



# SENATE BILL 355: Land-Use Regulatory Changes.

2019-2020 General Assembly

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<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 8, 2019
<b>Introduced by:</b>	Sens. Bishop, Newton, Searcy	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	PCS to First Edition S355-CSTG-10		Committee Co-Counsel

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**OVERVIEW:** *The Proposed Committee Substitute for House Bill 355 would make various changes to the land-use regulatory laws of the State. The PCS makes clarifying and conforming changes to the original bill.*

## **CURRENT LAW AND BILL ANALYSIS:**

### **Permit Choice Changes**

Current law provides that if a permit applicant submits an application for any type of development permit issued by the State or by a local government, and a rule or ordinance changes between the time the application was submitted and the time a permit decision is made, the applicant can choose which version of the rule or ordinance will apply to the permit.

**Sections 1 and 2** of the PCS for Senate Bill 355 would:

- Clarify that permit choice statutes apply to land development regulations, and define the terms "development," "development permit," and "land development regulation."
- Provide that if the applicant opts for the version of a rule or ordinance in place at the time of the application for the development permit, that applicant cannot be required to wait for action on the outcome of any pending changes to that rule or ordinance.
- Provide that any person aggrieved by State or local government noncompliance with the permit choice statutes may seek a court order compelling compliance.
- Provide that the permit choice provisions apply
- Provide for expedited calendaring and review of permit choice related court actions at both the trial and appellate level.
- Make conforming and clarifying changes to county and city permit choice statutes.

### **Vested Rights Statutes Changes**

**Section 3** would amend county and city land development statutes to define the terms "development," "development permit," and "land development regulation" as they are defined in the permit choice statute, as amended by Section 1 of the PCS, and to provide that:

- Without the land owner's written consent, amendments to land development regulations are not enforceable with regard to:

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- Uses of buildings or land, or subdivisions of land, for which a development permit application was submitted, and the permit subsequently issued, in accordance with permit choice statutes.
- Vested rights established by a development agreement between a developer and a local government.
- Statutory vesting starts when the application for the development permit or building permit is submitted and lasts for as long as the permit remains valid.
- Local development permits expire one year after issuance if work authorized by the permit has not substantially commenced, unless otherwise specified in statute.
- The establishment of a vested right under one law does not preclude vesting under another, or vesting by application of common law principles.
- A vested right, once established, precludes any action by a county or city that would change, delay, or stop the development or use of the property, except where a change in State or federal law mandating local government enforcement occurs after the development application that has a fundamental and retroactive effect on such development or use.
- Provide that except where a longer vesting period is provided by statute, the vesting period granted by this section expires:
  - For an uncompleted project, if development work is intentionally and voluntarily discontinued for a period of 30 consecutive months.
  - For a nonconforming use of property, if the use is intentionally and voluntarily discontinued for a period of 30 consecutive months.

**Section 3** would also expand the current definition of the term "multi-phased development" as used in county and city land development statutes by reducing the minimum size of a multi-phased development from 100 acres to 25 acres and by eliminating the current requirement that the master development plan include a requirement to offer land for public use as a condition of plan approval.

## **Zoning Map Amendments Not Initiated by a City or County**

**Section 4 and 5** would prohibit initiation or enforcement of a zoning map amendment without the written consent of all property owners subject to the amendment, unless the amendment is initiated by a city or county, and would delete a notice requirement rendered obsolete by these changes.

## **Procedure for Challenges to Land Regulation Decisions**

**Section 6** would require the written notice of decision on a board of adjustment appeal to state that the determination is final and that the party to whom the notice is given may appeal the decision as provided by law. Section 6 would also provide that when a notice of violation or other enforcement order is stayed upon by an appeal to the board of adjustment, the stay applies to any accumulation of fines during the pendency of the appeal to the board of adjustment and any subsequent appeal, or during the pendency of any civil proceeding authorized by law, including a civil action authorized under Section 7 of the PCS, and related appeals.

**Section 7** would add a new section to the General Statutes authorizing landowners or permit applicants to bring an original civil action in superior court or federal court challenging the enforceability, validity, or effect of a local land development regulation based on grounds of unconstitutionality, preemption, or exceeding statutory authority.

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**Section 8** would provide that a statute of limitation will not bar a party in an action provided for in Section 7 of the PCS from raising as a claim or defense the enforceability or invalidity of an ordinance.

**Section 9** would provide that in an appeal to superior court from a quasi-judicial decision of a city council, planning board, board of adjustment or other similar board, the court must allow the record to be supplemented through discovery if the appeal raises issues of lack of standing, due process violations, or action exceeding the board's statutory authority.

**Section 10** would provide that in a proceeding brought before a board of adjustment or in any civil action challenging conditions on the basis that they were illegally imposed, a city or county cannot assert the defense of estoppel based on a landowner's or permit applicant's having proceeded with development authorized under the permit choice statutes.

**Section 11** would require a court to award attorneys' fees and costs to a party successfully challenging a city's or county's action upon a finding that the city or county violated a statute or case law setting forth unambiguous limits on its authority, or took action inconsistent with or in violation of the permit choice statutes.

## **Restrictions on Permit Conditions Not Authorized by Otherwise Applicable Law**

**Sections 12 through 15** would prohibit denial of a development permit on the basis that existing public facilities are inadequate to serve the property described in the permit application, and would specifically prohibit cities and counties from including as a permit condition any of the following requirements for which either the city or county does not have authority to regulate: taxes, impact fees, certain building elements not voluntarily offered by the petitioner, street or driveway-related improvements in excess of those statutorily authorized, or other unauthorized limitations on land development or use.

## **Miscellaneous Provisions**

**Section 16** would prohibit a city from requiring a permit applicant for driveway improvements to acquire right-of-way from property the applicant does not own.

**Section 17** would provide that the definition of "building" and "dwelling" a city uses when adopting zoning regulations must be consistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

**EFFECTIVE DATE:** This act is effective when it becomes law. Sections 4, 5, and 16 apply to zoning map amendment applications submitted and appeals filed on or after that date. The remainder of the act applies to ordinances adopted before, on, and after that date.