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## Environment Committee

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### HB 2023

**Brief Description:** Addressing the effective date of certain actions taken under the growth management act.

**Sponsors:** Representative Fitzgibbon.

#### Brief Summary of 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.

**Hearing Date:** 2/13/17

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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

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*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.*

### 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. Each comprehensive plan must also include a plan, scheme, or design for certain specified elements, including a rural element.

### Growth Management Act - Rural Element.

The rural element of a comprehensive plan must allow for rural development, forestry, and agriculture in rural areas, and must provide for a variety for rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. "Rural development" is development that occurs outside an Urban Growth Area (UGA), or designated agriculture, forest, or mineral resource land.

### Growth Management Act - 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. Planning jurisdictions must include within their UGAs sufficient areas and densities to accommodate projected urban growth for the succeeding 20-year period. In addition, cities must include sufficient areas 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.

### Growth Management Act - Fully Contained Communities.

One exception to the urban growth requirement is that any county may approve new, fully contained communities outside of UGAs. These communities must meet specific planning criteria to address transit, job, and housing needs, to reduce the spread of urban development into nonurban areas, and to comply with protections of designated commercial lands and critical areas. Any county that establishes a fully contained community must reserve a portion of its 20-year population projection and offset its UGAs according to this population shift. Final approval of a fully contained community is considered an adopted amendment to the comprehensive plan.

### Growth Management Act - Master Planned Resorts.

The GMA allows a county to permit master planned resorts in an area outside of any UGAs established for the county. A master planned resort is a self-contained and fully integrated development of a scale that would not otherwise be permitted in an area outside of an UGA. Master planned resorts must be located in a setting of significant natural amenities and have a primary focus on destination resort facilities consisting of short-term visitor accommodations. All capital facilities, utilities, and services located within a master planned resort must be limited in scale so as to service only the master planned resort. Full-time residences are allowed to be

sited within the boundaries of a master planned resort but, those residential use must be integrated into the on-site recreational nature of the resort.

A county may approve a master planned resort only if certain conditions are satisfied. In order for a master planned resort to be approved, the master planned resort must be envisioned in the county's comprehensive plan, existing development regulations must restrict any additional urban or suburban development within the vicinity of any master planned resort, the county must find that the land for a proposed master planned resort is better suited for a master planned resort than for commercial timber or agricultural production, and all infrastructure and service impacts must be fully considered and mitigated.

#### Growth Management Act - Natural Resource Lands.

Counties and cities must designate agricultural lands, forest lands, and mineral resource lands in their comprehensive plans. "Agricultural land" means land: (1) primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to an excise tax, finfish in upland hatcheries, or livestock; and (2) that has long-term commercial significance for agricultural production. "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, and that has long-term commercial significance. "Minerals" include gravel, sand, and valuable metallic substances.

#### Growth Management Act - Limited Areas of More Intensive Rural Development.

Qualifying development in rural areas is permitted under the GMA if prescribed requirements are met. For example, counties may permit limited areas of more intensive rural development in the following instances:

- rural development: allowing the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas;
- recreational and tourist uses: allowing intensification of development on lots containing, or new development of, small-scale recreational or tourists uses; and
- nonresidential/cottage industry: allowing intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses.

#### 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. The Board must make findings of fact and prepare a written decision. Final decisions and orders of the Board may be appealed to superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

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, adopting the comprehensive plan or development regulations.

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 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 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 (UGA) 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.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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