
Judiciary Committee

ESB 5212

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 Summary of Engrossed Bill

- Amends the building permit and subdivision vesting statutes to add that permits and proposed divisions of land shall be considered under the environmental and development regulations, as well as the building/subdivision and zoning or other land use control ordinances, in effect on the date of application/submission, without respect to whether the regulation or ordinance was enacted for the purpose of complying with state law.

Hearing Date: 3/15/17

Staff: Cece Clynych (786-7195).

Background:

Vested rights in the context of land use law refers to the right of a property owner to develop and use his or her property in accordance with the laws and regulations governing the division, use, or development of real property in effect on a date certain. Washington's "vested rights doctrine" was first enunciated in common law. Courts initially held that a developer had a right to have his or her building permit application decided under the law in effect on the date of application. Later, courts extended this doctrine to other permit applications.

Subsequently, the vested rights doctrine was codified with respect to building permits and subdivisions. 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

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control ordinances in effect on the date of the application, must be considered under the building permit ordinance, and the zoning or other land use control ordinances, in effect on the date of application. Similarly, with respect to subdivisions, a proposed division of land must be considered under the subdivision or short subdivision ordinances, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval, or short plat approval of the short subdivision, is submitted.

In December of 2016, a unanimous Washington Supreme Court held that storm water regulations that permittees must implement as part of the National Pollutant Discharge Elimination System permitting program were *not* land use control ordinances under the building permit or subdivision vesting statutes. Some permittees had appealed permit conditions which compelled them to retroactively apply new storm water regulations to completed development applications. The Pollution Control Hearings Board held that the vested rights doctrine did not apply, the Court of Appeals reversed finding that the vested rights doctrine excused compliance because the storm water regulations were land use control ordinances, and a unanimous Supreme Court reversed the Court of Appeals.

In so doing, the Supreme Court determined that the legislative history and court precedent "demonstrate that the vesting statutes were intended to restrict municipal discretion with respect to local zoning and land use ordinances. Because state and federal law direct the permittees to implement the storm water regulations at issue in this case, the regulations are not the sort of local municipal land use and zoning ordinances the legislature was concerned with. Indeed, the legislature's actions with regard to implementation of Ecology's [low impact development] techniques make it clear that the vesting statutes do not preclude compliance with the [permit]."

Summary of Bill:

The building permit vesting statute is amended to add that a building permit shall be considered under the environmental and development regulations, as well as the building and zoning or other land use control ordinances, in effect on the date of application, without respect to whether the regulation or ordinance was enacted for the purpose of complying with state law.

The subdivision vesting statute is amended to add that a proposed division of land shall be considered under the environmental and development regulations, as well as the subdivision or short subdivision and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate official, without respect to whether the regulation or ordinance was enacted for the purpose of complying with state law.

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.