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SENATE BILL 5136

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Skratek and Haugen

Read first time 01/14/93. Referred to Committee on Government 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 to  
7 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.

14 NEW SECTION. **Sec. 2.** The legislature intends to reverse the  
15 common law vesting of rights doctrine and to provide that a landowner's  
16 rights vest at the issuance, by the appropriate local government  
17 officials, of an approved building permit. It is also the intent of  
18 the legislature to reverse the legal precedents concerning this

1 doctrine, beginning with State ex rel. Hardy v. Superior Court, 155  
2 Wash. 244 (1930), and State ex rel. Ogden, 45 Wn.2d 492 (1954).

3 NEW SECTION. **Sec. 3.** For the purposes of this chapter,  
4 "development of land" or "development" means a subdivision, short  
5 subdivision, or other improvement of land for commercial or multifamily  
6 residential purposes.

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

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

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

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

24 (c) An application that has not been acted upon prior to a change  
25 in zoning or land use controls because of bad faith, negligence, or  
26 unreasonable delay on the part of an entity or public employee whose  
27 activities are a legally required component of the decision process in  
28 regards to an application for a development. If an agency with  
29 appellate jurisdiction over such questions, or court of competent  
30 jurisdiction, determines such conduct has occurred it shall cause the  
31 development to be approved under the zoning or land use controls in  
32 effect at the time of application for the development.

33 (2) All applications that meet the criteria of subsection (1) of  
34 this section must be acted upon pursuant to the zoning or land use  
35 controls in effect at the time such application is submitted to the  
36 appropriate local official. No zoning or land use control change made

1 subsequent to the submittal shall be considered in acting on the  
2 application.

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

9 NEW SECTION. **Sec. 7.** (1) In any county or city that has a  
10 population of greater than fifteen thousand people, the local  
11 government responsible for approving developments of land or issuing  
12 permits may adopt an alternative method of determining when vesting of  
13 the right to proceed with a development of land has occurred. If an  
14 alternative is adopted, it must be in the form of an ordinance or  
15 ordinances, enacted in the regular course of business, and it must  
16 permit vesting when the applicant has experienced a substantial change  
17 in circumstances. The change in circumstances must be directly related  
18 to having acted upon the good faith belief that the zoning or land use  
19 controls in place at the time of applying for the development or permit  
20 would continue into the reasonably foreseeable future.

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

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

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

29 (b) If no proposed change was under public consideration and,  
30 subsequent to the submittal of an application for a development or  
31 permit, a change is made, the application must be treated as a matter  
32 of law as though the zoning change had not occurred. If a proposed  
33 change was under public consideration, an applicant may not be  
34 considered to have undergone a substantial change of position and no  
35 vesting of rights, as a matter of law, occurs.

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

4        NEW SECTION.    **Sec. 9.**    The enactment of sections 2 through 8 of  
5 this act does not have the effect of terminating, or in any way  
6 modifying, any rights or obligations concerning an application for a  
7 development of land or a permit filed before the effective date of this  
8 act.

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

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

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