
SENATE BILL 5148

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline, Fairley, and McDermott

Read first time 01/15/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to Washington's vesting laws; amending RCW
2 36.70A.290, 36.70A.130, 58.17.033, and 19.27.095; adding a new section
3 to chapter 36.70A RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the public
6 interest is served when applications for new land use projects are
7 assessed using the laws in effect at that time, not former versions
8 that have been repealed or revised. Washington requires jurisdictions
9 to update their land use and development laws and regulations on a
10 regular basis. The public has an interest in ensuring that projects
11 proposed during the public comment and approval process for these
12 updates follow the new laws, not the version that has been replaced.
13 Local governments have an interest in ensuring that their new laws are
14 followed by all persons, without exemptions for those who were able to
15 file for a permit application during the period of time the new law was
16 proposed, enacted, and subject to appeal. Real estate developers have
17 an interest in ensuring that everyone is required to follow the same
18 laws, without an exemption for those who win a race to the permit

1 counter when a change is proposed. Further, the legislature finds that
2 the public has an interest in meaningfully commenting on large projects
3 to ensure that they fit their community.

4 The legislature finds that other states employ a vesting date of
5 the time an application is approved, rather than when it is filed.
6 Many states do so for all projects at all times, not just when changes
7 to the law are proposed.

8 Development in other states has been able to continue in a
9 reasonable fashion. A later vesting date provides reasonable certainty
10 for the development community while providing better protection of the
11 public interest and improving the ability of local governments to
12 comply with the legislature's land use and environmental protection
13 goals and mandates.

14 This act is intended to better protect the public interest by
15 setting the vesting date for many projects as the date when permits are
16 issued. The courts should construe this and related laws liberally to
17 effectuate that purpose.

18 **Sec. 2.** RCW 36.70A.290 and 1997 c 429 s 12 are each amended to
19 read as follows:

20 (1) All requests for review to a growth management hearings board
21 shall be initiated by filing a petition that includes a detailed
22 statement of issues presented for resolution by the board. The board
23 shall render written decisions articulating the basis for its holdings.
24 The board shall not issue advisory opinions on issues not presented to
25 the board in the statement of issues, as modified by any prehearing
26 order.

27 (2) All petitions relating to whether or not an adopted
28 comprehensive plan, development regulation, or permanent amendment
29 thereto, is in compliance with the goals and requirements of this
30 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days
31 after publication by the legislative bodies of the county or city.

32 (a) Except as provided in (c) of this subsection, the date of
33 publication for a city shall be the date the city publishes the
34 ordinance, or summary of the ordinance, adopting the comprehensive plan
35 or development regulations, or amendment thereto, as is required to be
36 published.

1 (b) Promptly after adoption, a county shall publish a notice that
2 it has adopted the comprehensive plan or development regulations, or
3 amendment thereto.

4 Except as provided in (c) of this subsection, for purposes of this
5 section the date of publication for a county shall be the date the
6 county publishes the notice that it has adopted the comprehensive plan
7 or development regulations, or amendment thereto.

8 (c) For local governments planning under RCW 36.70A.040, promptly
9 after approval or disapproval of a local government's shoreline master
10 program or amendment thereto by the department of ecology as provided
11 in RCW 90.58.090, the local government shall publish a notice that the
12 shoreline master program or amendment thereto has been approved or
13 disapproved by the department of ecology. For purposes of this
14 section, the date of publication for the adoption or amendment of a
15 shoreline master program is the date the local government publishes
16 notice that the shoreline master program or amendment thereto has been
17 approved or disapproved by the department of ecology.

18 (3) Unless the board dismisses the petition as frivolous or finds
19 that the person filing the petition lacks standing, or the parties have
20 filed an agreement to have the case heard in superior court as provided
21 in RCW 36.70A.295, the board shall, within ten days of receipt of the
22 petition, set a time for hearing the matter.

23 (4) The board shall base its decision on the record developed by
24 the city, county, or the state and supplemented with additional
25 evidence if the board determines that such additional evidence would be
26 necessary or of substantial assistance to the board in reaching its
27 decision.

28 (5) The board, shall consolidate, when appropriate, all petitions
29 involving the review of the same comprehensive plan or the same
30 development regulation or regulations.

31 (6) Pending a board's final decision on a petition for review, or
32 during the sixty-day period following the publication of a
33 comprehensive plan, development regulation, or amendment thereto as
34 provided in subsection (2) of this section, whichever occurs later, the
35 submission of an application for a proposed division of land, building
36 permit, or other project approval shall not result in the vesting of
37 any development rights that may be affected by the comprehensive plan,
38 development regulation, or amendment. After a board has issued its

1 final decision on a petition for review or the sixty-day period has
2 expired, whichever occurs later, the application for the proposed
3 division of land, building permit, or other project approval shall be
4 subject to the zoning, permitting, or other land use control ordinances
5 in effect at that time.

6 **Sec. 3.** RCW 36.70A.130 and 2006 c 285 s 2 are each amended to read
7 as follows:

8 (1)(a) Each comprehensive land use plan and development regulations
9 shall be subject to continuing review and evaluation by the county or
10 city that adopted them. Except as otherwise provided, a county or city
11 shall take legislative action to review and, if needed, revise its
12 comprehensive land use plan and development regulations to ensure the
13 plan and regulations comply with the requirements of this chapter
14 according to the time periods specified in subsection (4) of this
15 section.

16 (b) Except as otherwise provided, a county or city not planning
17 under RCW 36.70A.040 shall take action to review and, if needed, revise
18 its policies and development regulations regarding critical areas and
19 natural resource lands adopted according to this chapter to ensure
20 these policies and regulations comply with the requirements of this
21 chapter according to the time periods specified in subsection (4) of
22 this section. Legislative action means the adoption of a resolution or
23 ordinance following notice and a public hearing indicating at a
24 minimum, a finding that a review and evaluation has occurred and
25 identifying the revisions made, or that a revision was not needed and
26 the reasons therefor.

27 (c) The review and evaluation required by this subsection may be
28 combined with the review required by subsection (3) of this section.
29 The review and evaluation required by this subsection shall include,
30 but is not limited to, consideration of critical area ordinances and,
31 if planning under RCW 36.70A.040, an analysis of the population
32 allocated to a city or county from the most recent ten-year population
33 forecast by the office of financial management.

34 (d) Any amendment of or revision to a comprehensive land use plan
35 shall conform to this chapter. Any amendment of or revision to
36 development regulations shall be consistent with and implement the
37 comprehensive plan.

1 (e) During the review and evaluation process authorized under this
2 subsection, an application for the proposed division of land, building
3 permit, or other project approval shall be subject to the zoning,
4 permitting, and other land use control ordinances in effect at the time
5 the local government takes final action on the application, including
6 all administrative appeals.

7 (2)(a) Each county and city shall establish and broadly disseminate
8 to the public a public participation program consistent with RCW
9 36.70A.035 and 36.70A.140 that identifies procedures and schedules
10 ~~((whereby))~~ for considering amendments to comprehensive plans and
11 development regulations.

12 (b) The procedures under (a) of this subsection must provide that
13 updates, proposed amendments, or revisions of the comprehensive plan
14 are considered by the governing body of the county or city no more
15 frequently than once every year. "Updates" means to review and revise,
16 if needed, according to subsection (1) of this section, and the time
17 periods specified in subsection (4) of this section or in accordance
18 with the provisions of subsections (5) and (8) of this section.
19 Amendments may be considered more frequently than once per year under
20 the following circumstances:

21 (i) The initial adoption of a subarea plan that does not modify the
22 comprehensive plan policies and designations applicable to the subarea;

23 (ii) The adoption or amendment of a shoreline master program under
24 the procedures set forth in chapter 90.58 RCW;

25 (iii) The amendment of the capital facilities element of a
26 comprehensive plan that occurs concurrently with the adoption or
27 amendment of a county or city budget; and

28 ~~(iv) ((Until June 30, 2006, the designation of recreational lands~~
29 ~~under RCW 36.70A.1701. A county amending its comprehensive plan~~
30 ~~pursuant to this subsection (2)(a)(iv) may not do so more frequently~~
31 ~~than every eighteen months; and~~

32 ~~(v))~~ The adoption of comprehensive plan amendments necessary to
33 enact a planned action under RCW 43.21C.031(2), provided that
34 amendments are considered in accordance with the public participation
35 program established by the county or city under this subsection (2)(a)
36 and all persons who have requested notice of a comprehensive plan
37 update are given notice of the amendments and an opportunity to
38 comment.

1 ~~((b))~~ (c) Except as otherwise provided in (a) of this subsection,
2 all proposals shall be considered by the governing body concurrently so
3 the cumulative effect of the various proposals can be ascertained.
4 However, after appropriate public participation a county or city may
5 adopt amendments or revisions to its comprehensive plan that conform
6 with this chapter whenever an emergency exists or to resolve an appeal
7 of a comprehensive plan filed with a growth management hearings board
8 or with the court.

9 (d) Land use development applications filed after the submission or
10 filing of a proposed comprehensive plan or development regulation
11 amendment shall not vest until the time the local government takes
12 final action on the application, including all administrative appeals.

13 (3)(a) Each county that designates urban growth areas under RCW
14 36.70A.110 shall review, at least every ten years, its designated urban
15 growth area or areas, and the densities permitted within both the
16 incorporated and unincorporated portions of each urban growth area. In
17 conjunction with this review by the county, each city located within an
18 urban growth area shall review the densities permitted within its
19 boundaries, and the extent to which the urban growth occurring within
20 the county has located within each city and the unincorporated portions
21 of the urban growth areas.

22 (b) The county comprehensive plan designating urban growth areas,
23 and the densities permitted in the urban growth areas by the
24 comprehensive plans of the county and each city located within the
25 urban growth areas, shall be revised to accommodate the urban growth
26 projected to occur in the county for the succeeding twenty-year period.
27 The review required by this subsection may be combined with the review
28 and evaluation required by RCW 36.70A.215.

29 (4) The department shall establish a schedule for counties and
30 cities to take action to review and, if needed, revise their
31 comprehensive plans and development regulations to ensure the plan and
32 regulations comply with the requirements of this chapter. Except as
33 provided in subsections (5) and (8) of this section, the schedule
34 established by the department shall provide for the reviews and
35 evaluations to be completed as follows:

36 (a) On or before December 1, 2004, and every seven years
37 thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,

1 Snohomish, Thurston, and Whatcom counties and the cities within those
2 counties;

3 (b) On or before December 1, 2005, and every seven years
4 thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and
5 Skamania counties and the cities within those counties;

6 (c) On or before December 1, 2006, and every seven years
7 thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and
8 Yakima counties and the cities within those counties; and

9 (d) On or before December 1, 2007, and every seven years
10 thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield,
11 Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille,
12 Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities
13 within those counties.

14 (5)(a) Nothing in this section precludes a county or city from
15 conducting the review and evaluation required by this section before
16 the time limits established in subsection (4) of this section.
17 Counties and cities may begin this process early and may be eligible
18 for grants from the department, subject to available funding, if they
19 elect to do so.

20 (b) A county that is subject to a schedule established by the
21 department under subsection (4)(b) through (d) of this section and
22 meets the following criteria may comply with the requirements of this
23 section at any time within the thirty-six months following the date
24 established in the applicable schedule: The county has a population of
25 less than fifty thousand and has had its population increase by no more
26 than seventeen percent in the ten years preceding the date established
27 in the applicable schedule as of that date.

28 (c) A city that is subject to a schedule established by the
29 department under subsection (4)(b) through (d) of this section and
30 meets the following criteria may comply with the requirements of this
31 section at any time within the thirty-six months following the date
32 established in the applicable schedule: The city has a population of
33 no more than five thousand and has had its population increase by the
34 greater of either no more than one hundred persons or no more than
35 seventeen percent in the ten years preceding the date established in
36 the applicable schedule as of that date.

37 (d) State agencies are encouraged to provide technical assistance

1 to the counties and cities in the review of critical area ordinances,
2 comprehensive plans, and development regulations.

3 (6) A county or city subject to the time periods in subsection
4 (4)(a) of this section that, pursuant to an ordinance adopted by the
5 county or city establishing a schedule for periodic review of its
6 comprehensive plan and development regulations, has conducted a review
7 and evaluation of its comprehensive plan and development regulations
8 and, on or after January 1, 2001, has taken action in response to that
9 review and evaluation shall be deemed to have conducted the first
10 review required by subsection (4)(a) of this section. Subsequent
11 review and evaluation by the county or city of its comprehensive plan
12 and development regulations shall be conducted in accordance with the
13 time periods established under subsection (4)(a) of this section.

14 (7) The requirements imposed on counties and cities under this
15 section shall be considered "requirements of this chapter" under the
16 terms of RCW 36.70A.040(1). Only those counties and cities: (a)
17 Complying with the schedules in this section; (b) demonstrating
18 substantial progress towards compliance with the schedules in this
19 section for development regulations that protect critical areas; or (c)
20 complying with the extension provisions of subsection (5)(b) or (c) of
21 this section may receive grants, loans, pledges, or financial
22 guarantees from those accounts established in RCW 43.155.050 and
23 70.146.030. A county or city that is fewer than twelve months out of
24 compliance with the schedules in this section for development
25 regulations that protect critical areas is making substantial progress
26 towards compliance. Only those counties and cities in compliance with
27 the schedules in this section may receive preference for grants or
28 loans subject to the provisions of RCW 43.17.250.

29 (8) Except as provided in subsection (5)(b) and (c) of this
30 section:

31 (a) Counties and cities required to satisfy the requirements of
32 this section according to the schedule established by subsection (4)(b)
33 through (d) of this section may comply with the requirements of this
34 section for development regulations that protect critical areas one
35 year after the dates established in subsection (4)(b) through (d) of
36 this section;

37 (b) Counties and cities complying with the requirements of this
38 section one year after the dates established in subsection (4)(b)

1 through (d) of this section for development regulations that protect
2 critical areas shall be deemed in compliance with the requirements of
3 this section; and

4 (c) This subsection (8) applies only to the counties and cities
5 specified in subsection (4)(b) through (d) of this section, and only to
6 the requirements of this section for development regulations that
7 protect critical areas that must be satisfied by December 1, 2005,
8 December 1, 2006, and December 1, 2007.

9 (9) Notwithstanding subsection (8) of this section and the
10 substantial progress provisions of subsections (7) and (10) of this
11 section, only those counties and cities complying with the schedule in
12 subsection (4) of this section, or the extension provisions of
13 subsection (5)(b) or (c) of this section, may receive preferences for
14 grants, loans, pledges, or financial guarantees from those accounts
15 established in RCW 43.155.050 and 70.146.030.

16 ~~((10) Until December 1, 2005, and notwithstanding subsection (7)
17 of this section, a county or city subject to the time periods in
18 subsection (4)(a) of this section demonstrating substantial progress
19 towards compliance with the schedules in this section for its
20 comprehensive land use plan and development regulations may receive
21 grants, loans, pledges, or financial guarantees from those accounts
22 established in RCW 43.155.050 and 70.146.030. A county or city that is
23 fewer than twelve months out of compliance with the schedules in this
24 section for its comprehensive land use plan and development regulations
25 is deemed to be making substantial progress towards compliance.))~~

26 **Sec. 4.** RCW 58.17.033 and 1987 c 104 s 2 are each amended to read
27 as follows:

28 (1) Except as provided in subsections (2) through (5) of this
29 section, a proposed division of land, as defined in RCW 58.17.020,
30 shall be considered under the subdivision or short subdivision
31 ordinance, and zoning or other land use control ordinances, in effect
32 on the land at the time a fully completed application for preliminary
33 plat approval of the subdivision, or short plat approval of the short
34 subdivision, has been submitted to the appropriate county, city, or
35 town official.

36 (2) An application for preliminary plat approval that is filed
37 while a petition for review is pending before a growth management

1 hearings board, or during the sixty-day period following the
2 publication of the local government's comprehensive plan, development
3 regulation, or amendment thereto, whichever is later, shall be subject
4 to the vesting provisions of the growth management act as set forth in
5 RCW 36.70A.290(6).

6 (3) A local government's decision regarding the issuance of plat
7 approvals for the following categories of large development projects
8 shall be in accordance with the pertinent ordinances governing
9 subdivisions and short subdivisions, zoning, other land use
10 regulations, and impact fees that are in effect on the date the permit
11 application is approved or denied:

12 (a) Fully contained communities established under RCW 36.70A.350;

13 (b) Master planned resorts established under RCW 36.70A.360;

14 (c) Residential development exceeding one hundred housing units of
15 any lot size, or ten or more units of less than ten acres in size, and
16 located outside of an urban growth area; and

17 (d) Any development of agricultural or forest lands of long-term
18 commercial significance designated under RCW 36.70A.170, except for
19 single residential dwellings or structures for agricultural accessory
20 uses developed in accordance with RCW 36.70A.177.

21 (4) An application for preliminary plat approval that is filed
22 during a local government's process of reviewing a comprehensive land
23 use plan and development regulations shall be subject to the vesting
24 provisions of the growth management act as set forth in RCW 36.70A.130
25 (1)(e) and (2)(d).

26 (5) The requirements for a fully completed application shall be
27 defined by local ordinance. If such a local ordinance is not adopted,
28 vesting shall occur when the local government takes its final action on
29 the application.

30 ((+3+)) (6) The limitations imposed by this section shall not
31 restrict conditions imposed under chapter 43.21C RCW.

32 (7) Beginning August 1, 2009, for a period of up to five years from
33 the date of filing, or once substantial construction has begun,
34 whichever occurs earlier, any lots in a final plat filed for record are
35 a valid land use, notwithstanding any change in zoning laws during the
36 intervening period. Subdivision shall be governed by the terms of
37 approval of the final plat, and the statutes, ordinances, and
38 regulations in effect at the time of approval under RCW 58.17.150 (1)

1 and (3) for a period of five years after final plat approval unless the
2 legislative body finds that a change in conditions creates a serious
3 threat to the public health or safety.

4 **Sec. 5.** RCW 19.27.095 and 1991 c 281 s 27 are each amended to read
5 as follows:

6 (1) Except as provided in subsections (2) through (4) of this
7 section, a valid and fully complete building permit application for a
8 structure, that is permitted under the zoning or other land use control
9 ordinances in effect on the date of the application, shall be
10 considered under the building permit ordinance in effect at the time of
11 application, and the zoning or other land use control ordinances in
12 effect on the date of application.

13 (2) An application for a building permit that is filed while a
14 petition for review is pending before a growth management hearings
15 board, or during the sixty-day period following the publication of the
16 local government's comprehensive plan, development regulation, or
17 amendment thereto, whichever is later, shall be subject to the vesting
18 provisions of the growth management act as set forth in RCW
19 36.70A.290(6).

20 (3) An application for a building permit that is filed during a
21 local government's process of reviewing a comprehensive land use plan
22 and development regulations shall be subject to the vesting provisions
23 of the growth management act as set forth in RCW 36.70A.130 (1)(e) and
24 (2)(d).

25 (4) A local government's decision regarding the issuance of
26 building permits for the following categories of large development
27 projects shall be in accordance with the pertinent ordinances governing
28 building permits, zoning, other land use regulations, and impact fees
29 that are in effect on the date the permit application is approved or
30 denied:

31 (a) Fully contained communities established under RCW 36.70A.350;

32 (b) Master planned resorts established under RCW 36.70A.360;

33 (c) Residential development exceeding one hundred housing units of
34 any lot size, or ten or more units of less than ten acres in size, and
35 located outside of an urban growth area;

36 (d) Commercial developments exceeding forty thousand square feet of
37 floor area; and

1 (e) Any development of agricultural or forest lands of long-term
2 commercial significance designated under RCW 36.70A.170, except for
3 single residential dwellings or structures for agricultural accessory
4 uses developed in accordance with RCW 36.70A.177.

5 (5) The requirements for a fully completed application shall be
6 defined by local ordinance ((but)). If such a local ordinance is not
7 adopted, vesting shall occur when the local government takes its final
8 action on the application. For any construction project costing more
9 than five thousand dollars the application shall include, at a minimum:

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

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

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

17 (d) Either:

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

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

24 ~~((3))~~ (6) The information required on the building permit
25 application by subsection ~~((2))~~ (5)(a) through (d) of this section
26 shall be set forth on the building permit document which is issued to
27 the owner, and on the inspection record card which shall be posted at
28 the construction site.

29 ~~((4))~~ (7) The information required by subsection ~~((2))~~ (5) of
30 this section and information supplied by the applicant after the permit
31 is issued under subsection ~~((5))~~ (8) of this section shall be kept on
32 record in the office where building permits are issued and made
33 available to any person on request. If a copy is requested, a
34 reasonable charge may be made.

35 ~~((5))~~ (8) If any of the information required by subsection
36 ~~((2))~~ (5)(d) of this section is not available at the time the
37 application is submitted, the applicant shall so state and the
38 application shall be processed forthwith and the permit issued as if

1 the information had been supplied, and the lack of the information
2 shall not cause the application to be deemed incomplete for the
3 purposes of vesting under subsection (1) of this section. However, the
4 applicant shall provide the remaining information as soon as the
5 applicant can reasonably obtain such information.

6 ~~((+6+))~~ (9) The limitations imposed by this section shall not
7 restrict conditions imposed under chapter 43.21C RCW.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70A RCW
9 to read as follows:

10 The vesting of any land use or development rights for the following
11 categories of large development projects shall be in accordance with
12 the pertinent ordinances that are in effect on the date the permit
13 application is approved or denied:

- 14 (1) Fully contained communities established under RCW 36.70A.350;
- 15 (2) Master planned resorts established under RCW 36.70A.360;
- 16 (3) Residential development exceeding one hundred housing units of
17 any lot size, or ten or more units of less than ten acres in size, and
18 located outside of an urban growth area;
- 19 (4) Commercial developments exceeding forty thousand square feet of
20 floor area; and
- 21 (5) Any development of agricultural or forest lands of long-term
22 commercial significance designated under RCW 36.70A.170, except for
23 single residential dwellings or structures for agricultural accessory
24 uses developed in accordance with RCW 36.70A.177.

25 NEW SECTION. **Sec. 7.** This act shall be broadly construed to give
26 full effect to the objectives and purposes under section 1 of this act.

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