

# Senate Bill No. 540

(By Senators McCabe, Green and Barnes)

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[Introduced February 8, 2012; referred to the  
Committee on Government Organization.]

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A BILL to amend and reenact §8A-4-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-5-12 of said code, all relating to subdivisions; extending the approval term of certain uses and permits associated with a subdivision plan or plat; and extending the vesting period for a subdivision or land development plan or plat.

*Be it enacted by the Legislature of West Virginia:*

That §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-5-12 of said code be amended and reenacted, all to read as follows:

**ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.**

**§8A-4-2. Contents of subdivision and land development ordinance.**

- 1       (a) A subdivision and land development ordinance shall
- 2   include the following provisions:

3       (1) A minor subdivision or land development process,  
4 including criteria, requirements and a definition of minor  
5 subdivision;

6       (2) The authority of the planning commission and its staff  
7 to approve a minor subdivision or land development;

8       (3) A major subdivision or land development process,  
9 including criteria and requirements;

10       (4) The authority of the planning commission to approve  
11 a major subdivision or land development;

12       (5) The standards for setback requirements, lot sizes,  
13 streets, sidewalks, walkways, parking, easements, rights-of-  
14 way, drainage, utilities, infrastructure, curbs, gutters, street  
15 lights, fire hydrants, storm water management, water and  
16 wastewater facilities;

17       (6) Standards for flood-prone or subsidence areas;

18       (7) A review process for subdivision or land development  
19 plans and plats by the planning commission;

20       (8) An approval process for subdivision or land develop-  
21 ment plans and plats by the planning commission, including  
22 the authority to approve subdivision or land development  
23 plans and plats with conditions;

24       (9) A process to amend final approved subdivision or  
25 land development plans and plats;

26       (10) A requirement that before development of the land  
27 is commenced, subdivision and land development plans and  
28 plats must be approved by the applicable planning commis-  
29 sion, in accordance with the comprehensive plan, if a  
30 comprehensive plan has been adopted;

31       (11) A requirement that after approval of the subdivision  
32 or land development plat by the planning commission and  
33 before the subdivision or development of the land is com-  
34 menced, the subdivision and land development plat shall be  
35 recorded in the office of the clerk of the county commission  
36 where a majority of the land to be developed lies;

37       (12) A schedule of fees to be charged which are propor-  
38 tioned to the cost of checking and verifying proposed plats;

39       (13) The process for granting waivers from the minimum  
40 standards of the subdivision and land development ordi-  
41 nance;

42       (14) Improvement location permit process, including a  
43 requirement that a structure or development of land is  
44 prohibited without an improvement location permit;

45       (15) The acceptable methods of payment to cover the cost  
46 of the water and sewer service infrastructure, which can  
47 include, but are not limited to, bonds, impact fees, escrow  
48 fees and proffers;

49       (16) The process for cooperating and coordinating with  
50 other governmental agencies affected by the subdivision and  
51 land development and use; and

52       (17) Penalties for violating the subdivision and land  
53 development ordinance.

54       (b) A subdivision and land development ordinance may  
55 include the following provisions:

56       (1) Establishing a board of subdivision and land develop-  
57 ment appeals with the same powers, duties and appeals  
58 process as set out for the board of zoning appeals under the  
59 provisions of article eight of this chapter;

60       (2) Requirements for green space, common areas, public  
61 grounds, walking and cycling paths, recreational trails,  
62 parks, playgrounds and recreational areas;

63       (3) Encourage the use of renewable energy systems and  
64 energy-conserving building design;

65       (4) Vested property right, including requirements;

66 (5) Exemptions of certain types of land development from  
67 the subdivision and land development ordinance require-  
68 ments, including, but not limited to, single-family residential  
69 structures and farm structures; and

70 (6) Any other provisions consistent with the comprehen-  
71 sive plan the governing body considers necessary.

72 (c) All requirements, for the vesting of property rights  
73 contained in an ordinance enacted pursuant to this section  
74 that require the performance of any action within a certain  
75 time period for any subdivision or land development plan or  
76 plat valid under West Virginia law and outstanding as of  
77 January 1, 2010, shall be extended until July 1, ~~2012~~ 2015, or  
78 longer as agreed to by the municipality, county commission  
79 or planning commission. The provisions of this subsection  
80 also apply to any requirement that a use authorized pursuant  
81 to a special exception, special use permit, conditional use  
82 permit or other agreement or zoning action be terminated or  
83 ended by a certain date or within a certain number of years.

**ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND  
PLAT.**

**§8A-5-12. Vested property right.**

1 (a) A vested property right is a right to undertake and  
2 complete the land development. The right is established  
3 when the land development plan and plat is approved by the  
4 planning commission and is only applicable under the terms  
5 and conditions of the approved land development plan and  
6 plat.

7 (b) Failure to abide by the terms and conditions of the  
8 approved land development plan and plat will result in  
9 forfeiture of the right.

10 (c) Subject to section ten-a, article thirteen-e, chapter  
11 sixteen of this code, the vesting period for an approved land  
12 development plan and plat which creates the vested property  
13 right is five years from the approval of the land development  
14 plan and plat by the planning commission.

15 (d) Without limiting the time when rights might other-  
16 wise vest, a landowner's rights vest in a land use or develop-  
17 ment plan and cannot be affected by a subsequent amend-  
18 ment to a zoning ordinance or action by the planning  
19 commission when the landowner:

20 (1) Obtains or is the beneficiary of a significant affirma-  
21 tive governmental act which remains in effect allowing  
22 development of a specific project;

23       (2) Relies in good faith on the significant affirmative  
24 governmental act; and

25       (3) Incurs extensive obligations or substantial expenses  
26 in diligent pursuit of the specific project in reliance on the  
27 significant affirmative governmental act.

28       (e) A vested right is a property right, which cannot be  
29 taken without compensation. A court may award damages  
30 against the local government in favor of the landowner for  
31 monetary losses incurred by the landowner and court costs  
32 and attorneys' fees resulting from the local government's bad  
33 faith refusal to recognize that the landowner has obtained  
34 vested rights.

35       (f) Any subdivision or land development plan or plat,  
36 whether recorded or not yet recorded, valid under West  
37 Virginia law and outstanding as of January 1, 2010, shall  
38 remain valid until July 1, ~~2012~~ 2015, or such later date  
39 provided for by the terms of the planning commission or  
40 county commission's local ordinance or for a longer period as  
41 agreed to by the planning commission or county commission.  
42 Any other plan or permit associated with the subdivision or  
43 land development plan or plat shall also be extended for the  
44 same time period: *Provided*, That the land development plan

45 or plat has received at least preliminary approval by the  
46 planning commission or county commission by March 1,  
47 2010.

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(NOTE: The purpose of this bill is to extend the approval term of certain uses and permits associated with a subdivision plan or plat and extending the vesting period for a subdivision or land development plan or plat from July 1, 2012 until July 1, 2015.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)