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## OLR Bill Analysis

### sHB 5272

#### ***AN ACT CONCERNING THE EXPIRATION OF CERTAIN LAND USE APPROVALS AND THE NEW HOME CONSTRUCTION GUARANTY FUND.***

#### **SUMMARY**

This bill establishes a hearing process for local land use authorities to shorten the amount of time developers have to complete certain ongoing land use projects that were approved during specified date ranges. Under current law, these approvals' expiration dates were automatically extended, generally to at least 14 years after the date they were approved. The bill also changes the covered approval date ranges specified in current law and, in doing so, appears to automatically reverse extensions granted for certain approvals.

Separately, the bill expands eligibility for the New Home Construction Guaranty Fund. It allows consumers to recuperate money from the fund for judgments awarded against certain individuals with financial or operational control of a new home construction company that violated certain laws (rather than only for judgments against the construction company). It also (1) increases, from \$30,000 to \$50,000 per claim, the maximum amount consumers may recuperate from the fund and (2) lowers, from \$750,000 to \$650,000, the fund's annual cap. It correspondingly increases (from \$300,000 to \$400,000) the funds exceeding this cap that must be annually transferred into the Consumer Protection Enforcement Account. Existing law requires any remaining excess to be transferred into the General Fund.

**EFFECTIVE DATE:** Upon passage, except the guaranty fund provisions are generally effective July 1, 2024, and applicable to fiscal years starting on or after that date.

#### **§§ 1-7 — LAND USE APPROVAL EXPIRATION DATES**

### ***Extended Project Completion Deadlines***

By law, when a planning or zoning commission, combined planning and zoning commission, or an inland wetlands agency (“land use authority”) operating under the statutes approves a project, it must set an expiration date that falls within the timeframes the law specifies. Consequently, a developer must complete the project before that date or resubmit it to the local commission or agency for approval. However, current law gives developers more time to complete certain ongoing projects without seeking reapproval from the applicable land use authority (generally at least 14 years or 19 years, as applicable).

These extended timeframes for certain land use approvals are based on (1) the approval type (e.g., site plans, subdivisions, wetlands permits, and special permits and exceptions) and (2) if the approval was still in effect on specified dates (which depends on when the approval was granted). Specifically, the extension in current law applies to certain approvals made:

1. before July 1, 2011, and that had not expired on July 12, 2021, and
2. between July 1, 2011, and June 9, 2021, and that did not expire before March 10, 2020. (It is unclear if approvals granted after March 10, 2020 (through June 9, 2021), could be considered unexpired on that date. (These extended timeframes were established in 2021; see BACKGROUND.)

The bill changes these qualifying dates to cover approvals made on or before June 10, 2021, that were unexpired on July 12, 2021 (see below).

The bill also establishes a process for land use authorities to set an earlier expiration date for these approvals, despite the extended deadlines. The table below shows the existing extended deadlines for the land use approvals subject to the bill’s provisions.

**Table: Extended Deadlines for Land Use Approvals Subject to Bill**

<b><i>Land Use Approval</i></b>	<b><i>Required Expiration Dates</i></b>	<b><i>Bill §</i></b>
<b>Site plan approvals</b> (except for residential projects with 400 or more	At least 14 years after approval (and up to 19	§ 1

<b>Land Use Approval</b>	<b>Required Expiration Dates</b>	<b>Bill §</b>
units or commercial projects of 400,000 square feet or more)	years, if extended)	
<b>Subdivisions</b> (projects with fewer than 400 dwelling units)	At least 14 years after approval (and up to 19 years, if extended)	§ 2
<b>Subdivisions</b> (projects with 400 or more dwelling units)	19 years after approval	§ 3
<b>Wetlands permits</b>	At least 14 years after approval (and up to 19 years, if extended)	§ 4
<b>Special permits and special exceptions</b> (including those approved by a municipality exercising land use powers under a special act)	19 years after approval	§§ 5, 6 & 7(b)
<b>Site plans, subdivisions, or permits approved by a municipality exercising land use powers under a special act</b>	At least 14 years after approval (and up to 19 years, if extended)	§ 7(a)

### ***Hearings to Move Up Expiration Date***

Under the bill, to set an earlier expiration date, a land use authority must hold a public hearing that complies with procedural requirements set in law. It may vote in favor of setting an earlier expiration date for an approval if it finds that the work in connection with the approval (1) is incomplete or substandard, creating a condition that poses a significant hazard to the public, or (2) has not been done at all in the last five years.

### ***Automatically Shortened Expiration Dates***

The bill changes the covered approval periods for extended project completion deadlines as described above. It appears that, by changing the covered periods, the bill automatically revokes certain extensions granted under current law. Under current law, certain approvals were extended if they were unexpired on March 10, 2020. Under the bill, those same approvals would need to have still been in effect on July 12, 2021, to be extended. It is unclear what the effect would be on an approval that was extended under current law but no longer qualifies under the bill (i.e., whether the approval's original expiration date would apply,

even if that date has passed).

### **§§ 8 & 9 — NEW HOME CONSTRUCTION GUARANTY FUND**

Under current law, a consumer who is awarded a judgment (e.g., a binding arbitration decision, court judgment, order, or decree) against a registered new home construction contractor but is unable to satisfy the judgment (i.e., get payment from the contractor) may apply to the Department of Consumer Protection (DCP) to instead recuperate the judgment amount (up to a specified maximum) from the New Home Construction Guaranty Fund. (New home construction contractors annually pay into this fund when renewing their registrations.)

Under the bill, consumers may also recuperate money from the fund if the judgment was awarded against a person who exercises day-to-day financial or operational control of a business entity that is a new home construction contractor (i.e., a “controlling participant”). The company must either be currently registered as a new home construction company or have been registered within two years of entering into a contract with a consumer harmed by the company.

The bill makes consumers awarded a judgement against a controlling participant eligible for funds from the New Home Construction Guaranty Fund subject to the same conditions and requirements the law sets for consumers with a judgment against a contractor. For example, among other things, the consumer:

1. must apply in writing to DCP within two years of the judgment being finalized;
2. is eligible to receive payment from the fund (up to \$50,000 under the bill) for the actual damages and costs he or she was awarded by the court (excluding punitive damages) and minus any amount already recovered; and
3. must affirm that he or she has made a good faith effort to satisfy the judgment by following statutory post-judgment procedures.

Additionally, the bill makes new home construction contractors and

controlling participants liable for consumer payouts from the New Home Construction Guaranty Fund that result from a judgment against the controlling participant.

## **BACKGROUND**

### ***Executive Order Tolling Expirations***

In May 2020 (during the emergencies declared due to COVID-19), the governor signed EO 7JJ, which delayed the expiration date of various land use approvals if the approval-holder was not in violation of the approval's conditions on March 10, 2020. In 2021, similar extensions were codified into law (PA 21-34, §§ 3-9, and PA 21-163).

### ***Related Bill***

sSB 201, §§ 8 & 9, reported favorably by the General Law Committee, also contains provisions allowing consumers to recuperate money from the New Home Construction Guaranty Fund if they are unable to satisfy a judgment against an individual associated with a new home construction contractor. However, under this bill, the individual (i.e., "proprietor") must have (1) an ownership interest in the construction company and (2) been found guilty of violating the state's new home construction contractor laws for the company's conduct.

## **COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/22/2024)