

# HOUSE BILL REPORT

## 2SSB 5290

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### As Passed House - Amended:

April 10, 2023

**Title:** An act relating to consolidating local permit review processes.

**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 History:

#### Committee Activity:

Local Government: 3/21/23, 3/24/23 [DP];

Appropriations: 4/1/23, 4/3/23 [DPA].

#### Floor Activity:

Passed House: 4/10/23, 98-0.

### Brief Summary of Second Substitute Bill (As Amended by House)

- 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 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.
- Provides that a project permit application is complete if it meets the local government's procedural submission requirements as outlined on the application.
- Replaces current permit processing reporting requirements applicable to

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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 part of the legislation nor does it constitute a statement of legislative intent.*

certain counties and cities with new reporting requirements beginning January 1, 2025, 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 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 qualifying 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.
- Requires the Department to develop a plan for providing local governments with staff to provide temporary support or expertise by December 1, 2023.

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## HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

**Staff:** Kellen Wright (786-7134).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Staff:** Jackie Wheeler (786-7125).

**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 pre decision 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.

When an application for a permit is submitted, the local government must determine if the application is complete for subsequent processing. 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 information on 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 methods of providing notice can be used for different types of permits. In the absence of an ordinance or resolution governing how notice will be provided, it must be posted at the property if the proposal relates to a property, and 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 an 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. Part of this program 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 from the deadline, excluding applications in which an extension of time was mutually agreed; 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.

**Summary of Amended Bill:**

Determination of Completeness.

The determination of completeness must be provided in writing to an applicant. 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.

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 65 days from the determination of completeness. For permits that do require public notice, the deadline is 100 days from the determination of completeness. For permits that require both public notice and a public hearing, the deadline is 170 days from the determination of completeness.

The time that a permit takes to process is calculated by counting every calendar day, excluding the following time periods:

- any time period between the day that the local government notifies the applicant in writing that additional information is needed to process the application and the day that the applicant provides the information;
- any time period after an applicant informs the local government in writing that they would like to temporarily suspend review of the application until the time that the applicant notifies the local government in writing that they would like the application to resume; and
- any period after an administrative appeal is filed until the appeal is resolved and any additional time period provided by the appeal has expired.

The deadline for processing a permit resets if an applicant proposes a change in use that adds or removes residential or commercial elements such that the application would fail to meet the determination of completeness standard for the new use.

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, including by differentiating between residential and non-residential permits. 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 under the GMA, unless a permit type is included for which more than 170 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 additional project review provisions is not required to provide a refund if it misses a permitting time frame. A local government may again become subject to the refund requirements if it adopted the third additional project review provision at least five years prior, it is not meeting permitting deadlines at least 50 percent of the time, and it does not adopt additional project review provisions 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 reasonable fee structures that are sufficient to recover 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 Program, 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 must include:

- the time frames for certain permit processes as compared to the statutory time frames;
- 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 days that each permit application for one of these permit types was in review with the local government and the number of days that were excluded from the time period calculation because the local government was waiting on information from the applicant or the applicant had paused the application;
- the average number of days from the submission of an application for one of these permits types to the issuance of a decision on the application; and
- the total number of decisions for each permit type that included consolidated permit review.

The report must be provided to the Department by March 1 of each year, with the first report due March 1, 2025, with information from permitting in 2024. 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.

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, cost more than 50 percent of the value of the structure, 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, with this review optionally including 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 July 1, 2024, 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 may be reimbursed 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.

The Department must also develop a plan and proposal for providing local governments with appropriately trained staff to provide temporary support or expertise for processing residential housing permit applications. The plan should consider how local governments can be provided with staff who have experience with permitting policies and regulations in the local government's geographic area or with jurisdictions of the local government's size. The plan must be submitted to the Legislature by December 1, 2023.

#### 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. Only cities that allow for the development of at least two units per lot on all lots primarily zoned for residential use are eligible for these grants.

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. New fiscal note requested on April 6, 2023.

**Effective Date:** The bill contains multiple effective dates. Please refer to the bill.

**Staff Summary of Public Testimony (Local Government):**

(In support) Washington faces a housing affordability and supply crisis. We are currently hundreds of thousands of units short of meeting the demand, and only 15 percent of Washingtonians can afford the cost of a medium-priced home. Permitting timelines are a top concern, as slow permitting adds costs and delays projects, particularly as interest rates rise. Fast and predictable permitting is a key piece of getting more housing built. This bill will establish more certainty in the permitting process, will standardize timelines, and will support new technology for streamlined permitting in the future. This bill is trying to speed up permit processing timelines, and the grant program will help to facilitate that through enabling faster permitting with electronic systems. The bill creates incentives for local governments to be responsive to the permit processing timelines. The goal is to incentivize efficient permitting processes so that more housing can be built. Permit processing, planning reform, and housing funding are the key components of fixing the housing crisis. The state has a vested interest in speeding up permitting, as permitting delays cost the state money, and new housing construction is a huge revenue generator for the state. Cities, counties, and builders have agreed on all of the items in the bill. This bill is one part of the Governor's plan for addressing housing. Building permits need to be included in the permits that should be streamlined, as some cities do not have other permit types.

(Opposed) None.

(Other) The goals of the bill are good, but the current bill would inadvertently lengthen timelines. The bill removes the ability of cities to adjust permitting timelines for specific, outlier projects. This will incentivize cities to adopt longer timelines than necessary to mitigate the risk of an outlier going outside of the timelines and requiring a refund. This will lead to all timelines being extended in order to accommodate the outliers. Cities will also need to be stricter in accepting permits for processing to ensure that the timelines can be met before the clock is started. The cities should retain the option to have longer timelines for specific permits if the city makes written findings. The need to rewrite the city's code will use staff that would otherwise be working on permits.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Permitting reform is one tool that the state can provide to address the housing supply and helps reduce costs by expediting permits through the process. The average permit timeline in Washington is 6-1/2 months with average carrying costs for that day just over \$31,000 per project. This bill has been worked on by a broad group of stakeholders including local jurisdictions, the environmental justice community, and builders and comes as a recommendation from the Growth Management Act roadmap. The bill also provides additional resources and flexibility for local governments to get the assistance they need to meet the timelines. This is an important part of the overall solution for housing.

(Opposed) None.

**Persons Testifying (Local Government):** (In support) Senator Mark Mullet, prime sponsor; Brent Ludeman, Building Industry Association of Washington; Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; Angela Rozmyn, Natural and Built Environments; Noha Mahgoub, Office of the Governor; and Mary Hull-Drury, Washington Realtors.

(Other) Lacey Jane Wolfe, City of Bellevue.

**Persons Testifying (Appropriations):** Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; and Josie Cummings, Building Industry Association of Washington.

**Persons Signed In To Testify But Not Testifying (Local Government):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.