
Judiciary Committee

ESB 5921

Title: An act relating to preserving the common law interpretation and application of the vested rights doctrine.

Brief Description: Increasing certainty and predictability in the land use permit process.

Sponsors: Senators Honeyford, Hatfield, Chase and Brown.

<p style="text-align: center;">Brief Summary of Engrossed Bill</p> <ul style="list-style-type: none">• Provides that the vested rights doctrine is not limited by statutory codification.
--

Hearing Date: 3/25/15

Staff: Brent Campbell (786-7152).

Background:

The Vested Rights Doctrine in Common Law.

Washington's vested rights doctrine originated at common law. Vested rights in the context of land use law refers to the legal rights of an owner to use their property in accordance with the laws and regulations in effect on a certain date. Property uses may include any property division, development, or other lawful use of real property. Washington's vested rights doctrine uses a "date certain" standard. Under the date certain standard, developers are entitled to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations. This is a minority approach within the United States, and it offers greater protection of developers' rights than the rules applied in other jurisdictions.

The Washington Supreme Court first adopted the common law vested rights doctrine in the 1950s. The court originally stated that a right vests when a party applies for a building permit. However, subsequent cases applied the vested rights doctrine to permit applications other than building permit applications, finding that rights vest at conditional use permit applications,

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.

grading permit applications, shoreline substantial development permit applications, and septic permit applications.

Codification of the Vested Rights Doctrine.

The Legislature codified the vested rights doctrine, in various forms, as it pertains to land use, property development, and construction permitting. For example, the State Building Code Act requires that a valid and fully complete building permit application be filed for a structure for rights to vest. The vested rights doctrine is also codified for local governments that choose to enter into development agreements with any person for the development of that person's property and for proposed divisions of land for plats and subdivisions.

The Washington Supreme Court has held that the Legislature's codification of the vested rights doctrine in these instances means that vested rights doctrine is now completely statutory.

In August 2014, the Washington Court of Appeals was asked to determine whether the vested rights doctrine applied when a developer had an approved shoreline substantial development permit, but did not file a completed building permit application. The court held that the filing of an application for the shoreline substantial development permit, without filing an application for a building permit, did not vest rights to zoning or other land use control ordinances. The court looked to codifications of the vested rights doctrine, and found that the statutes did not include shoreline substantial development permits within the vested rights doctrine. The court presumed that the Legislature was aware of the common law regarding vested rights when it passed the legislation, and concluded that the exclusion of permits from statute meant that the Legislature intended that the vested rights doctrine would not extend to any permit not specifically listed. The Washington Supreme Court then denied the plaintiff's petition for review.

Summary of Bill:

Statutory codification of the vested rights doctrine does not limit the common law interpretation and application of the vested rights doctrine.

Appropriation: None.

Fiscal Note: Not requested.

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