

HOUSE BILL REPORT

SB 5042

As Passed House:

March 3, 2022

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

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

Sponsors: Senators Salomon, Billig, Kuderer, Lias and Wilson, C..

Brief History:

Committee Activity:

Environment & Energy: 2/17/22, 2/22/22 [DP].

Floor Activity:

Passed House: 3/3/22, 55-43.

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 established in 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

Majority Report: Do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Minority Report: Without recommendation. Signed by 1 member: Representative Shewmake.

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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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

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.

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. Final decisions and orders of the Board may be appealed to superior court.

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, which adopts the comprehensive plan or development regulations.

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;
- 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The bill does not end vesting per se. Local governments sometimes knowingly take an action, such as expanding an urban growth area (UGA), knowing that the expansion is illegal under the Growth Management Act (GMA) and that an appeal would overturn the expansion, but any developments that vest in the meantime before an appeal gets filed will get to be built. One county permitted the construction of 3,000 housing units during the loophole period. This bill would close the loophole.

The GMA was passed to ensure growth could be accommodated while preserving natural and open spaces. There is a need to close a loophole that allows growth in rural areas. Developments should not be vested before it has been confirmed that the underlying development regulations and comprehensive plans comply with the law.

The state has lost thousands of acres over the years to illegally vested development. It has happened in counties throughout the state. The actions addressed in the bill are the ones that are the hardest to undo, and are the ones that create the biggest impact on sprawl. This bill does not change the presumption that comprehensive plans are presumed valid. There are many types of permits that the bill does not apply to.

This bill closes a sprawl loophole. This is not a new issue. The House of Representatives has considered and passed this policy before. It is of paramount importance to pass the bill. The bill prevents financial strain on local governments so they do not have to provide services to rural areas.

Under current law, county governments can create urban density islands far from cities, and in turn cities are then required to provide municipal services to these areas. This bill just restores the status quo until there has been a final decision. One county in Eastern Washington has done this numerous times. Current Washington law leaves the result of the government action in place and it is not possible to do anything to reverse it. Some appeals do take a long time, but many do not.

The bill is an important, targeted reform that can eliminate some of the more difficult cases involving the GMA. One of the things that happens when a county expands a UGA is that it creates a situation where the county is stuck and cannot get back out because there is now an obligation to provide urban services to those areas. The easiest way to unwind an inappropriate UGA expansion is to rescind it, but that cannot happen if permits have vested. The bill only causes a 180-day delay in vesting, since that is how long the Growth Management Hearings Board (Board) has to issue a decision. The bill does not change the standard of review for the Board.

The vesting loophole has been frequently used by one county in Eastern Washington. The bill allows people who disagree with the GMA to basically ignore it. The current language of the GMA is not sufficient; in order to truly manage growth, it is necessary to pass this bill.

There is a concern about conserving farmland and forests. The GMA needs to be strengthened, not weakened.

Early vesting leads to unnecessary conversion of important agricultural land. In one county in southwestern Washington, over 2,000 acres of farmland were recently converted while a GMA appeal was pending. Just as the business community needs certainty, so too do farmers, which is why the bill is necessary.

Infrastructure is not keeping up with growth. Cities are the ones who get the biggest bills and the biggest blame for the problems created by these loopholes. There needs to be greater accountability.

Neighborhoods can expand out into farmland with the current loophole in the GMA. There is a shortage of affordable housing.

(Opposed) The bill says that it is impossible to know what a law actually is until years after it has been passed. Builders cannot get loans on land with this level of uncertainty. The bill will exacerbate rising housing costs. The bill upends the entire system of legislatively adopted laws. A law is valid once it has been passed. Litigation and appeals can take years to play out. The bill does not distinguish between legitimate and frivolous appeals.

The bill removes the presumption of validity under the GMA. There is significant public comment on any expansion of a UGA. This type of delay is an attack on the independence of legislation passed by local governments. Vesting creates certainty. This is a bad bill that will cost local governments money.

Limited land availability is a constraint on new development throughout the state. There are significant market pressures on both the east and west sides of state. The bill will delay needed new development. Delaying the date of certainty delays needed new development. All of the actions in the bill are reviewed by local officials. Anyone opposing these local actions has plenty of opportunity to make their voices heard on these actions. All laws should be deemed valid upon adoption. The bill is a bad idea if the state wants to encourage economic development.

All of the comprehensive plans adopted by one southwestern Washington county have been challenged in court. Comprehensive plans can be litigated all the way up to the state Supreme Court. The litigation around one recent comprehensive plan took six years to conclude, and a total of nine years after the proceedings before the Board was done, and at the end, the courts upheld the comprehensive plan. The policy in the bill places the county and property owners in limbo. Parties can already get an injunction in court if appropriate. If the bill is going to pass, there needs to also be fixes to other issues in the GMA, like standing.

Under current law, vested rights cannot be clawed back. If this bill took effect, bankers would price their loans to account for the higher risk. The bill would threaten community banks by infringing on cash flow. When the risk becomes so great, the only entities that can withstand that risk are the very largest, which in turn favors the large national developers over the smaller local developers.

The state is facing a housing affordability crisis. The median home price in one central Puget Sound county is more than \$730,000. Over 35,000 people move into that same

county each year, but only 12,000 building permits are issued each year in that county. Land costs are one of the major costs of housing. The Legislature has chosen to reject increasing urban density in UGAs. The Board is just one stage of litigation; there are also appeals to Superior Court, the Court of Appeals, and the Supreme Court. Uncertainty means there is no opportunity to develop land or address housing needs. New construction generates increased property taxes.

The presumption of validity is one of the foundational elements of the GMA. That presumption is not a loophole; it is a benefit provided to local governments after they have done all of the necessary work to take an action under the GMA. Project applicants take all the risk in the project application process. In return for that risk, the state provides some level of certainty with regard to the rules of the game when it comes to permitting. The requirements for standing under the GMA are very light. It is not true that the bill would delay projects by only 180 days.

Persons Testifying: (In support) Senator Jesse Salomon, prime sponsor; Cynthia Stewart, League of Women Voters of Washington; Bryce Yadon, Futurewise; Danielle Shaw, Washington Environmental Council and Washington Conservation Voters; Dave Andersen, Department of Commerce; Larry Luton, 350 Spokane; Breean Beggs; June Campbell; Kristiana de Leon; Sue Marshall, Friends of Clark County; and Ezza Sohail, The Washington Bus.

(Opposed) Jan Himebaugh, Building Industry Association of Washington; Jamie Howsley; Mike Ennis, Association of Washington Business; Nancy Rogers, National Association for Industrial and Office Parks, Commercial Real Estate Association; Brad Tower, Community Bankers of Washington; Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; and Paul Jewell, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.