

SENATE BILL REPORT

ESHB 2023

As Reported by Senate Committee On:
Local Government, March 28, 2017

Title: An act relating to the effective date of certain actions taken under the growth management act.

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

Sponsors: House Committee on Environment (originally sponsored by Representative Fitzgibbon).

Brief History: Passed House: 3/07/17, 50-47.

Committee Activity: Local Government: 3/23/17, 3/28/17 [DPA].

Brief Summary of Amended Bill

- Provides that the effective date of certain land use actions will be the later of the two following dates: (1) 60 days after publication of notice of the action, or (2) the date on which the Growth Management Hearings Board issues its final order if a petition has been filed.
- Requires state and local agencies to complete a private property taking impact analysis before taking an action likely to result in a taking of private property.
- Requires local governments to complete an economic impact analysis before taking an action that may economically impact citizens.

SENATE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass as amended.

Signed by Senators Short, Chair; Angel, Vice Chair; Takko, Ranking Minority Member; Palumbo and Sheldon.

Staff: Alex Fairfortune (786-7416)

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.

Background: The Growth Management Act (GMA). The GMA is the comprehensive land use planning framework for counties and cities in Washington. Jurisdictions fully planning under the GMA must adopt comprehensive land use plans that are implemented through locally adopted development regulations. Each comprehensive plan must include a number of specified elements, including a mandatory rural element for counties. This rural element must protect rural character by, among other things, protecting surface water and groundwater resources.

Growth Management Hearings Board (Board). A seven-member Board established under the GMA is charged with hearing and determining petitions alleging noncompliance with the GMA by state agencies, counties, or cities. Petitions that relate to whether an adopted comprehensive plan or development regulation complies 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 adopting the comprehensive plan or development regulations.

The Board must issue its final decision and order within 180 days, with limited exceptions. In the final order, the Board must either find the agency, county, or city in compliance or not in compliance. If found not in compliance, the matter is remanded back to the agency, county, or city and it has 180 days to come into compliance.

Determination of Invalidity. Under the GMA, 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 unless the Board makes a determination of invalidity. The Board may issue a determination of invalidity for all or part of a comprehensive plan or development regulation that it determines is invalid. A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before the Board's order. A development permit application not vested before receipt of the Board's order vests to the local ordinance or resolution that the Board determines does not substantially interfere with the GMA, with some exceptions. The Board may modify or rescind a determination of invalidity if the invalidated parts of a plan or regulation are amended.

Summary of Amended Bill: The initial effective date of certain land use actions 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 Board is timely filed by a person with standing, the date on which the Board's final order is issued.

Land use actions subject to these effective dates are actions that:

- amend a locally adopted critical areas ordinance;
- amend a locally adopted shoreline master program;
- add the designation of agricultural, forest, or mineral resource lands;
- reduce a limited area of more intensive rural development;
- reduce density or increase minimum lot size requirements; or
- could result in uncompensated taking of private property or significant economic impacts.

All state and local agencies must complete a private property taking impact analysis before taking an action which is likely to result in a taking of private property. The analysis must include:

- the purpose of the action;
- an assessment of the likelihood that a taking of private property will occur;
- an evaluation of whether the action is likely to require compensation to private property owners;
- alternatives to the action that would achieve the intended purpose and lessen the likelihood that a taking will occur;
- an estimate of the potential liability if the agency is required to compensate a private property owner; and
- whether enforcement of the action could reasonably be construed to require an uncompensated taking of private property.

All local governments must complete an economic impact analysis before taking an action which may economically impact the citizens of that jurisdiction. The analysis must include:

- the purpose of the action;
- an assessment of economic impacts likely to occur both to individuals and the jurisdiction's economy; and
- alternatives that would achieve the intended purpose and lessen the economic impacts.

Each analysis must be submitted to the board of county commissioners and be available to the public.

EFFECT OF LOCAL GOVERNMENT COMMITTEE AMENDMENT(S):

- Modifies the actions that are subject to the effective date timeline.
- Removes the provision that allows a comprehensive plan to be amended to comply with water resource protection requirements and have an immediate effective date.
- Requires that state and local agencies complete a private property taking impact analysis before taking an action likely to result in a taking of private property.
- Requires that local governments complete an economic impact analysis before taking an action that may economically impact citizens.
- Requires each analysis to be submitted to the board of county commissioners and be available to members of the public.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 28, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: If the Growth

Management Hearings Board issues a determination of invalidity, it does not retroactively extinguish rights that vested before the determination was made. This creates a challenge for counties to come back into compliance, and it leaves citizens without a remedy. Currently, jurisdictions must build out facilities to a patchwork of land that vested before noncompliance was found. These ongoing obligations are difficult to serve. This bill will prevent a rush to the permit counter to vest and will protect local jurisdictions. It does not affect any existing zoning, change any property rights the owner already has, or make changes to the hearings board process.

CON: This fundamentally alters the ability of a legislative action to be considered valid, making it so an action isn't valid until an unelected growth board says it is. That change in law is not appropriate. The actions listed are not small actions, and they entail a long and expensive public process. These actions need to be given deference by the board. Appeals can also take a long time to resolve, so this could extend for years, not just 180 days. This could lead to loss of economic development.

Persons Testifying: PRO: Representative Joe Fitzgibbon, Prime Sponsor; Bryce Yadon, Futurewise; Dave Andersen, Washington Department of Commerce.

CON: Jan Himebaugh, Building Industry Association of Washington; Laura Berg, WA State Assoc. of Counties.

Persons Signed In To Testify But Not Testifying: No one.