

# HOUSE BILL REPORT

## HB 2220

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**As Reported by House Committee On:**  
Local Government & Housing

**Title:** An act relating to time limitation for approval of plats.

**Brief Description:** Extending the time limitations for approval of plats.

**Sponsors:** Representatives Simpson and White.

**Brief History:**

**Committee Activity:**

Local Government & Housing: 2/18/09, 2/19/09 [DPS].

**Brief Summary of Substitute Bill**

- Extends the vesting period for subdivisions located within an urban growth area from five to seven years following final plat approval.
- Establishes that the vesting of short subdivisions and short plats is limited to the seven-year period following final plat approval.
- Establishes that the lots in a short plat and short subdivision are vested for a period of seven years from the date of filing.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Ericksen, Miloscia, Short, Springer, Upthegrove, White and Williams.

**Staff:** Thamas Osborn (786-7129)

**Background:**

The "Vested Rights Doctrine" in the State of Washington.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In the context of land use law, the concept of "vesting" is used to determine the point in time at which the laws and regulations controlling the division, use, or development of real property become fixed with respect to the development of a specific property, thus preventing such use or development from being subject to subsequent regulatory changes. Over the years, the determination of when a property owner's development rights become vested has been a key issue for the Washington courts, resulting in the courts' development of what is known as the "vested rights doctrine."

In the case of *Noble Manor v. Pierce County*, 133 Wn.2d 269 (1997), the Washington Supreme Court (Court) summarized the "vested rights doctrine" as it had been developed by the courts under the common law: "In Washington, 'vesting' refers generally to the notion that a land use application, under the proper conditions, will be considered only under the land use statutes and ordinances in effect at the time of the application's submission." The court went on to note that:

"The doctrine provides that a party filing a timely and sufficiently complete building permit application obtains a vested right to have that application processed according to zoning, land use and building ordinances in effect at the time of the application. The doctrine is applicable if the permit application is sufficiently complete, complies with existing zoning ordinances, and building codes, and filed during the period the zoning ordinances under which the developer seeks to develop are in effect. If a developer complies with these requirements, a project cannot be obstructed by enacting new zoning ordinances or building codes."

This common law vesting doctrine has been codified by the Legislature, in various forms, in several chapters of the Revised Code of Washington pertaining to land use, property development, and construction permitting.

Many other states have adopted vesting doctrines which are much more restrictive than those codified in Washington. Specifically, in many states vesting occurs only at such time as the local government authority gives *final approval* to an application for a land use, development project, or building permit.

#### Government Regulation of Land Use: Subdivisions, Short Subdivisions, and Plats.

A property owner must have a proposed division of land reviewed and approved by the county, city, or town in which the land is located. Such divisions of land are generally categorized as either "subdivisions" or "short subdivisions." Subdivisions are defined as land divisions resulting in five or more lots, tracts, or parcels. Short subdivisions are defined as land divisions resulting in four or fewer lots, tracts, or parcels. However, a city, town, or Growth Management Act planning county may adopt a local ordinance increasing to a maximum of nine the number of lots, tracts, or parcels that may be contained within a short subdivision.

A "plat" is a map or graphic representation of a *subdivision* that shows the division of a tract or parcel of land into lots, blocks, streets, alleys, and other divisions. A "short plat" is the map or graphic representation of a *short subdivision*. The initial step in the process of having a subdivision or short subdivision approved begins with the submission of a preliminary plat

(for a subdivision) or a preliminary short plat (for a short subdivision) to the local planning authority for approval. The final step in the approval process involves the submission to the local planning authority of the final plat or final short plat.

#### Vesting of "Subdivisions."

State law distinguishes between *subdivisions* and *short subdivisions* with respect to the vesting of development rights. For a period of five years following the approval of the *preliminary plat* by the local planning authority, the development of a *subdivision* is governed by the pertinent laws and regulations in effect at the time of such approval. In other words, subdivision development rights are vested for a period of five years following approval of the preliminary plat. If the *final plat* is not submitted for approval within this five-year period, the property is *divested* and the subdivision may be subject to development regulations enacted subsequent to preliminary plat approval. However, even if a developer is subject to such divestiture, a second five year vesting period begins following the planning authorities' approval of the *final plat*. During this second five-year period, the development of a subdivision is governed by the terms of such approval, as well as the statutes, ordinances, and regulations in effect at the time of final plat approval.

In addition, a local government may make changes to the applicable development regulations prior to the expiration of these vesting periods in response to a change of conditions that creates a serious threat to public health or safety.

#### Vesting of Short Subdivisions.

Short subdivisions, on the other hand, are not subject to the five-year vesting limitations applicable to subdivisions. Development rights with respect to short subdivisions become fully vested at the time of short plat approval and, therefore, are not subject to subsequent changes in land use or development regulations or statutes.

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### **Summary of Substitute Bill:**

#### Vesting of a Subdivision.

The development of a subdivision located within an urban growth area is governed by the terms of approval of the final plat -- and the statutes, ordinances, and regulations in effect at that time -- for a period of *seven* years after final plat approval. In other words, the period during which a subdivision remains vested following final plat approval is extended from five to seven years.

#### Vesting of a Short Subdivision.

Short subdivisions and short plats, and the lots contained therein, are made subject to vesting limitations, as follows:

- the lots in a short plat and short subdivision remain vested for a period of seven years from the date of filing; and

- short subdivisions and short plats remain vested for the seven year period following final plat approval.

**Substitute Bill Compared to Original Bill:**

The substitute bill makes the following changes to the original bill:

- deletes section 2 of the bill which: (1) extends the time limit for the submission of the final plat from five to seven years following the date of preliminary plat approval; and (2) requires that a final short plat be submitted within four years of the date of preliminary short plat approval;
- requires that a subdivision be located in an urban growth area in order for the vesting period to be extended from five to seven years following final plat approval;
- establishes that the vesting of short subdivisions and short plats is limited to the seven year period following final plat approval; and
- establishes that the lots in a short plat and short subdivision are vested for a period of seven years from the date of filing.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill extends the plat approval period from five to seven years. This would be a big help to developers because many approved plats are not being developed right now because of the economic downturn. This bill would give developers an extra two-year window that is sorely needed.

(With concerns) The revisions to vesting rules proposed in this bill are very problematic for local governments. In any case, if the bill is to be considered at all, its provisions should be applicable only to developments within urban growth areas.

(Opposed) None.

**Persons Testifying:** (In support) Representative Simpson, prime sponsor; and Scott Hildebrand, Master Builders Association of King and Snohomish Counties.

(With concerns) Dave Williams, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.