H-1236.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2100**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Representative Goodman

AN ACT Relating to the statutory vested rights doctrine and establishing rules for determining what regulations control decisions on project permit applications; amending RCW 36.70B.020, 19.27.095, 58.17.170, 36.70B.170, 36.70A.302, 36.70A.280, and 36.70A.280; adding a new section to chapter 36.70B RCW; creating a new section; repealing RCW 58.17.033; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that the status of the common law vested rights doctrine has been called into question by Washington courts, resulting in substantial uncertainty in land use decisions. The question of vested rights is a matter of state concern and it is in the public interest to state clear rules for determining what regulations control local land use decisions.

NEW SECTION. **Sec.**  A new section is added to chapter 36.70B RCW to be codified between RCW 36.70B.050 and 36.70B.060 to read as follows:

Each local government shall apply the following controlling law when reviewing project permit applications:

(1) An application for approval of a proposed preliminary, final, or short plat, as defined in RCW 58.17.020, must be considered under the controlling law in effect on the date a complete application for preliminary plat approval of a subdivision, or short plat approval of a short subdivision, was submitted, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(2) For land subject to a final plat approval, each complete project permit application submitted no later than five years after the date of that approval must be considered under the controlling law in effect on the date the complete application for preliminary plat approval was submitted, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(3) For land subject to a short plat approval, each complete project permit application submitted no later than two years after the date of that approval must be considered under the controlling law in effect on the date the complete application for short plat approval was submitted, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the short subdivision.

(4) For any project permit application for which the controlling law is not determined under subsections (1) through (3) of this section, each complete project permit application is considered under the controlling law in effect on the date the complete application for the comprehensive permit was submitted, if the project is one for which:

(a) A complete comprehensive permit application has been submitted:

(i) Provided the application has not expired without the local government making a decision on the application; and

(ii) The local government has not denied the application; or

(b) The local government has issued a comprehensive permit: Provided the permit has not expired.

(5) For any project permit application for which the controlling law is not determined under subsections (1) through (4) of this section, the application must be considered under the controlling law in effect on the date that complete application was submitted.

(6) For a building permit application, the application must be considered under the technical code in effect on the date the complete building permit application was submitted.

(7) Notwithstanding subsections (1) through (6) of this section:

(a) An application for a site-specific rezone or a planned unit development must be considered under the controlling law in effect on the date the local government makes a final determination on that application.

(b) Any nonqualifying law relevant to making a decision on a project permit application must be the version of that law in effect on the date the local government makes a final determination on that application.

(c) Unless a local government adopts a different rule by ordinance or resolution, any local government law regulating the process for reviewing a project permit application must be the latest version of that law.

(8) If the jurisdiction's critical area ordinance is amended after the project permit application is filed, the amended critical area ordinance applies to the project if compliance can be achieved without significant change to the project. For purposes of this subsection, "significant change" means a reduction by more than ten percent of:

(a) The lots proposed in a residential application; or

(b) The floor area in a nonresidential application.

(9) After a county, city, or town has provided public notice or the applicant has actual notice that the jurisdiction has initiated a process to review, amend, or adopt a comprehensive plan, development regulation, or shoreline master program, any project permit applications must comply with the provisions in effect when the county, city, or town makes a final decision on the application. A county, city, or town must provide public notice when it initiates a process to review, amend, or adopt a comprehensive plan or development regulation.

(10) A development agreement authorized under this chapter may establish the controlling law for project permit applications. In the event of a conflict between subsections (1) through (9) of this section and the terms of a development agreement authorized under this chapter, the terms of the development agreement control.

**Sec.**  RCW 36.70B.020 and 1995 c 347 s 402 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

(2) "Local government" means a county, city, or town.

(3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(4) "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

(5) "Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

(6) "Complete application" means a project permit application deemed complete pursuant to:

(a) RCW 36.70B.070 by a local government planning pursuant to RCW 36.70A.040; or

(b) The requirements for a complete application defined by local ordinance by a local government not planning pursuant to RCW 36.70A.040.

(7) "Controlling law" means:

(a) All policies adopted under RCW 43.21C.060;

(b) All development regulations and other local government law relevant to making a decision on a project permit application;

(c) All comprehensive plan policies that may apply and development regulations as defined in RCW 36.70A.030(7); and

(d) For shoreline permits, variances, and exemptions the policy of the shoreline management act, chapter 90.58 RCW, any applicable regulations adopted under the act, and the shoreline master program.

(8) "Nonqualifying law" means: Impacts fees and other fees and taxes; other laws that do not directly affect the physical attributes of new development or the types or intensity of new land uses; and any law with which existing development or uses must also comply. "Nonqualifying law" excludes local government law regulating a project permit review process.

(9) "Technical code" means any of the codes enumerated in RCW 19.27.031 and chapter 19.27A RCW, excluding any such code provision that purports to apply a development regulation.

(10) "Comprehensive permit" means a building permit and, for each local government, any other permit designated as such by ordinance or resolution provided that no local government may designate any of the following as a comprehensive permit: Final plat or short plat approval; site-specific rezone; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; variance; concurrency determination; grading permit; clearing permit; or septic tank permit.

**Sec.**  RCW 19.27.095 and 1991 c 281 s 27 are each amended to read as follows:

(1) ((~~A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.~~

~~(2)~~)) The requirements for a ((~~fully~~)) complete((~~d~~)) building permit application shall be defined by local ordinance but for any construction project costing more than five thousand dollars the application shall include, at a minimum:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than fifty percent of the total amount of the construction project.

((~~(3)~~)) (2) The information required on the building permit application by subsection ((~~(2)~~)) (1)(a) through (d) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

((~~(4)~~)) (3) The information required by subsection ((~~(2)~~)) (1) of this section and information supplied by the applicant after the permit is issued under subsection ((~~(5)~~)) (4) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

((~~(5)~~)) (4) If any of the information required by subsection ((~~(2)~~)) (1)(d) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of ((~~vesting under subsection (1) of this section~~)) determining the controlling law under section 2 of this act. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

((~~(6) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW.~~))

**Sec.**  RCW 58.17.170 and 2013 c 16 s 2 are each amended to read as follows:

(1) When the legislative body of the city, town, or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that ((~~said~~)) subdivision meets the requirements of this chapter, other applicable state laws((~~, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval~~)) in effect on the date a complete application for preliminary plat approval was submitted, and of the controlling law determined under section 2 of this act, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat ((~~shall~~)) must be filed for record with the county auditor. One reproducible copy ((~~shall~~)) must be furnished to the city, town, or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)((~~(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.~~

~~(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.~~

~~(3)(a) Except as provided by (b) of this subsection,~~)) A subdivision shall be governed by the terms of approval of the final plat, and the ((~~statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015~~)) controlling law determined under section 2 of this act for the period determined under section 2 of this act, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

((~~(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.~~))

**Sec.**  RCW 36.70B.170 and 1995 c 347 s 502 are each amended to read as follows:

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or ((~~vesting~~)) other period ((~~for~~)) during which applicable standards must be considered controlling law. No development agreement and build-out period is valid for more than ten years. Before a development agreement expires, the county or city legislative body may extend a development agreement and build-out period for one additional five-year period and may include changes to the applicable development standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

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

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

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

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

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

(2) A determination of invalidity is prospective in effect and does not ((~~extinguish rights that vested under state or local law~~)) alter any controlling law determined under section 2 of this act 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~~)) the controlling law determined under section 2 of this act after receipt of the board's order by the county or city ((~~vests to~~)) must include 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 determination of invalidity does not ((~~apply to a development~~)) alter any controlling law determined under section 2 of this act with respect to a project 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) 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 under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. ((~~A development permit application may vest under~~)) An interim control or measure may be included as controlling law determined under section 2 of this act upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

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

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

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

**Sec.**  RCW 36.70A.280 and 2014 c 147 s 3 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction;

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That a department determination under RCW 36.70A.060(1)(d) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

(6) The initial effective date of an action subject to review by the growth management hearings board that expands the urban growth boundary shall be after the latest of the following dates:

(a) Sixty days after the date of publication of notice of the comprehensive plan, development regulation, or amendment to the plan or regulation adoption, modifying the boundaries of the urban growth area, as provided in RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final decision and order.

**Sec.**  RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

(6) The initial effective date of an action subject to review by the growth management hearings board that expands the urban growth boundary shall be after the latest of the following dates:

(a) Sixty days after the date of publication of notice of the comprehensive plan, development regulation, or amendment to the plan or regulation adoption, modifying the boundaries of the urban growth area, as provided in RCW 36.70A.290(2); or

(b) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final decision and order.

NEW SECTION. **Sec.**  RCW 58.17.033 (Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance) and 1987 c 104 s 2 are each repealed.

NEW SECTION. **Sec.**  Section 8 of this act expires December 31, 2020.

NEW SECTION. **Sec.**  Section 9 of this act takes effect December 31, 2020.

**--- END ---**