, with this number determined by counting five days per week and excluding holidays;
- the total number of days that the application was in review with the local government from the determination of completeness to the issuance of the final decision, with this number determined by counting five days per week, excluding holidays and any periods in which the local government was waiting on additional information needed to process the application that was requested in writing from the applicant, or periods in which the applicant temporarily suspended review of the application; and
- the total number of days in which the application was the responsibility of the applicant, including days in which the local government was waiting for additional information.

The report must be provided to the Department by March 1 of each year, with the first report due March 1, 2025. The report must also be posted on the local government's website.

The Department must provide templates for the local governments to use when providing data. Local governments must begin collecting data in 2024.

By July 1 of each year, the Department must produce a report which includes the information received from the local governments, a list of those local governments that provide for shorter processing deadlines than the default time frames, and key metrics and findings from the report.

Interior Alterations and Site Plan Review.

Interior alterations are construction activities that do not modify an existing building's layout or its current use, and do not involve work on the exterior that adds to the building's footprint.

Local governments must exclude project permits for interior alterations from site plan review requirements as long as the interior alterations do not add sleeping quarters or bedrooms, lead to nonconformity with the FEMA substantial improvement thresholds, or increase the total square footage or valuation of the structure sufficiently to require upgraded fire access or fire suppression systems. Interior alterations remain subject to applicable building, plumbing, mechanical, and electrical codes.

Consolidated Permit Review Grant Program.

The Department must, subject to funding from the Legislature, establish a Consolidated Permit Review Grant Program (Program). This Program may award grants to local governments that commit through the passage of an ordinance, a resolution, or by other action to the following permitting requirements:

- issuing final decisions on residential building permit applications within the scope of the IRC within 45 business days or 90 calendar days and providing for consolidated permit review for building permit applications, which review may include an initial technical peer review of the application by all departments of the local government with jurisdiction over the project; and
- establishing a fee structure sufficient for the local government to continue to offer consolidated permit review within 45 business days or 90 calendar days; this structure must be determined by August 1, 2023, and may be developed in consultation with local building associations.

Local governments in the Program may contract with a third-party business to conduct the consolidated review or to operate as inspection staff. The funds used for such a contract are subject to reimbursement through the Program.

Any local government that is awarded a grant must provide a quarterly report to the Department including the average and maximum time for permit review during the local government's participation in the Program. If a local government fails to satisfy the terms of the grant, it must enter a 90-day probationary period. If it is still out of compliance at the end of the probationary period, it is no longer eligible to receive grants through the Program.

Digital Permit Review Grant Program and Work Group.

Subject to funding from the Legislature, the Department must establish a grant program to provide grants to local governments to transition their permit review processes from paper systems to software systems capable of processing digital permit applications, virtual inspections, electronic review, and with capacity for video storage.

Subject to funding from the Legislature, the Department must also convene a digital permitting process work group to examine potential licensing and permitting software that local governments can use to make permit review more streamlined and efficient. The Department, along with the Association of Washington Cities and the Washington State Association of Counties, must appoint members to the work group, including a representative of cities and counties, a representative of building industries, and a representative of building officials.

The work group must convene by August 1, 2023, and must issue a final report to the Governor and the appropriate committees of the Legislature by August 1, 2024. This report must evaluate the need for digital permitting systems; the barriers preventing access to, or adoption of, digital permitting systems; the costs and benefits of a statewide system; and provide budgetary, policy, and legislative recommendations to increase the adoption of digital permit review systems, or to establish a statewide system of digital permit review.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 7, relating to permit processing time frames and reporting requirements, which takes effect January 1, 2025.