

SENATE BILL REPORT

SB 5473

As of January 31, 2023

Title: An act relating to project permit timelines.

Brief Description: Concerning project permit timelines.

Sponsors: Senators Gildon, Lias, Mullet, MacEwen, Lovick, Wilson, L., Braun, Randall, Salomon, Shewmake and Trudeau.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/31/23.

Brief Summary of Bill

- Amends the process for jurisdictions to provide a written determination of completeness for project permit applications.
- Establishes project permit review time periods for permit applications that meet certain public notice and public hearing requirements.
- Requires jurisdictions to refund a percentage of permit fees under certain conditions.
- Amends annual performance reporting requirements for jurisdictions issuing project permits.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

Staff: Maggie Douglas (786-7279)

Background: Growth Management Act. The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. The GMA establishes a wide array of planning duties for 28 counties, and the cities within those

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counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as fully planning under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations. Development regulations include zoning ordinances, official controls, subdivision ordinances, and other regulations.

Development regulations must also establish and implement time periods for local governments to take action on each type of project permit application. These time periods should not exceed 120 days unless the local government makes written findings that additional time is needed to process specific types of applications.

Project Permit Process. Before developing land, a developer must obtain permits from the local government. These permits can include land use permits, environmental permits, building permits, and others, and are known as project permits. 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.

Local governments must issue a determination of completeness of the project permit application within 28 days of submission and must notify other governments and agencies of the application if they have jurisdiction over some aspect of the project. A project permit application is deemed complete if the GMA jurisdiction does not provide the determination within the required time period.

If the locality determines the application incomplete, the locality must notify the applicant what additional information is needed to make the application complete. The local government must notify an applicant whether the application is complete or what additional information is needed within 14 days of resubmission.

A project permit application is determined to be complete when it meets the local procedural submission requirements and is sufficient for continued processing. The determination of completeness does not preclude a request for additional information if new information is required or substantial project changes occur.

Within 14 days of a local government determining a project permit application complete, the locality must provide notice of application to the public and to affected departments. The notice must include a determination, statement of public comment period, and scoping notice under the State Environmental Policy Act (SEPA) if applicable. A public comment period must be at least 14 days, but no more than 30 days following the date of notice of application.

If an open record predecision meeting is required for the project permit, the local government must issue its notice of application at least 15 days prior to the open record

predecision hearing. No more than one open record hearing and one closed record appeal may be provided, except for the appeal of a determination provided under SEPA.

A local government must provide a notice of decision that includes a statement of any threshold determination made under SEPA. The notice of action should be issued within the time period specified by the local government for each type of project permit application, and should not exceed 120 days unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.

Should a local government deny a project permit application, a local government may, but is not required to, provide for administrative appeals. If provided, an administrative appeal of the project decision, combined with any environmental determinations, shall be filed within 14 days after the notice of the decision has been made and is appealable.

Project Review—Required Elements. A proposed project must be consistent with a local government's development regulations, or in the absence of applicable regulations, the adopted comprehensive plan. Applicable regulations must be determinative of the following:

- type of land use permitted at the site, including uses that may be allowed under certain circumstances;
- density of residential development in urban growth areas; and
- availability and adequacy of public facilities identified in the comprehensive plan or development regulations.

Annual Performance Report Requirements. Counties located west of the crest of the Cascade mountain range and whose populations were greater than 150,000 in 1996 as determined by the Office of Financial Management, and the cities located within those counties with populations of at least 20,000, must prepare annual performance reports that include, at minimum, the following information:

- number of complete applications received during the year;
- number of complete applications received during the year for which a notice of final decision was issued before the 120 day deadline;
- number of applications received during the year for which a notice of final decision was issued after the 120 day deadline;
- number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city;
- variance of actual performance to the 120 day deadline; and
- the mean processing time and the number of standard deviation from the mean.

A county or city required to complete the annual performance report must provide notice of and access to the report on the jurisdiction's website.

Summary of Bill: Determination of Completeness. Within 20 business days of receiving a

project permit application, a city or county fully planning under the GMA must provide a written determination to the applicant. The written determination must state either:

- the application is complete; or
- the application is incomplete, the procedural submission requirements of the local government have not been met and an outline of what is necessary to make the application procedurally complete.

A project permit application is deemed complete when it meets the procedural submission requirements of the project permit application as outlined by the local government. Additional information, or studies or project modifications may be required or undertaken subsequent to the procedural review of the application by the local government.

The need for additional information or studies may not preclude a completeness determination if the procedural submission requirements outlined by the project permit application have been provided.

A determination of completeness may include or be combined with:

- a preliminary determination of those development regulations that will be used for project mitigation;
- a preliminary determination of consistency;
- other information the local government chooses to include; or
- the notice of application pursuant to the requirements of the urban growth area under the GMA.

An application shall be deemed procedurally complete on the 29th day after receiving a project permit application if the local government does not provide a written determination to the applicant that the application is procedurally incomplete. When the local government does not provide a written determination, they may still seek additional information or studies.

The notice of application shall be provided within 14 days after the determination of completeness.

Project Permit Application Time Periods. Local governments must establish and implement time periods for local government actions for each type of project permit application in their development regulations. The time periods should not exceed the following unless modified by the local government:

- 45 days for permits which do not require public notice;
- 70 days for permits which require public notice; and
- 120 days for permits which require public notice and a public hearing.

A local government may modify the time periods to add permits types not identified, change permit names or types in each category, address how consolidated review time frames may be different than permits submitted individually, and address how projects of a

certain size or type may be differentiated.

If a local government does not adopt an ordinance or resolution modifying the time periods established in this act, then the time periods established in this act must be applied. Adopting a resolution or ordinance to implement the time periods are not subject to appeal unless the time periods are modified to include a permit type for which more than 120 days is provided.

The total number of days the application is in review with the local government is calculated from the date a determination of completeness is issued to the date a final decision is issued on the project permit application. The number of days is measured by counting five days per week, excluding holidays. The number of days the application is in review with the local government does not include the following:

- time period between when the local government has notified the applicant that additional information is required, and the day when additional information is submitted by the applicant;
- if an applicant informs the local government, in writing, that they would like to temporarily suspend review of the project permit application; and
- if an administrative appeal is filed that extends the time period to issue a final decision.

When permit time periods for issuing a final decision are not met, up to 20 percent of the permit fee must be refunded to the applicant. A local government must refund:

- 10 percent of the permit fees when the established time period is exceeded up to 20 percent; and
- 20 percent of the permit fees when the established time period is exceeded by more than 20 percent.

Alternatively, a local government may collect 80 percent of the fee up front, and collect the remaining balance if permit time frames are met. These provisions do not apply to cities and counties that have implemented at least three of the encouraged actions related to project permit review.

Annual Performance Report. A city or county required to establish an Urban Growth Capacity Report under the GMA must produce an annual performance report that includes information outlining time periods for certain permit types associated with housing. The information collected is intended to provide:

- permit time periods for certain permit processes in counties and cities;
- ongoing information to those submitting permits, local governments, and the state regarding permit time frames associated with permit processes for housing;
- the total number of decisions issued during the year for the following permit types:
- preliminary subdivisions;
- final subdivisions;
- binding site plans;

- permit processes associated with the approval of multifamily housing;
- construction plan review for each of these permit types when submitted separately;
- the total number of decisions for each permit type which included consolidated project permit review; and
- the total number of days from a submittal to a decision being issued, the application was in review with the county or city, and the permit is the responsibility of the applicant.

Beginning in 2024, cities and counties must begin collecting data for producing the annual report. A county or city required to produce an annual report must post the report on the jurisdiction's website and submit the annual report to the Department of Commerce (Commerce) by March 1st.

Commerce must develop a template for jurisdictions to use when reporting data. No later than July 1st of each year, Commerce must publish an annual report that includes:

- annual performance report data for each county and city subject to the reporting requirements;
- a list of those counties and cities whose time frames are shorter than established, to glean best practices from the jurisdictions; and
- key metrics and findings from information and data collected.

A city or county that does not submit a required annual performance report may not receive grants, loans, or financial guarantees provided by the state for public works projects and water pollution control facilities.

Project Review and Code Revisions. Each local government is encouraged to adopt further project review and code provisions to provide prompt, coordinated review for project permit applications. This includes, but is not limited to:

- collecting reasonable fees from an applicant for a permit approval to cover the cost to the jurisdiction processing applications, inspecting and reviewing plans, or preparing detailed statements as required by SEPA;
- entering into an interlocal agreement with another jurisdiction to share permitting staff and resources;
- having on-call permitting assistance in place and budgeted for when permit volumes or staffing levels change rapidly;
- having new positions budgeted that are contingent on increased permit revenue; and
- adopting development regulations which:
 1. only require public hearings for permit applications required to have a public hearing by statute;
 2. make preapplication meetings optional rather than a requirement of permit application submittal; and
 3. make housing types an outright permitted use in all zones where the housing type is permitted.

If a local government has taken measures to provide prompt, coordinated reviews for project permit applications, and is not meeting the time periods identified at least 50 percent of the time, the county or city must adopt new measures, as part of its comprehensive plan periodic update, aimed at reducing permit timelines.

Technical Assistance. Technical assistance from Commerce should focus on local governments that have implemented at least three of the project permit review options.

Technical assistance must develop guidance to assist local governments in setting appropriate fee structures to ensure that fees are both reasonable and sufficient to recover true costs, including guidance on growth factors or other measures to reflect cost increases over time.

Appropriation: None.

Fiscal Note: Requested on January 26, 2023.

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

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

Staff Summary of Public Testimony: PRO: This is a bill that incorporates recommendations from the Growth Management Collaborative Roadmap. This bill tries to meet the needs of several different groups. The average permit timeline is six and a half months to a year. Builders are concerned about the amount of time it takes to get a permit. Those who process permits don't have the resources to process them in a timely manner. Applying for permits can be unpredictable and most cities and counties have different processes for their permit process. Inconsistencies can delay projects and drive-up costs. This bill tries to build in some predictability in the permit process. This combines both needs into one bill. It helps builders shorten timelines and have certainty. It gives municipalities the resources they need to do the work.

OTHER: There are a few remaining elements that need feedback. This bill is very close to having a balanced approach that will provide speed and certainty in the permitting process in a way that is administer-able and flexible for local governments. There are issues with the clarity on how to count and the process for when the development clock and review clock is stopped and started that will provide additional legal clarity. This bill allows local governments and cities to establish own timelines if they are not realistic. Work is needed on the penalty provisions. The off-ramps and the policy options to defer the application of those penalties must be realistic and attractive enough that they will be taken.

Persons Testifying: PRO: Senator Chris Gildon, Prime Sponsor; Josie Cummings, Building Industry Association of Washington; Paul Jewell, Washington State Association of Counties; Mike Ennis, Association of Washington Business.

OTHER: Carl Schroeder, Association of Washington Cities.

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