
Local Government Committee

HB 2245

Brief Description: Addressing vesting in urban growth areas with recently added territory.

Sponsors: Representatives Ormsby, Riccelli, Ryu and Pollet.

Brief Summary of Bill

- Delays vesting of certain development rights when territory has been added to an urban growth area (UGA): (1) until 60 days after adoption of the comprehensive plan, development regulation, or amendment that modified the boundaries of the UGA; or (2) until resolution of any petition for review to the Growth Management Hearings Board (Board) challenging the adopted comprehensive plan, development regulation, or amendment.
- Provides that, if the Board issues a finding of noncompliance and an order of remand in response to a petition challenging an adopted comprehensive plan, development regulation, or amendment that modified the boundaries of a UGA, the validity of the plan, regulation, or amendment is affected during the period of remand.

Hearing Date: 1/29/14

Staff: Michaela Murdock (786-7289).

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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

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.

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.

Urban Growth Areas.

Counties that fully plan under the GMA must designate UGAs, areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. Fully planning counties and each city within these counties must include within their UGAs, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth, including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

GMA - Enforcement Provisions.

The GMA includes enforcement and penalty provisions for public entities. A seven-member Board established in the GMA is charged with hearing and determining petitions alleging noncompliance by state agencies, counties, or cities with the GMA and related statutory provisions. Petitions relating to whether an adopted comprehensive plan, development regulation, or amendment to a plan or regulation complies with the GMA, must be filed with the Board within sixty days after an adopted measure is published.

The Board must make findings of fact and, in general, prepare its final order within 180 days of receipt of a petition for review. The Board may extend the period of time for issuing a final order for up to 90 days per extension to achieve a settlement of the dispute. Final decisions and orders of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

In issuing final decisions and orders, the Board must find the state agency, county, or city identified in the petition to be either in compliance or not in compliance with the GMA and any related and applicable statutory provisions. If the agency or local government is found to be not in compliance, the Board must generally remand the matter to the agency or local government for 180 days, within which time it must comply with applicable requirements. If, following a hearing to determine whether the agency or local government has satisfied the requirements of the remand, the Board may find that the agency, county, or city is in compliance or that it remains not in compliance. The Board may also issue a determination of invalidity for all or part of a comprehensive plan or development regulation that it determines is invalid.

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 date certain. 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 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 a period of remand. Rights that vest prior to a finding of noncompliance are not affected, and rights may continue to vest in comprehensive plans and development 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 by a city or county; however after the date of receipt, rights can no longer vest to the invalidated plans or regulations.

A determination of invalidity does not apply to, and does not prevent vesting of rights, for certain permits, including for example, a completed development permit application, or related construction permits, for a project that vested under state or local law before receipt of the board's order.

Summary of Bill:

An exception is created to the general rule that building permits and proposed divisions of land must be considered under applicable ordinances in effect on the date that a valid and complete application is submitted.

A new section is created in the GMA, which provides that applications for development or other land use activities in territory added to a UGA do not vest until a specified date. Such rights vest on the latest of the following dates:

- 60 days after notice is published that a comprehensive plan, development regulation, or an amendment to the plan or regulation, has been adopted that modifies the boundaries of a UGA; or
- if a petition for review is filed with the Board challenging the adopted plan, regulation, or amendment: (1) upon issuance of the Board's final order finding that the plan, regulation, or amendment is in compliance; or (2) if the Board finds noncompliance, upon the Board's subsequent review of the matter and determination that the jurisdiction is in compliance.

Also, in addition to determinations of invalidity, the validity of comprehensive plans and development regulations following a finding of noncompliance and an order of remand are now affected when vesting rights are delayed under applicable statute.

Appropriation: None.

Fiscal Note: Not requested.

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