
HOUSE BILL 2618

State of Washington

65th Legislature

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By Representatives Irwin, Walsh, Volz, Johnson, Hayes, Condotta, Pike, Shea, Steele, and Young

Read first time 01/11/18. Referred to Committee on Judiciary.

1 AN ACT Relating to relief from government actions during property
2 development; and amending RCW 64.40.010, 64.40.020, and 64.40.030.

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

4 **Sec. 1.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to
5 read as follows:

6 As used in this chapter, the terms in this section shall have the
7 meanings indicated unless the context clearly requires otherwise.

8 (1) "Agency" means the state of Washington, any of its political
9 subdivisions, including any city, town, or county, and any other
10 public body exercising regulatory authority or control over the use
11 of real property in the state.

12 (2) "Permit" means any governmental approval required by law
13 before an owner of a property interest may improve, sell, transfer,
14 or otherwise put real property to use.

15 (3) "Property interest" means any interest or right in real
16 property in the state.

17 (4) "Damages" means reasonable expenses and losses, other than
18 speculative losses or profits, incurred between the time a cause of
19 action arises and the time a holder of an interest in real property
20 is granted relief as provided in RCW 64.40.020. Damages must be
21 caused by an act, necessarily incurred, and actually suffered,

1 realized, or expended, but are not based upon diminution in value of
2 or damage to real property, or litigation expenses. Damages include
3 expenditures for planning and predevelopment activities necessary to
4 the development of the real property, including legal fees related to
5 permit development and environmental review.

6 (5) "Regulation" means any ordinance, resolution, or other rule
7 or regulation adopted pursuant to the authority provided by state
8 law, which imposes or alters restrictions, limitations, or conditions
9 on the use of real property.

10 (6) "Act" means a final decision by an agency which places
11 requirements, limitations, or conditions upon the use of real
12 property in excess of those allowed by applicable regulations in
13 effect on the date an application for a permit is filed. "Act" also
14 means the failure of an agency to act within time limits established
15 by law in response to a property owner's application for a permit:
16 PROVIDED, That there is no "act" within the meaning of this section
17 when the owner of a property interest agrees in writing to extensions
18 of time, or to the conditions or limitations imposed upon an
19 application for a permit. "Act" shall not include lawful decisions of
20 an agency which are designed to prevent a condition which would
21 constitute a threat to the health, safety, welfare, or morals of
22 residents in the area.

23 In any action brought pursuant to this chapter, a defense is
24 available to a political subdivision of this state that its act was
25 mandated by a change in statute or state rule or regulation and that
26 such a change became effective subsequent to the filing of an
27 application for a permit.

28 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to
29 read as follows:

30 (1) Owners of a property interest who have filed an application
31 for a permit have an action for damages to obtain relief from acts of
32 an agency which are arbitrary, capricious, unlawful, or exceed lawful
33 authority, or relief from a failure to act within time limits
34 established by law(~~(: PROVIDED, That the action is unlawful or in~~
35 ~~excess of lawful authority only if the final decision of the agency~~
36 ~~was made with knowledge of its unlawfulness or that it was in excess~~
37 ~~of lawful authority, or it should reasonably have been known to have~~
38 ~~been unlawful or in excess of lawful authority)).~~

1 (2) The prevailing party in an action brought pursuant to this
2 chapter may be entitled to reasonable costs and attorney's fees.

3 (3) No cause of action is created for relief from unintentional
4 procedural or ministerial errors of an agency.

5 (4) Invalidation of any regulation in effect prior to the date an
6 application for a permit is filed with the agency shall not
7 constitute a cause of action under this chapter.

8 **Sec. 3.** RCW 64.40.030 and 1982 c 232 s 3 are each amended to
9 read as follows:

10 Any action to assert claims under the provisions of this chapter
11 shall be commenced only within ~~((thirty))~~ one hundred twenty days
12 after ~~((all administrative remedies have been exhausted))~~ the agency
13 issues a final written decision on the application for permit.

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