
Local Government Committee

HB 2886

Brief Description: Concerning local government permitting and land use decisions.

Sponsors: Representatives Gildon, Barkis, Jenkin and Eslick.

Brief Summary of Bill

- Establishes deadlines for processing of permit project applications by local governments.
- Provides that projects will be approved if a local government does not issue a decision by the required deadline.
- Requires local governments to submit permit processing reports to the Department of Commerce in order to qualify for grants from the Department of Commerce.

Hearing Date: 2/5/20

Staff: Kellen Wright (786-7134).

Background:

Twenty-eight counties in Washington plan under the Growth Management Act (GMA) fully. Eleven counties are only subject to Critical Area and Natural Resource Lands requirements, and are not required to fully plan. The GMA requires counties and cities (local governments) to adopt development regulations on certain subjects, and that regulations be consistent with adopted comprehensive plans.

Local governments fully planning under the GMA must comply with certain permit application processes. This includes combining the environmental review process with project permit review, and to generally only provide for one open record hearing and one closed record appeal. The process must include a determination of an application's completeness; notice to the public of an application; and a single report detailing the decisions made on all permits included as part of a consolidated permit process, among other requirements.

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.

Local governments planning under the GMA are also required to take action on permit applications within certain timeframes. A local government must respond to a project permit application within 28 days of receiving it with a written determination of whether the application is complete. A local government must also adopt time periods for the processing of each type of permit project application. These time periods should not exceed 120 days, unless the local government makes written findings that a longer period is required to process specific project permit applications or project types. Local governments must also identify a deadline for issuance of a notice of final decision on an application. These times can be extended upon mutual agreement of the local government and the applicant. Local governments are required to prepare annual performance reports that include information about compliance with the established timelines.

Some project applications may require an open record hearing. This hearing is conducted to create a record through testimony and submission of evidence for the local government to review and consider. An open record hearing that occurs prior to the local government making a final decision on the project permit application is known as an open record predecision hearing. A closed record appeal in which only argument is allowed follows an open public record hearing.

Summary of Bill:

A local government development regulation must establish deadlines for the review of project permit applications. The deadline for a permit application that does not require an open record predecision hearing may not exceed 90 days. If an open record predecision hearing is required as part of a permit application, then the deadline may not exceed 120 days. The time that a local government takes to determine if a permit application is complete counts toward the deadline. Times in which the local government is waiting for a response from an applicant to review comments from the local government do not count toward the deadlines, and any time after the local government sends review comments for a second time until all reviews are complete does not count toward the deadline. Local governments may adopt an ordinance providing for deadlines that go beyond 90 or 120 days when the local government makes written findings that additional time is needed to process a specific permit type or when specific circumstances exist. An extension of the deadlines may not be based on a local government's self-imposed review processes that exceeds state requirements. If a decision is not issued on a permit application within the required timeframes, then the permit is approved. A permit applicant and a local government may mutually agree to extend the deadlines, but a local government may not require an applicant to waive the applicable deadline as a condition of permit submittal or consideration. A local government may not deny a permit application because it is unable to meet the applicable deadline.

Local government subject to the Growth Management Act must submit annual reports to the Department of Commerce that includes, among other information, the number of applications received during the year; the number that were processed before the deadlines; and the number that were approved because the review deadline was exceeded. The Department of Commerce must submit an annual report summarizing this information to the legislature. Any local government that does not provide the required report is not eligible for grants through the Department of Commerce until the report has been provided.

Owners of a property interest that have filed an application for a permit may file suit against a government entity for damages resulting from an arbitrary or capricious land use decision, or from an unlawful land use decision in which the entity making the decision knew or should have know that its action was unlawful or in excess of its authority.

Appropriation: None.

Fiscal Note: Requested on January 30, 2020.

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