
SENATE BILL 6368

State of Washington

52nd Legislature

1992 Regular Session

By Senator Skratek

Read first time 01/27/92. Referred to Committee on Governmental Operations.

1 AN ACT Relating to the vesting of property rights upon an
2 application for the development or improvement of land; adding new
3 sections to chapter 58.17 RCW; creating a new section; and repealing
4 RCW 58.17.033.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the decision
7 to issue a building permit for medium and large scale construction
8 projects has consequences for the quality of life of individuals,
9 communities, and businesses surrounding the area where the projects are
10 to be located. The legislature also finds that Washington is one of
11 only a few states in which the vesting of the right to construct such
12 projects has been declared by the state supreme court to occur upon the
13 submittal of an application for a building permit for the project.

1 NEW SECTION. **Sec. 2.** The legislature intends to reverse the
2 common law vesting of rights doctrine and to provide that a landowner's
3 rights vest at the issuance, by the appropriate local government
4 officials, of an approved building permit. It is also the intent of
5 the legislature to reverse the legal precedents concerning this
6 doctrine, beginning with State ex rel. Hardy v. Superior Court, 155
7 Wash. 244 (1930), and State ex rel. Ogden, 45 Wn.2d 492 (1954).

8 NEW SECTION. **Sec. 3.** For the purposes of this chapter,
9 "development of land" or "development" means a subdivision, short
10 subdivision, or other improvement of land for commercial or multifamily
11 residential purposes.

12 NEW SECTION. **Sec. 4.** An application for a development of land
13 as defined in this chapter does not cause a right to proceed with the
14 development to accrue to the applicant under the zoning or land use
15 control in effect at the time of application. An official or court of
16 competent jurisdiction may not consider such zoning or land use
17 controls in determining whether to issue, or direct the issuance of, a
18 permit necessary to the development of land if the zoning or land use
19 control has been changed since the application for the development.

20 NEW SECTION. **Sec. 5.** (1) The provisions of section 4 of this
21 act do not apply to the following:

22 (a) An application for the construction, razing, remodeling,
23 moving, or addition to the principal place of residence of an
24 individual when the application is made by the person who intends to
25 occupy or is occupying such residence;

1 (b) An application for the razing, remodeling, moving, or addition
2 to an existing structure in which is located any commercial,
3 agricultural, or industrial enterprise;

4 (c) An application that has not been acted upon prior to a change
5 in zoning or land use controls because of bad faith, negligence, or
6 unreasonable delay on the part of an entity or public employee whose
7 activities are a legally required component of the decision process in
8 regards to an application for a development. If an agency with
9 appellate jurisdiction over such questions, or court of competent
10 jurisdiction, determines such conduct has occurred it shall cause the
11 development to be approved under the zoning or land use controls in
12 effect at the time of application for the development.

13 (2) All applications that meet the criteria of subsection (1) of
14 this section must be acted upon pursuant to the zoning or land use
15 controls in effect at the time such application is submitted to the
16 appropriate local official. No zoning or land use control change made
17 subsequent to the submittal shall be considered in acting on the
18 application.

19 NEW SECTION. **Sec. 6.** The requirements for determining what
20 constitutes a fully completed application for a development of land, or
21 a fully completed permit required by the provisions of section 5 of
22 this act, are to be determined by an ordinance adopted in the regular
23 course of business by the local government responsible for making such
24 determinations or issuing such permits.

25 NEW SECTION. **Sec. 7.** (1) In any county or city that has a
26 population of greater than fifteen thousand people, the local
27 government responsible for approving developments of land or issuing
28 permits may adopt an alternative method of determining when vesting of

1 the right to proceed with a development of land has occurred. If an
2 alternative is adopted, it must be in the form of an ordinance or
3 ordinances, enacted in the regular course of business, and it must
4 permit vesting when the applicant has experienced a substantial change
5 in circumstances. The change in circumstances must be directly related
6 to having acted upon the good faith belief that the zoning or land use
7 controls in place at the time of applying for the development or permit
8 would continue into the reasonably foreseeable future.

9 (2)(a) A determination of whether a substantial change has occurred
10 may be based on:

11 (i) Whether the applicant has incurred substantial expenses that
12 would not have been incurred but for good faith reliance on the
13 continuation of the zoning or land use controls; or

14 (ii) Whether a proposed change in zoning or land use controls was
15 under public consideration at the time of application for the
16 development or permit.

17 (b) If no proposed change was under public consideration and,
18 subsequent to the submittal of an application for a development or
19 permit, a change is made, the application must be treated as a matter
20 of law as though the zoning change had not occurred. If a proposed
21 change was under public consideration, an applicant may not be
22 considered to have undergone a substantial change of position and no
23 vesting of rights, as a matter of law, occurs.

24 NEW SECTION. **Sec. 8.** The requirements of sections 2 through
25 7 of this act do not preclude any requirements or conditions imposed
26 upon an application or permit required by chapter 43.21C RCW.

27 NEW SECTION. **Sec. 9.** The enactment of sections 2 through 8 of
28 this act does not have the effect of terminating, or in any way

1 modifying, any rights or obligations concerning an application for a
2 development of land or a permit filed before the effective date of this
3 act.

4 NEW SECTION. **Sec. 10.** RCW 58.17.033 and 1987 c 104 s 2 are
5 each repealed.

6 NEW SECTION. **Sec. 11.** Sections 2 through 9 of this act are
7 each added to chapter 58.17 RCW.