

SENATE BILL REPORT

SB 6784

As Reported By Senate Committee On:
Government Operations & Elections, February 04, 2008

Title: An act relating to Washington's vesting laws.

Brief Description: Changing Washington's vesting laws.

Sponsors: Senators Kline and Fairley.

Brief History:

Committee Activity: Government Operations & Elections: 1/28/08, 2/04/08 [DPS, DNP].

Brief Summary of Bill

- When a comprehensive plan, development regulation or amendment is pending review and evaluation, and 18 months has passed, the project will vest to those laws in effect when an application is complete.
- When a petition for review is awaiting a Growth Management Hearings Boards' decision development rights affected by a comprehensive plan or development regulation will not vest until a final decision is issued.
- For large development projects, vesting is when the permit application is approved or denied.
- Authorizes the legislative review authority discretion to allow nonprofit affordable housing organizations or housing authorities to vest earlier.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6784 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline, McDermott and Pridemore.

Minority Report: Do not pass.

Signed by Senator Roach, Ranking Minority Member and Benton.

Staff: Cindy Calderon (786-7784)

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.

Background: 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. Vested rights in land development are controlled by state law. Three vesting rules exist: (1) the majority rule; (2) the minority rule; and (3) the early-vesting rule. Under the majority rule vesting occurs when landowners, relying in good faith upon an act of the local government, make substantial expenditures prior to a change in the zoning law. Under the minority rule vesting occurs upon governmental approval; the focus is on permit/application approval. Under the early-vesting rule vesting occurs at the time of filing-submitting a complete permit application.

The "Vested Rights Doctrine" in the State of Washington. Over the years, the determination of when a property owner's development rights vest 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 Wn2d. 269 (1997), the Washington Supreme Court discussed the application of the "vested rights doctrine." A land use application is considered under the land use statutes and ordinances in effect when the application is submitted; for developers, a development proposal is processed under the regulations in effect at the time a complete building permit application is filed. The court further explained the common law vesting doctrine's application for a building permit:

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, pertaining to land use, property development, and construction permitting.

Vesting of "Subdivisions" and "Short Subdivisions." 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 "subdivision" 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 (GMA) planning county may adopt a local ordinance increasing the number of lots, tracts, or parcels that may be contained within a short subdivision to a maximum of nine.

State law distinguishes between subdivisions and short subdivisions with respect to the vesting of development rights. For a period of five years following approval by the local planning authority of the final plat, 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 final plat. If the property is not developed within this five year period, the property is divested and the subdivision may be subject to development regulations enacted subsequent to final plat approval. In addition, a local government may make changes to the applicable development regulations prior to the expiration of this five year period in response to a change of conditions that creates a serious threat to public health or safety.

Short subdivisions 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 that a complete application for short plat approval is submitted to the local planning authority and, therefore, are not subject to subsequent changes in land use or development regulations.

Washington State Building Code: Building Permits and the Vesting Doctrine. The Washington State Building Code (Code) consists of a series of national model codes and standards that regulate the construction of residential, commercial, and industrial buildings and structures. The general purpose to the Code is to create minimum performance standards and requirements for construction and construction materials, consistent with accepted standards for engineering and safety. Counties and cities are authorized to create local amendments to the Code, provided such amendments are consistent with the Code's objectives and minimum performance standards.

The Code does not contain regulatory provisions pertaining to land use, property division, zoning, or site development. The Code explicitly states that such regulations are "reserved to local jurisdictions." However, the Code contains vesting provisions pertaining to applications for building permits. A fully complete building permit application is considered under the building permit ordinance in effect at the time of the application, and the zoning ordinances in effect on the date of application.

Growth Management Act: Comprehensive Plans and Petitions to the Growth Management Hearing Board. The Growth Management Act (GMA) requires state and local governments to manage Washington's growth by identifying and protecting critical areas and natural resource lands, designating urban growth areas, and preparing and implementing comprehensive plans. Comprehensive plans provide the framework and policy direction for land use decisions. A county or city must review and revise its comprehensive plans, development regulations, or amendments to ensure compliance with the GMA according to the time periods specified for each county. Counties or cities not planning under the GMA must review and revise its policies and development regulations for critical areas and natural resource lands to ensure they comply with the requirement of the GMA according to the time periods specified for each county. Every county and city must establish and disseminate to the public a public participation program that identifies procedures and schedules.

Growth Management Hearings Boards (GMHB) hear and determine allegations of non-compliance with the GMA. The GMHB reviews local actions only when a petition for review is filed. The petition includes a detailed statement of issues to be resolved. Petitions relating to whether or not an adopted comprehensive plan or development regulation is in compliance with the GMA must be filed within sixty days after publication. The date of publication is the

date the city publishes the ordinance or adopts the comprehensive plan, development regulations, or amendment. For a shoreline master program the date of publication is the date the local government publishes notice that the shoreline master program has been approved or disapproved. The GMHB must within ten days of receipt of the petition set a hearing.

Vesting is not addressed in the context of a comprehensive plan, development regulations, or amendment review or petitions for review to the GMHB.

Summary of Bill (Recommended Substitute): Vesting of "Subdivisions" and "Short Subdivisions." An application for a pending plat approval awaiting a GMHB decision will not result in the vesting of any development rights that may be affected by the comprehensive plan or development regulations, or amendment. Once the GMHB reaches a final decision, an application for a pending plat approval is subject to the zoning and other land use ordinances in effect at that time. An application for a preliminary plat approval filed during the process of reviewing a comprehensive plan, development regulations, or amendments, or after the filing of such, is subject to the zoning and other land use ordinances in effect at the time the local government takes final action on the application, to include all administrative appeals. However, if 18 months have passed since the filing of a complete application, the project will vest to the laws in effect at the time the application was completed. A local government's decision regarding the issuance of plat approvals for large development projects must be in accordance with existing ordinances controlling subdivisions and short subdivisions and other land use regulations on the date the permit application is approved or denied.

On the earlier of: July 1, 2008, for a period of up to five years from the date of filing; or once substantial construction has begun, all lots in final plat filed for record are a valid land use regardless of changes in zoning laws during the intervening period.

Washington State Building Code: Building Permits and the Vesting Doctrine. An application for a building permit awaiting a GMHB decision will not result in the vesting of any development rights that may be affected by the comprehensive plan or development regulations, or amendment. Once the GMHB reaches a final decision, an application for a building permit is subject to the zoning and other land use ordinances in effect at that time. An application for a building permit filed during the process of reviewing a comprehensive plan, development regulations, or amendment, or after the filing of such, is subject to the zoning and other land use ordinances in effect at the time the local government takes final action on the application, to include all administrative appeals. However, if 18 months have passed since the filing of a complete application, the project will vest to the laws in effect at the time the application was completed. A local government's decision regarding the issuance of building permits for large development projects must be in accordance with relevant ordinances controlling building permits, and other land use regulations in effect on the date the permit application is approved or denied.

Growth Management Act: Comprehensive Plans and Petitions to the Growth Management Hearing Board. The submission of an application for a proposed division of land, building permit, or other project approval will not result in vesting of any development rights that may be affected by a comprehensive plan, development regulation, or amendment while a petition for review is pending. The application for the proposed division of land, building permit, or

other project approval is subject to the zoning and other land use ordinances in effect at the time a GMHB reaches a final decision.

During the review of comprehensive plans and development regulations an application for the proposed division of land, building permit, or other project approval is subject to the zoning, and other land use ordinances in effect when the local government takes final action on the application, to include all administrative appeals. Land use development applications filed after a proposed comprehensive plan or development regulation amendment is submitted does not vest until the local government takes final action on the application, to include all administrative appeals. Counties and cities must establish and disseminate a public participation program that identifies procedures and schedules for considering amendments to comprehensive plans and development regulations.

Adds to the GMA chapter that vesting of any land use or development rights for large development projects must be in accordance with relevant ordinances in effect on the date the permit application is approved or denied.

Nonprofit Affordable Housing Organizations and Housing Authorities. The legislative review authority may, upon considering evidence that a later vesting date will cause an undue burden or significant cost impact on a project, allow non-profit affordable housing organizations or housing authorities who previously submitted applications for the proposed division of land, building permit, or other project approval, previously submitted, to vest at the time an application is approved.

EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Allows vesting to occur at the time an application is complete even when a comprehensive plan and development regulation or a land use application filed after a proposed comprehensive plan or development regulation amendment is pending review and evaluation so long as 18 months has passed.

Removes mandating language that vesting will occur when the local government takes final action on an application when a local ordinance defining the requirements for a fully completed application is not adopted.

Retail developments exceeding 40,000 square feet is added as a category to large development projects thereby making it subject to the laws in effect on the date the permit application for the issuance of plat approvals is approved or denied. With respect to large development projects discussed throughout the bill commercial developments exceeding 40,000 square feet is changed to retail developments exceeding 40,000 square feet.

Removes the provision that a proposed division of land, specifically subdivisions, is governed by the terms of approval of the final plat, and other statutes and ordinances in place at the time of approval as measured by action taken by the local health department and city engineer through five years.

Allows the legislative review authority to exercise discretion in allowing non-profit affordable housing organizations or housing authorities to vest to those laws in place at the time the application is approved, when there is a finding that a later vesting date will cause undue hardship or significant cost impact to completion of the project.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: Our state is among the very earliest in locking in a set day – the day you file an application. We need to find a balance between protecting the public interest and providing more certainty for developers. Current vesting laws undermine the public and result in inequities. If an application has vested and a problem is discovered in the law or it turns out the law is wrong then nothing can be done since vesting has occurred. The current vesting laws result in unplanned and uncoordinated growth, and create opportunities to violate the GMA.

CON: The current vesting laws provide a fair system and reasonable certainty. The current vesting laws do not negatively impact the GMA since almost every jurisdiction had adopted comprehensive plans or development regulations that comply with this act. This bill will have a negative effect on architectures and their clients by creating uncertainty, stopping development, and driving up housing costs; this bill creates a long-term moratorium. The proposed vesting laws are extreme. This bill undoes consensus legislation, undermines the vested doctrine, and undermines the presumption of validity of all legislative action. An increase in litigation will also result if this bill is passed.

Persons Testifying: PRO: Senator Kline, prime sponsor; David Bricklin, Bricklin Newman Dold LLP; Keith Scully, Futurewise; Damiana Merryweather, United Food & Commercial Workers; Tom Nevins, citizen; Tom Donnelly, Kitsap Citizens for Responsible Planning.

CON: Stan Bowman, American Institute of Architects Washington Council; Andrew Cook, Building Industry Association of Washington; Stuart Drebeck, Olympia Master Builders; Chris McCabe, Pat Schneider, Abbie Birmingham, Association of Washington Business; George Kresovich, Hillis Clark Attorneys; Robert Johnson, Lewis County; Van Collins, Associated General Contractors.