
SENATE BILL 5579

State of Washington 63rd Legislature 2013 Regular Session

By Senators Benton, Rivers, and Braun

Read first time 02/04/13. Referred to Committee on Governmental Operations.

1 AN ACT Relating to land use decisions; and amending RCW 64.40.010,
2 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 read
5 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 public
10 body exercising regulatory authority or control over the use of real
11 property in the state.

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

1 granted relief as provided in RCW 64.40.020. Damages must be caused by
2 an act, necessarily incurred, and actually suffered, realized, or
3 expended, but are not based upon diminution in value of or damage to
4 real property, or litigation expenses.

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

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

26 (7) "Land use decision" has the same meaning as used in RCW
27 36.70C.020(2).

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

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

35 (1) Owners of a property interest who have filed an application for
36 a permit have an action for damages to obtain relief from acts of an
37 agency which are arbitrary, capricious, unlawful, or exceed lawful

1 authority, or relief from a failure to act within time limits
2 established by law: PROVIDED, That the action is unlawful or in excess
3 of lawful authority only if the (~~final~~) land use decision of the
4 agency was made with knowledge of its unlawfulness or that it was in
5 excess of lawful authority, or it should reasonably have been known to
6 have been unlawful or in excess of lawful authority.

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

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

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

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

16 Any action to assert claims under the provisions of this chapter
17 shall be commenced only within thirty days after (~~all administrative~~
18 ~~remedies have been exhausted~~) issuance of a land use decision pursuant
19 to RCW 36.70C.040(4).

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