
HOUSE BILL 2234

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Fitzgibbon and Pollet

Read first time 01/14/14. Referred to Committee on Local Government.

1 AN ACT Relating to vesting under comprehensive plans or development
2 regulations determined to be invalid by the growth management hearings
3 board; and amending RCW 36.70A.302.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 36.70A.302 and 2010 c 211 s 10 are each amended to
6 read as follows:

7 (1) The board may determine that part or all of a comprehensive
8 plan or development regulations are invalid if the board:

9 (a) Makes a finding of noncompliance and issues an order of remand
10 under RCW 36.70A.300;

11 (b) Includes in the final order a determination, supported by
12 findings of fact and conclusions of law, that the continued validity of
13 part or parts of the plan or regulation would substantially interfere
14 with the fulfillment of the goals of this chapter; and

15 (c) Specifies in the final order the particular part or parts of
16 the plan or regulation that are determined to be invalid, and the
17 reasons for their invalidity.

18 (2) ((A determination of invalidity is prospective in effect and
19 does not extinguish rights that vested under state or local law before

receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order,) (a) Except as otherwise provided in (b) of this subsection, no rights vest in the part or parts of a plan or regulation determined to be invalid by the board under subsection (1) of this section. A permit application or permit submitted or issued under the invalidated part or parts of a plan or regulation prior to the board's determination of invalidity is void and confers no vested rights.

(b) A determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

((+4)) (3) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine

1 under subsection (1) of this section whether the prior policies or
2 regulations are valid during the period of remand.

3 ((+5)) (4) A county or city subject to a determination of
4 invalidity may adopt interim controls and other measures to be in
5 effect until it adopts a comprehensive plan and development regulations
6 that comply with the requirements of this chapter. A development
7 permit application may vest under an interim control or measure upon
8 determination by the board that the interim controls and other measures
9 do not substantially interfere with the fulfillment of the goals of
10 this chapter.

11 ((+6)) (5) A county or city subject to a determination of
12 invalidity may file a motion requesting that the board clarify, modify,
13 or rescind the order. The board shall expeditiously schedule a hearing
14 on the motion. At the hearing on the motion, the parties may present
15 information to the board to clarify the part or parts of the
16 comprehensive plan or development regulations to which the final order
17 applies. The board shall issue any supplemental order based on the
18 information provided at the hearing not later than thirty days after
19 the date of the hearing.

20 ((+7)) (6)(a) If a determination of invalidity has been made and
21 the county or city has enacted an ordinance or resolution amending the
22 invalidated part or parts of the plan or regulation or establishing
23 interim controls on development affected by the order of invalidity,
24 after a compliance hearing, the board shall modify or rescind the
25 determination of invalidity if it determines under the standard in
26 subsection (1) of this section that the plan or regulation, as amended
27 or made subject to such interim controls, will no longer substantially
28 interfere with the fulfillment of the goals of this chapter.

29 (b) If the board determines that part or parts of the plan or
30 regulation are no longer invalid as provided in this subsection, but
31 does not find that the plan or regulation is in compliance with all of
32 the requirements of this chapter, the board, in its order, may require
33 periodic reports to the board on the progress the jurisdiction is
34 making towards compliance.

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