

HOUSE BILL REPORT

ESHB 2847

As Passed House:
February 15, 2000

Title: An act relating to remedies for exceeding the one hundred twenty day timeline for land use project permit applications.

Brief Description: Providing sanctions when a local government fails to issue a final decision on a project permit application within the applicable time period.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Mulliken, Edwards, Cairnes and Mielke).

Brief History:

Committee Activity:

Local Government: 1/31/00, 2/2/00 [DPS].

Floor Activity:

Passed House: 2/15/00, 71-26.

Brief Summary of Substitute Bill

- Authorizes project applicants to file a peremptory writ of mandamus action based on a local government's failure to issue a final permit decision within 120 days after a project permit application is deemed complete.
- Requires the superior court to issue the peremptory writ unless the local government can demonstrate approval would violate a substantive provision of its comprehensive plan or land use regulations.
- Prohibits the local government from requiring a permit applicant to waive the 120-day period or the right to seek the peremptory writ as a condition for taking action on the permit application unless the application is filed concurrently with a comprehensive plan amendment.
- Repeals the June 30, 2000, expiration of the 120-day time permit requirement.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen and Fortunato.

Staff: Caroleen Dineen (786-7156).

Background:

Legislation enacted in 1995 required counties and cities planning under the Growth Management Act (GMA) to issue a final decision on a permit application within 120 days after the applicant is notified the application is complete. This 120-day permit requirement does not include:

- any period during which the applicant is requested to correct plans, perform required studies, or provide additional information;
- the period during which an environmental impact statement is prepared;
- any period for administrative appeals of permits with certain limitations; and
- a mutually agreed upon time extension.

The 120 day permit requirement does not apply to projects requiring an amendment of the comprehensive plan or development regulations, new fully contained communities, master planned resorts, or essential public facilities. If an applicant substantially revises the proposal, the 120-day permit period starts again.

The 1995 legislation also specified counties and cities are not liable for damages due to failure to make a final decision within this 120-day permit period. The 120-day permit requirement and local government liability waiver are scheduled to expire on June 30, 2000.

A writ of mandamus is a directive from a court requiring the performance of a particular act.

Summary of Bill:

The expiration of the 120-day permit requirement liability is removed.

A permit applicant may file a peremptory writ of mandamus action in superior court if the local government fails to take final action on the project permit application within 120 days after the application is deemed complete, subject to the statutory basis

for extension of the 120-day permit period. This new mandamus authority is null and void unless funded in the budget.

The mandamus action may seek to compel the local government to issue an approval for the project permit application. Unless a project permit application is filed concurrently with a comprehensive plan amendment, a local government may not compel an applicant to waive the 120-day permit requirement or the right to file a mandamus action as a condition for taking action on a project permit application.

The person filing the action must give notice to all persons entitled to notice under the local project review statutes (RCW 36.70B.110) and any person who participated orally or in writing in the local evidentiary hearing on the project permit application. Notice must be mailed or hand delivered on the same day the writ of mandamus petition is filed.

The superior court has jurisdiction for all decisions regarding the project permit application, including settlement, when the mandamus action is filed. The superior court must issue the peremptory writ of mandamus unless the local government shows that the approval would violate a substantive provision of its comprehensive plan or land use regulations.

A new exemption period for the 120-day permit requirement is created. Any period during which a state or federal agency must review a project permit application is not included in the 120-day time calculation if: 1) the review is required by state or federal statute; and 2) approval by the state or federal agency is necessary for the local government to issue a final decision.

Substitute Bill Compared to Original Bill: The original bill repealed the expiration of both the 120-day permit requirement and the local government liability waiver provision.

Appropriation: None.

Fiscal Note: Requested on January 21, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) The 120-day time limit for permits has worked out well for both the applicants and the local governments and should be continued. It is not difficult for local governments to comply with the 120-day time limit. The permitting system needs to be streamlined and has to have deadlines. This bill creates accountability; the intent is to avoid court and encourage local governments to meet the deadline.

Permit applicants would appreciate greater criteria for a complete application at the beginning of the process rather than additional requirements later on in the process. Permit delays impact the ability to provide affordable housing. Carrying costs from delays add to the construction costs.

The 120-day time limit is not working now, as some local governments are not meeting the deadline. The bill also should include some penalties if the local government does not meet the deadline.

Testimony Against: (Original bill) This bill has many unintended consequences. Planners will increase criteria for a complete application, increasing the costs to applicants for a complete application. This bill also will clog the superior court system and make the court a "super zoning board." Focusing on substantive and not procedural issues at the superior court level denies due process rights.

Some local governments have had to reduce planning staffs as a result of I-695; with I-695, permit fee increases would require a vote. There needs to be a balance for permit applicants and local governments. This is an unfunded state mandate that will require additional local planning staff.

The Land Use Study Commission was asked to review the 120-day time limit and reported it works for some large projects but creates problems for some smaller projects. Numerous counties report the current 120-day provisions are working. Most planning directors now are conscientious about permit time frames.

Testified: (In support) Representative Mulliken, prime sponsor; Representative Edwards, sponsor; Representative Cairnes, sponsor; Jodi Slavik, Building Industry Association of Washington; Thomas C. O'Connor, O'Conner and Associates, LLC; Michael Reid, Reid and Associates; Scott Hazelgrove, Association of Washington Business; and Leo Deatherage.

(Opposed) Vincent Moore, Association of County and Regional Planning Directors; Paul Parker, Washington State Association of Counties; Pat Hamilton, Pacific County; Dave Williams, Association of Washington Cities; and Steve Stuart, 1000 Friends of Washington.