

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Josh D. Peters, AICP, Community Development Director
Greg Ballard, Development Code Administrator
Mo-chi Lindblad, Principal Planner
Erin Martin, Permit Center Coordinator

DATE: November 12, 2024

SUBJECT: WORKSHOP re: Compliance with Senate Bill 5290

STATEMENT OF ISSUE:

The Washington State Legislature passed Senate Bill (SB) 5290, concerning consolidating local permit review processes, during the 2023 legislative session. The governor signed the bill into law on May 8, 2023, modifying parts of RCW 36.70B Local Project Review, effective July 23, 2023 (Chapter 338, Laws of 2023). New permit time period requirements go into effect on January 1, 2025.

Department of Community Development (DCD) staff have been working to ensure that Jefferson County is in compliance with the provisions of SB 5290. DCD proposes adoption of an ordinance that amends the Unified Development Code (UDC, Title 18 of the Jefferson County Code) and of a resolution that addresses aspects of SB 5290. DCD is collaborating with the Prosecuting Attorney's Office on the ordinance and resolution, with a projected adopted date of December 16, 2024. This workshop is to review the requirements of SB 5290 and DCD's proposed response more generally in preparation for consideration of the proposed ordinance and resolution in December.

ANALYSIS:

Response to SB 5290 entails code changes, a Board resolution addressing compliance, and adjustments to permit review processes and tracking. Attached to this agenda request are the following documents:

- Final Bill Report from the Washington State Legislature on SB 5290
- Washington State Department of Commerce factsheet on key requirements of SB 5290
- Commerce FAQ sheet on SB 5290

Following is information posted on the Commerce webpage (linked below):

Local jurisdictions are responsible for implementing several new requirements.

- [RCW 36.70B.070](#)
 - Clarify determination of completeness procedural requirements.
 - The determination must be based on the procedural requirements as outlined on the project permit application.
- [RCW 36.70B.080](#)

- Apply new default timelines for processing permits, effective January 1, 2025.
 - 65 days if no notice is required for the permit type
 - 100 days if public notice is required for the permit type
 - 170 days if public notice and hearings are required for the permit type
- Refund application review fees up to 20% if new time periods are not met, unless additional measures have been adopted.
- Report annual permit review data, including data on compliance with the new permit time periods – only for counties and cities subject to the requirements of the Review and Evaluation Program, [RCW 36.70A.215](#) (often referred to the Buildable Lands Program) and cities greater than 20,000 population within those counties.
- [RCW 36.70B.160](#)
 - Adopt some of 10 listed measures to expedite permit review by the next comprehensive plan update, under certain circumstances.
 - Adopt additional measures to expedite permit review if the local government had adopted at least three project review and code measures more than five years earlier, and the local government is not meeting the permit deadlines at least 50% of the time since its most recent comprehensive plan update.

More information:

- www.commerce.wa.gov/growth-management/gma-topics/local-project-review/
- app.leg.wa.gov/billsummary?BillNumber=5290&Initiative=false&Year=2023

Additionally, the measures that DCD is taking to achieve compliance with SB 5290 are consistent with Resolution 17-19 that the Board adopted in 2019, “Establishing a Joint Program of Regulatory Reform,” and with Comprehensive Plan policies related to permit processing efficiency, such as LU-P-14.1, 14.2, 14.3 and ED-P-8.1 and 8.2.

FISCAL IMPACT:

The fiscal impact of implementing SB 5290 has yet to be determined. DCD would have more information on fiscal impact at the end of 2025. The fiscal notes prepared by the Office of Financial Management during the 2023 legislative session for SB 5290 are available here:

fnspublic.ofm.wa.gov/FNSPublicSearch/Search/bill/5290/68

RECOMMENDATION:

Listen to DCD staff presentation. Ask questions and make comments. Solicit public input, as desired. Approve future consent agenda request for publication of hearing notice for public hearing anticipated on December 16, 2024.

REVIEWED BY:


 Mark McCauley, County Administrator

Date 11/7/24

FINAL BILL REPORT

2SSB 5290

C 338 L 23

Synopsis as Enacted

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).

Senate Committee on Local Government, Land Use & Tribal Affairs

Senate Committee on Ways & Means

House Committee on Local Government

House Committee on Appropriations

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 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 allowing the development. 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

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.

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.

Site Plan Review. A local government may require a binding site plan to be included with any permit application prior to the issuance of construction permits. The site plan may include a description of physical details that relate to the site and the type of use proposed, including landscaping, design, parking location, and other site-specific issues. A site plan provides exact locations, and detail for the type of information appropriately addressed as a part of property division, such as infrastructure, certification, and other requirements of typical subdivisions.

The review of a site plan must include a preapplication conference, conceptual review, public participation meeting, design guidance review, and a final design review and recommendation. A site plan may be subject to review by the local public health district, city engineering department, or the local planning commission.

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:

- total 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 deviations 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: Project Permit Applications—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 and that 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 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 established in this act are not subject to appeal unless the time periods are modified to include a permit type for which more than 120 days is provided for.

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.

Project Permit Applications—Exemptions. Project permit applications for interior alterations must be exempted from site plan review under the condition that the interior alterations do not result in additional sleeping quarters, nonconformity with federal emergency management agency substantial improvement thresholds, or increase the total square footage or valuation of the structure, which would all require upgraded fire access or fire suppression systems. Any interior alteration may not modify the existing site layout, current use, or building footprint.

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 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 by this act in order to glean best practices from the jurisdictions; and
- key metrics and findings from information and data collected.

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 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 review 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.

Commerce must develop technical assistance that focuses on local governments that have implemented at least three of the project permit review options. Technical assistance must provide 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.

SB 5290 (2023) – KEY REQUIREMENTS

Local Project Review Update

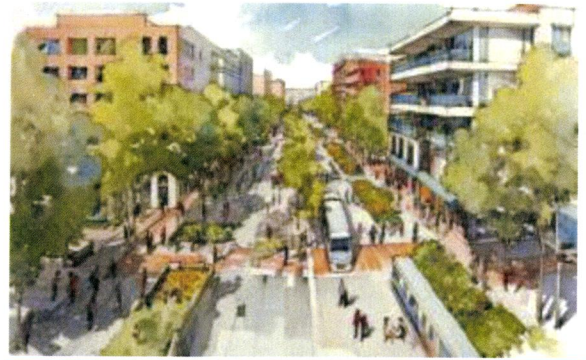
Background

In 2023, [Senate Bill 5290](#) updated portions of the Local Project Review Act, [RCW 36.70B](#). The intent of the new update is to strengthen and improve project review and permitting for construction and land use project permits, with an emphasis on housing development.

New Requirements for Local Project Review

Included in these updates are a new series of requirements for local governments and the Department of Commerce. Key requirements are summarized, with effective dates, and provided in the following table. For further updates and requirements, local jurisdictions are encouraged to read Senate Bill 5290 and the new sections in RCW 36.70B.

Commerce will publish a project review guide to serve as a resource to counties and cities planning under the GMA, with an expected publish date of June 30, 2025. A Local Project Review webpage will be available by March 1, 2024, to serve as a landing place for Commerce guidance, grant information and other tools to assist jurisdictions with project permit implementation.



Agency contact:

Jo Anne Wright, AICP
SENIOR PLANNER

Joanne.wright@commerce.wa.gov



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Local Jurisdiction Requirements

Bill Section Number and RCW:	Changes	Effective Date
Section 6 RCW 36.70B.070	Clarify determination of completeness procedural requirements – the determination must be based solely on the procedural requirements as outlined on the project permit application.	July 23, 2023
Section 7(1)(a)-(k) RCW 36.70B.080	Revise the existing 120-day time period for project review from the date an application is determined complete. The default time periods listed in the section apply automatically if the local government does not adopt an ordinance setting or changing the time periods.	January 1, 2025
Section 7(1)(l) RCW 36.70B.080	Refund 10-20% of permit fees if the new time periods described in section 7 are not met, unless they have adopted at least 3 measures per section 8. Also, allows a local government to only collect 80% of a permit fee upon application, and the remainder only if time periods are met.	January 1, 2025
Section 7(2) RCW 36.70B.080	Modifies the existing annual performance report requirement for jurisdictions to include data on compliance with the new permit time periods. Applies to counties and cities subject to RCW 36.70A.215 and cities/towns greater than 20,000 population within those counties.	March 1, 2025
Section 8(1) RCW 36.70B.160	Adopt some of 10 listed measures to expedite permit review by the next comprehensive plan update under certain circumstances.	At the next comprehensive plan update after January 1, 2026.
Section 8(2) RCW 36.70B.160	Adopt additional measures to expedite permit review if the local government had adopted at least 3 project review and code measures more than five years earlier, and the local government is not meeting the permit deadlines at least 50% of the time since its most recent comprehensive plan update.	At the next comprehensive plan update after January 1, 2026.

Commerce Requirements

Bill Section Number and RCW:	Changes	Effective Date
Sections 2 and 3 RCW 36.70B.240 RCW 36.70B.241	Administer two grant programs – Grant 1: consolidated permit review for acceleration of residential building permits; Grant 2: for permitting systems updates from paper to digital platforms.	April 2024 – June, 2025
Section 4	Convene a digital permitting work group to report to the legislature and governor on the need for digital permitting systems for local governments; the barriers to adoption of digital permitting systems; the costs/benefits of a statewide permitting software system; and budgetary, administrative, and legislative recommendations to establish a statewide system of digital permit review.	Report to the legislature due by August 1, 2024. The permitting work group will continue to meet and work with Commerce until June 30, 2025. August 1, 2023 through June 30, 2025
Section 9 RCW 36.70B.245	Provide technical assistance and guidance to local governments regarding the structure of their application and permit fees.	Fall, 2024
Section 11 RCW 36.70B.250	Create a template and guidance for those local governments required by section 7(2) to submit annual performance reports.	Fall, 2024
Section 12	Develop a plan to provide local governments with temporary permit staff for residential housing permit applications. Report due to the legislature December 1, 2023.	December 1, 2023

2SSB 5290

Frequently Asked Questions



Washington State
Department of
Commerce

SENTATE BILL 5290
FREQUENTLY ASKED
QUESTIONS (FAQ)

Introduction

New legislation passed in 2023, 2SSB 5290, made a number of changes to Chapter 36.70B RCW that affect how local governments process applications for project permits, including changes affecting the amount of time allowed to process applications and imposing new requirements to refund application fees when those timelines are not met.

For more background, please see:

- [2SSB 5290 \(2023\) Bill Information Page](#)
- [Chapter 36.70B RCW: Local Project Review](#)
- [Department of Commerce Local Project Review Program](#)
- [MRSC - 2023 Legislative Updates to Modernize and Streamline Local Project Review](#)

Acknowledgments

Washington State Department of Commerce Growth Management Services

- Dave Andersen, AICP Managing Director
- Catherine McCoy, Senior Planner
- Ben Serr, AICP, Eastern Regional Manager
- Jo Anne Wright, AICP, Senior Planner

Consultant Team:

- SCJ Alliance Consulting
- Ryan Walters Law, PLLC
- BHC Consultants
- Demarche Consulting Group

1011 Plum St. SE
P.O. Box 42525
Olympia, WA 98504-2525

www.commerce.wa.gov

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Applicability

Who is impacted by the new legislation?

The new legislation modified Chapter 36.70B RCW, which generally applies to all **local governments** (cities, towns, and counties). Notable exceptions:

- The **application processing requirements** primarily found in RCW 36.70B.060-080 and .110-130 (e.g., application consolidation, determination of completeness, time periods for application review, notice of application, and the new fee refund provisions) only apply to [local governments planning under RCW 36.70A.040](#), i.e., not partially planning jurisdictions. RCW 36.70B.150 specifically authorizes those partial-planning jurisdictions to adopt provisions of RCW 36.70B.070-080 and .110-130 if desired.
- The **performance reporting requirements** in RCW 36.70B.080(2) only apply to buildable lands counties and cities within those counties with a population of 20,000 or more.

To what types of permits does the legislation apply? Does it apply to building permits, civils, fire, etc.? Does it apply only to residential permits, or also to non-residential/commercial permits?

The legislation applies to Chapter 36.70B RCW, which itself largely applies to “project permits,” defined in RCW 36.70B.020 as “any land use or environmental permit or license required from a local government for a project action...” The legislation struck “building permits” from the non-exhaustive list of example permits that are project permits, but did not specifically exclude building permits from the definition of “project permit,” so the effect of that deletion is debatable. We recommend you continue to consider building permits (and fire permits, which are issued pursuant to the state building code adoption of the International Fire Code) to be a type of project permit until the Legislature clarifies the law or the Attorney General issues an opinion.

Review Time Periods

For project permit applications submitted after January 1, 2025, revised RCW 36.70B.080(1) modifies the previous across-the-board 120-day time period for review of a project permit application to a sliding scale based on the process required for review of various types of project permit applications. Local governments are allowed and required to “establish and implement time periods for local government actions for each type of project permit application,” but those time periods “should” not exceed the time periods provided in that section:

Project permit type	Time periods
Project permits NOT requiring public notice	65 days
Project permits requiring public notice	100 days
Project permits requiring public notice and a public hearing	170 days

Can a local government amend its code by interim ordinance to adopt the permit review periods required by RCW 36.70B.080?

Nothing in RCW 36.70B or 2SSB 5290 prevents a local government from using an interim ordinance (as authorized under RCW 36.70A.390) to adopt review time periods as required by RCW 36.70B.080.

Newly revised RCW 36.70B.080 becomes effective January 1, 2025. Are applications submitted prior to that date subject to the new review time periods?

No. Applications are not subject to the new review periods until after January 1, 2025. RCW 36.70B.080(1)(f) provides that the default statutory time periods apply if a local government does not adopt an ordinance or resolution modifying them.

Is a jurisdiction required to accept an application (and begin the 28-day period to check completeness) if an applicant fails to provide specific documents that are listed on the application checklist?

The legislation provides no authority to reject an incomplete application without following the 28-day completeness determination process.

Although it is not specified in the legislation, our advice is that a local government that is presented with an obviously incomplete application at intake should (a) advise the applicant of the application's deficiencies and recommend they provide the additional information before submitting, but if the applicant insists, (b) accept the application for intake and respond with a letter documenting its incompleteness within 28 days. Accepting an incomplete application may make processing of the application slower, but will provide the applicant with a due process opportunity to appeal the local government's decision on completeness if they disagree with that determination.

When a local government determines an application is not complete during the initial 28-day review period, how long does the applicant have to respond?

Commerce recommends that local governments adopt development regulations to expire applications when applicants do not respond within specified time periods.

After an application has been determined complete, how do we track the time period for review of the application? What about the time that a local government spends waiting for a response from the applicant?

The review time period for an application is limited by the time period the local government has adopted for that type of application. (Note that per RCW 36.70B.080(1)(e), the local government may adopt special rules to lengthen the applicable time period for circumstances in which the applicant has chosen to consolidate multiple application types.) Starting after the date of completeness, the local government should track calendar days until final decision on the application, but EXCLUDING all of the time periods listed in RCW 36.70B.080(g) and RCW 36.70B.080(3), which includes any time period while the local government is awaiting responsive application from the applicant.

Is a local government required to count days when it is waiting on corrections from an applicant?

No. See RCW 36.70B.080(1)(g)(i).

What is "procedurally complete" and when does the clock start if resubmittals do not provide items required to be procedurally complete?

An application is "procedurally complete" when either:

- "it meets the procedural submission requirements of the local government, as outlined on the project permit application" (RCW 36.70B.070(2)) or
- when it is "deemed" procedurally complete on the 29th day after receiving the application if the local government does not provide a written determination to the applicant that the application is procedurally incomplete (RCW 36.70B.070(4)(a)).

Note that RCW 36.70B.080(1)(b) requires that a local government's development regulations must, for project permits submitted after January 1, 2025, specify the contents of a complete application for each type of permit application. The clock will not start if the resubmittals do not provide the items required to be procedurally complete. The local government has 14 days to review the resubmitted material and provide notification to the applicant on the determination of completeness (RCW 36.70B.070(4)(b)).

Is it up to the local government to decide at what point it is forced to "deny" a permit due to an applicant's failure to respond to a request for more information?

Yes, local government can adopt maximum time periods for responses to requests for more information, after which it may expire the application.

Does the "final decision" on an application occur when an application is approved, or when an appeal is resolved?

"Final decision" as used in RCW 36.70B.080 is not defined in the chapter or related chapters, but is either the local decision, if not administratively appealed, or the local appellate body's decision on appeal. However, note that for the purposes of measuring review time, the time during the appeal and any additional time provided by the appeal is excluded per RCW 36.70B.080(1)(g)(iii).

Can local development regulations exclude from the review time periods the days between application decision and the filing of an appeal?

The days between final decision on the application (exclusive of an appeal) and the filing of an appeal are not explicitly excluded by RCW 36.70B.080(1)(g)(iii), but since the time for appeal itself is excluded, we think it's reasonable to exclude the days before an appeal is filed, by local ordinance, from the review time periods.

Can a local government exclude weekends and holidays from the review time periods?

No, a local government cannot exclude weekends and holidays. "Days" are calendar days. See RCW 36.70B.070(1)(c) and 36.70B.080(1)(g). If the local government needs more time for a permit type, it can adopt a longer time period by adding time measured in calendar days.

Can a local government exclude the time for review by other agencies (e.g., state or federal agencies, or tribes) from the review time periods?

RCW 36.70B.080(1)(a) and (1)(d) provide that the time periods are for “local government action” to review applications, not the action of other agencies. However, the method for calculating the number of countable days in RCW 36.70B.080(1)(g) does not include any exclusion for days an application is pending review by an outside agency.

We think local governments should attempt to have application review by other agencies occur concurrently with local government review to the maximum extent possible.

As an alternative, local government could utilize RCW 36.70B.140 to exclude permit types that require lengthy outside-agency review from the process requirements altogether.

RCW 36.70B.080(3) allows a local government to extend the time period for review of an application when an applicant and the local government mutually agree to extend the time period for decision. What should those agreements look like?

Local government may determine how such agreements are written. They should be agreed to by the applicant and a local government representative with authority to sign such an agreement and specify a fixed reasonable time period for extension.

Can a local government require pre-requisites to an application (e.g., septic permits, road access permits, water review) before an application may be submitted?

A local government may adopt rules for processing and sequencing applications, but those rules must be consistent with the requirement in RCW 36.70B.120 to offer a consolidated permit review process. Note that RCW 36.70B.080(1)(e) allows a local government to prescribe how time periods for review of consolidated applications may differ from time periods for review of the underlying permit application.

Can a local ordinance exempt certain project types from the required review time periods?

Per RCW 36.70B.140, a local government may exclude from the statutory default time periods or other process requirements certain specified types of project permits or others that “local government by ordinance or resolution has determined present special circumstances.”

If a local ordinance establishes review time periods greater than 170 days or creates “review processes” that deviate from the statute, would that ordinance be subject to appeal under GMA?

Unless otherwise provided, RCW 36.70A.280 provides that adoption of development regulations may be appealed to the Growth Management Hearings Board. RCW 36.70B.080(1)(k) makes an ordinance or resolution adopting local review time periods not subject to such an appeal so long as the resolution or ordinance does not create a review period of more than 170 days for any project permit. RCW 36.70B.080(1)

further provides that whatever time periods are adopted, those time periods “should” not exceed the time periods provided in that section.

For project permit applications that require a decision by the hearing examiner, Planning Commission, or legislative authority, do the review time periods terminate at the department recommendation, or are the time periods meant to include those additional process steps?

The review time periods are measured from the date the application is deemed complete until final decision. Final decision occurs when the notice of decision under RCW 36.70B.130 is issued, if not appealed, or at the conclusion of a local appeal. But see also the exclusion of appeal periods in RCW 36.70B.080(1)(g)(iii).

Do the review time periods apply to review of post-issuance requests for permit revisions?

The time periods do not apply to a permit revisions process, unless it constitutes a new application.

Are pre-application conferences and determinations subject to statutory review time periods?

No. Review time periods are calculated from date of application completeness; by definition an application is not submitted until after a pre-application conference. RCW 36.70B.160 explicitly recognizes and allows pre-application conferences, although it discourages them.

RCW 36.70B.080(1)(i) provides that if applicants suspend review of their project for more than 60 days, then 30 days may be added to the review time period. What if an applicant wants to serially suspend and restart review?

RCW 36.70B.080(1)(i) provides the local government additional time for review if the applicant wants to suspend review of their application. It is not a constraint on local development regulations governing applicant-requested suspensions of review. Local regulations may allow suspension of review, or not, or add constraints on suspensions.

Our local government’s policy is to cancel applications when the applicant is non-responsive for more than 60 days. Does RCW 36.70B.080(1)(i) require us to allow applicants to extend the valid period of their applications beyond 60 days without applicant response or upon applicant request?

No. RCW 36.70B.080(1)(i) affects review time periods by providing the local government additional time for review if the applicant wants to suspend review of their application. It is not a constraint on local development regulations that limit how long applicants have for response.

Under RCW 36.70B.080(1)(i), a local government may add 30 days to the review time period for an application when an applicant is being

“nonresponsive” (defined as not making “demonstrable progress”) for 60 days to requests for additional information. What is the definition of “demonstrable progress”? Can the local government establish this definition by ordinance?

“Demonstrable progress” is not defined in the statute. Local development regulations could reasonably define it.

Per RCW 36.70B.080(1)(i), if an applicant requests a hold on their application for more than 60 days, or if the applicant is nonresponsive for at least 60 consecutive days, then an additional 30 days can be added to the review time. Is the 30 days on a sliding scale? For example, if the applicant requests a hold for 59 days or 119 days, can there be a proportionate amount of 30 days added to the review time?

RCW 36.70B.080(1)(i) permits a local government to add up to 30 days to the review time period when the applicant requests suspension of their application for more than 60 days or when the applicant is nonresponsive for 60 consecutive days. It does not authorize local government to add more than 30 days to the review time period, nor does it authorize the local government to trigger the provision after fewer than 60 days.

If different types of project permits are combined in a single review process, does the longest review time period of the constituent project permit types govern, or is the review time period the sum of the time periods of the constituent project permit types?

Local government development regulations should clearly indicate how time periods and other permit processes are applied when applications are consolidated. RCW 36.70B.080(1)(e) provides that the time period for consolidated review of multiple permit types is to be the longest of the time periods for review of the constituent applications, unless the local government adopts rules providing otherwise.

Per RCW 36.70B.070(4)(b), during initial review of an application, the local government must respond to re-submittals (in response to a determination that the application is not complete) within 14 days. If the local government does not provide a response within 14 days, is the application deemed procedurally complete?

The 14-day time period in this section is a constraint on review of additional information required for completeness that the local government requests after initial submittal and before the 28-day review period ends. Consider the following example:

- On day 0, an applicant submits their application.
- On day 27, the local government finds the application is incomplete and requests additional info.

- On day 50, the applicant responds with more information. The amount of time the applicant has to respond is not limited unless local regulations provide for such a limitation.
- The local government must review the additional information to determine completeness and must notify the applicant if the application is complete or whatever additional information is necessary, within 14 days (in this example, until day 64). RCW 36.70B.070(4)(b). The statute doesn't specify what happens if the local government does not respond to the new information within 14 days. It is likely the Legislature intended, and a court may hold, that the application is automatically deemed procedurally complete after 14 days if the local government does not respond, based on the similar provision in RCW 36.70B.070(4)(a) for the initial 28-day review period.
- The local government has an additional 14 days after the determination of completeness to provide the notice of application (if one is required for the relevant type of project permit). RCW 36.70B.070(4)(c).

Is a jurisdiction required to intake and begin the 28-day completeness period if an applicant has not paid the application fee?

A local government should prescribe in its development regulations the requirements for a complete application. RCW 36.70B.080(1)(b). The contents of a complete application can include fees. A local government that is presented with an application without the correct fees at intake should (a) advise the applicant of the application's deficiencies and recommend they provide the fees before submitting, but if the applicant insists, (b) accept the application for intake and respond with a letter documenting its incompleteness within 28 days. Doing the latter, rather than refusing to accept the application, provides the applicant with a due process opportunity to appeal the Department's decision on fees if they disagree with that determination.

We don't have fees for permit review. Does the legislation require that permit fees be established for permits?

No.

When should applicants pay fees, along the continuum of a completeness check? At intake, in order to process the completeness review?

The legislation does not specify, but it's a reasonable practice to collect at least a base fee at intake. But see also the limitation in RCW 36.70B.080(1)(l): "A local government may provide for the collection of only 80 percent of a permit fee initially, and for the collection of the remaining balance if the permitting time periods are met."

RCW 36.70B.080(1)(l)(i) requires application fee refunds in certain circumstances. Which fees are captured by this provision and must be refunded? Any fees associated with a project? Review fees, re-submittal fees, inspection fees collected when a permit is issued, re-inspection fees, fees for screening/intake to determine procedurally completeness, school impact fees, State and County recording fees, State Building Code Council fees, fees for document or sign sales, investigation fees for work without a

permit, appeal filing fees, fees charged for other agencies, consultant invoices for contract review or special inspection, open space in-lieu fees, affordable housing in-lieu fees, NSF charges?

The bill does not provide any additional specificity, but excluding fees that are not explicitly and specifically permit fees (e.g., impact fees, recording fees, code enforcement fees, third-party review reimbursements, NSF charges, technology surcharges, in-lieu fees) is reasonable.

Adoption of Process Measures

RCW 36.70B.160 requires adoption of at least three measures from the list of ten measures in RCW 36.70B.160(1) to avoid the new fee refund provisions in RCW 36.70B.080(1)(l) that go into effect January 1, 2025.

Are amendments to local development regulations to implement 2SSB 5290 subject to SEPA review?

Such amendments, if they meet the exemption, would be categorically exempt from SEPA review per [WAC 197-11-800\(19\)](#) for procedural actions:

(19) Procedural actions. The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

Per RCW 36.70B.080(1)(k), an ordinance or resolution adopting local review time periods is also not subject to an appeal to the Growth Management Hearings Board so long as the resolution or ordinance does not create a review period of more than 170 days for any project permit.

We are using several of the measures in RCW 36.70B.160 (expedited review, contracts for on-call permitting assistance, etc.) but they are not adopted—they are procedural. Would that meet the standard?

RCW 36.70B.160 says a local government must “adopt” these measures. Those that do not require an ordinance should be adopted by resolution. We recommend the local government adopt a resolution referencing the statute and describing which of the measures it is using. Measures requiring development regulation amendments should be adopted through the local government’s standard process for development regulation amendments.

RCW 36.70B.080(1)(b) provides that a local government’s development regulations must specify content of complete application for each type. Does this mean that the local ordinance must specify all the elements of a procedurally complete application?

Yes.

Per RCW 36.70B.160(2)(a)(i), if a local government adopted at least 3 of the measures more than 5 years ago, it must adopt additional measures from the list. When does the 5-year period begin?

The five-year lookback period begins at the time of the local government's adoption (as opposed to the due date) of its next required periodic comprehensive plan update after January 1, 2026. For example, for King, Kitsap, Pierce, and Snohomish counties (and the cities within those counties), where their periodic update is due in 2024, the five-year lookback period begins at the time of adoption of the local government's 2034 periodic update.

Notably, the requirement to adopt additional measures only applies if the county or city previously adopted three measures (thus avoiding the requirement to refund permit fees) and "is not meeting the permitting deadlines established in RCW 36.70B.080 at least half of the time over the period since its most recent comprehensive plan update under RCW 36.70A.130." RCW 36.70B.160(2)(a)(ii).

Measure (j) requires a local government to offer a "meeting with the applicant to attempt to resolve outstanding issues during the review process. The meeting must be scheduled within 14 days of a second request for corrections during permit review. If the meeting cannot resolve the issues and a local government proceeds with a third request for additional information or corrections, the local government must approve or deny the application upon receiving the additional information or corrections." What length of time must local government give applicants between these letters? Does the three-letter process start over for each item requested?

Local government does not have to provide any particular length of time between letters, and may set deadlines for responses in its development regulations. Additionally, per RCW 36.70B.080(1)(i), when an applicant is unresponsive for 60 consecutive days, the local government may extend the time period for review by up to 30 days.

The three-letter process described in RCW 36.70B.160(1)(j) applies to the entirety of an application; it does not restart when a local government sends a new letter related to a new topic. If a local government has adopted fewer than three of the measures listed in RCW 36.70B.160(1), or three or more measures within the five years prior, why would the mandate to adopt more measures in subsection (2) not apply?

If the local government did not adopt three measures from the list in RCW 36.70B.160(1), the mandate to adopt additional measures will not apply because the local government will be instead subject to the requirements to refund portions of application fees.

If the local government adopted three measures from the list in RCW 36.70B.160(1) less than five years prior, the mandate to adopt additional measures will not apply, apparently because the legislation intended a five-year lookback period to allow the additional measures time to work.

At a high level, the local government has a choice to either be subject to the fee refund requirements, or be protected from the fee refund requirements by achieving the review time periods or by making continuous effort toward that goal.

Per RCW 36.70B.160(2)(a), a local government has to adopt additional measures from the list in subsection (1) at the time of its next comprehensive plan update after January 1, 2026, if it is not meeting application review period targets and certain other circumstances. What is the measurement period for evaluating whether the local government is meeting the targets?

After January 1, 2026, a county or city must adopt additional measures under 160(1) at the time of its next comprehensive plan update under RCW 36.70A.130 if it meets certain circumstances and is not meeting permitting deadlines.

For example, per RCW 36.70A.130, Snohomish, King, Pierce, and Kitsap counties had a Comprehensive Plan deadline of December 31, 2024. Their next periodic updates are due June 30, 2034, which is the first deadline after January 1, 2026. Per RCW 36.70B.160(2)(a)(ii), a local government would need to adopt additional measures if it is not meeting permitting deadlines “at least half the time” over the period between the date of adoption of its 2024 periodic update and the date of its 2034 comprehensive plan update. The five-year period in subsection (2)(a)(i) does not apply to calculation of permit review performance for the purpose of (2)(a)(ii).

Are projects with mutually agreed time periods per RCW 36.70B.080(3) excluded from the calculation of whether the local government is meeting targets per 36.70B.160(2)(a)(ii)?

While that would be a logical exclusion, there is not specific authority in the bill to exclude them from the calculations. We recommend local governments track those applications separately.

The optional measure in RCW 36.70B.160(1)(b) seems to encourage, but explicitly does not require, local government to delete fees for administrative appeals. Yet subsection (2)(a) makes adoption of some of these voluntary measures mandatory if review time periods are not met at least half the time. Which provision controls—8(1)(b) or 8(2)(a)?

RCW 36.70B.160(1)(b) contains an optional measure that a local government may adopt to avoid the fee refund requirements of RCW 36.70B.080(1)(l). Adopting this measure would not allow the local government to charge fees for administrative appeals EXCEPT where otherwise authorized by state law.

RCW 36.70B.160(2)(a)(ii) imposes additional requirements if a local government doesn't meet the permitting deadlines at least “half of the

In RCW 36.70B.080(2)(b)(ii) there is a reference to reporting decisions associated with construction plan review. Since building permits were struck from the definition of project permit, what type of permits is construction plan review referring to?

Based on the context and the important role of housing in this legislation, we believe that "construction plan review" encompasses building permits. The term "building permits" was struck from a non-exhaustive list of example types of "project permits" in RCW 36.70B.020; the effect of that deletion is debatable.

Do projects with mutually agreed time periods per RCW 36.70B.080(3) get reported per RCW 36.70B.080(2)(b)?

A mutually agreed deadline extension for a particular application extends the allowed time period for that application; therefore the refund provision in RCW 36.70B.080(1)(l) would not apply until the mutually agreed time period expires. However, such applications should still be reported under RCW 36.70B.080(2). A local government may identify in their reports which applications have mutually agreed extensions.

In Sec. 7 of the bill, now codified at RCW 36.70B.080, there is a reference in subparagraph (2)(b)(v) and (2)(b)(vi) to "the project types in (2)(a)(ii)." Should that be a reference to (2)(b)(ii)?

Yes. The code reviser has noted this apparent drafting error.

Compliance with Senate Bill 5290

BoCC workshop 11/12/2024

Department of Community Development (DCD)

Josh Peters, Director

Greg Ballard, Development Code Administrator

Mo-chi Lindblad, Principal Planner

Erin Martin, Permit Center Coordinator

SB 5290 Summary

- 2023 Legislative Session
- Main objectives
 - Increase timeliness and predictability of local project review
 - Establish grant and technical assistance programs
- Multiple amendments to Ch. 36.70B RCW – Local Project Review
- Provisions requiring partial permit fee refunds for failure to timely process permit applications
- Components that take effect 1/1/2025
 - New permit review timelines
 - Annual reporting requirements (not applicable to Jefferson County)

Response

- Proposed ordinance with Unified Development Code (UDC) changes
 - JCC 18.40 – Permit Application and Review Procedures/SEPA Implementation
 - For amendments to procedures, Type V process *without* Planning Commission
- Proposed resolution that addresses key component of compliance
 - Law says only partial payment of fees permissible if timelines not met
 - However, local government may choose from list of measures in order to be exempted from that provision
- Additionally...
 - Continually make adjustments to application process, review protocols
 - Enhance permit tracking/reporting in conjunction with EPL software system
 - SB 5290 compliance actions consistent with 2019 Board resolution on regulatory reform (and corresponding Comp Plan policies)

Measures — *need to select 3 to be exempt from fee refunds*

1. Expedited review process available for Type I permit applications
 - Type I permit applications not subject to public notice (i.e., SEPA exempt) and are submitted as complete applications shall take priority over other projects
2. Reasonable fees
 - ...that do not automatically include a fee to process an administrative appeal
3. Consultants under contract for on-call planning services (currently 6)
4. Public hearings only required for permit applications required by statute
5. Optional pre-application conferences
6. Provision for meeting with applicants to attempt to resolve outstanding issues during review process

Schedule

- 11/12/2024 workshop
- By mid-Nov 2024, send proposed code changes for Commerce review
- 11/25/2024 consent agenda request for hearing notice approval
- 12/4/2024 hearing notice published, comment period initiated
- 12/16/2024 public hearing, BoCC action on ordinance & resolution
 - If not that day, code changes made before end of year
- 1/1/2025 timelines in SB 5290 take effect (irrespective of local code)
- End of 2025 – DCD summarizes data, outcomes relative to objectives
- 2026 & beyond: ongoing monitoring & continuous improvement

Workshop conclusion

- Questions?
- Comments?
- Concerns?