

# SENATE BILL REPORT

## ESB 5212

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As Passed Senate, February 28, 2017

**Title:** An act relating to clarifying the scope of land use control ordinances for purposes of vesting.

**Brief Description:** Concerning the scope of land use control ordinances for purposes of vesting.

**Sponsors:** Senators Wilson, Angel, Honeyford and Schoesler.

**Brief History:**

**Committee Activity:** Local Government: 1/24/17, 2/07/17 [DP].

**Floor Activity:**

Passed Senate: 2/28/17, 25-24.

**Brief Summary of Engrossed Bill**

- Clarifies that applications for building permits and preliminary plat approvals vest to environmental and development regulations and other land use control ordinances in effect at time applications are complete, without respect to whether the regulations or ordinances were enacted for the purpose of complying with state law.

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### SENATE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass.

Signed by Senators Short, Chair; Angel, Vice Chair; Takko, Ranking Minority Member; Sheldon.

**Staff:** Bonnie Kim (786-7316)

**Background:** The Vested Rights Doctrine in Common Law. Washington's vested rights doctrine was developed by courts under the 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. An application to use property vests to the laws in effect upon submission of a sufficiently complete application for the requested property use. If the application is sufficiently complete and it complies with existing

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ordinances and codes, the application must be processed according to the laws in effect at the time of the application, regardless of subsequent changes in the law.

Codification of the Vested Rights Doctrine. The Legislature has 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 for a structure, which is permitted under applicable zoning or other land use control ordinances, be considered under the ordinances in effect at the time of the application. Vested rights are also codified in a separate state law for a local government that chooses to enter into a development agreement with any person for the development of that person's property. The state law for plats and subdivisions also incorporates the vested rights doctrine at the time a fully complete application has been submitted for preliminary approval.

**Summary of Engrossed Bill:** A valid and fully complete building permit application for a structure vests to the environmental and development regulations, and the zoning and other land use control ordinances in effect on the date of the application, without respect to whether the regulations or ordinances were enacted for the purpose of complying with state law. The same applies to applications for preliminary plat approval of a subdivision or short plat approval of the short subdivision.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: A recent WA State Supreme Court decision requires us to clarify vesting for land use applications. The opinion created more uncertainty for vested rights in WA. Developers, cities, and counties need predictability in their land use applications. We have offered alternative language for this bill and look forward to working with the prime sponsor as the bill moves forward. We support this bill's intention to preserve the vested rights doctrine as codified and applied for decades. The current system is effective for the management of public and private resources. This bill fosters thoughtful long-term planning for land management. Vesting laws matter in what homebuilders do for a living because the timing of the application decides which laws apply. This certainty, predictability, and consistency affects the success of the rest of a building project.

CON: This bill is designed to overturn a recent Supreme Court decision, which made clear that vesting laws do not apply to a federal Clean Water Act permit. We spent about eight years working with many of the stakeholders before the permits at issue were adopted.

OTHER: We are getting conflicting feedback on the merits of this bill. The bill as drafted has problems. The law needs to be very clear about what laws vest when. Here, the issue is a state law implementing federal law.

**Persons Testifying:** PRO: Senator Lynda Wilson, Prime Sponsor; Mike Ennis, Assoc. of WA Business; Duana Kolouskova, Master Builders/Assoc. of WA Business; Bill Stauffacher, Building Industry Assoc. of WA.

CON: Bruce Wishart, Puget Soundkeeper.

OTHER: Carl Schroeder, Assoc. of WA Cities.

**Persons Signed In To Testify But Not Testifying:** CON: Bryce Yadon, Futurewise.