

# SENATE BILL REPORT

## ESB 5921

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As Passed Senate, March 11, 2015

**Title:** An act relating to increasing certainty and predictability in the land use permit process.

**Brief Description:** Increasing certainty and predictability in the land use permit process.  
[REVISED FOR ENGROSSED: Increasing certainty and predictability in the land use permit process.]

**Sponsors:** Senators Honeyford, Hatfield, Chase and Brown.

**Brief History:**

**Committee Activity:** Law & Justice: 2/17/15, 2/18/15 [DP, DNP].  
Passed Senate: 3/11/15, 29-20.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

**Minority Report:** Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

**Staff:** Tim Ford (786-7423)

**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 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

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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:** No statutory codification of the vested rights doctrine limits the common law interpretation and application of the vested rights doctrine. The vested rights doctrine at common law is the rule of decision in all courts of Washington State provided that the doctrine does not conflict with the constitution and laws of the United States or Washington State.

**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:** PRO: This bill will prevent cities and municipalities from changing the rules governing a project that is for some property use or land use. The property use or project vests to the laws in effect upon submission of the application. This is common sense. Companies need certainty in the law. It takes a long time to submit a complete application and a company may spend millions of dollars to do that. This bill will affirm and retain common law vested rights doctrine established by the courts in 1954. In 1987 the Legislature codified vested rights in some applications but not all types of applications. In 2014 the Court of Appeals ruled that Potala Villages LLC did not vest to existing laws for a shoreline permit. Without vesting rights many projects can be killed and that is bad for affordable housing.

CON: The Legislature in 1987 set aside common law vesting by codifying into some laws the vested rights doctrine. The Potala case did not break new legal ground, and the Legislature should not open this up to the common law doctrine.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Mike Ennis, Heather Burgess, Assn. of WA Business; Justin Stewart, Potala Kirkland LLC; Jan Himebaugh, Building Industry Assn. of WA.

CON: Carl Schroeder, Assn. of WA Cities.