

Oppose HB 3202/SB 6784 (Changing Washington's Vesting Laws)

HB 3202/SB 6784 will:

Hurt economic development efforts throughout the state. Eliminating the vesting doctrine would increase the uncertainty and risk of Washington's land use review process – a process that is already fraught with uncertainty, delay, and discretion. Adding greater uncertainty to this process would particularly hurt efforts to encourage economic development in those areas of the state that have not shared in the recent economic growth of the Seattle area. This will also have a substantial adverse affect upon state monies generated by Real Estate Excise Tax (REET).

Hinder current affordable housing goals. Increased uncertainty and risk will have the inherent effect of raising the costs associated with housing construction. This fact was expressly illustrated in committee amendments to this legislation that exempt “nonprofit affordable housing organizations or housing authorities”, when documentable evidence exists that supports a finding that a later vesting date would create an undue burden or significant cost impact that would jeopardize the project.”

Cause needless and expensive litigation that our cities, towns, and counties cannot afford. If this legislation is adopted, litigation is certain. There are fundamental questions about the extent to which the Legislature has the authority to alter constitutionally-based property rights. These questions can only be answered through lawsuits. In addition, any municipality that attempts to change a comprehensive plan or zoning code after an application is filed will be faced with the prospect of lawsuits challenging the propriety of such actions. Lawsuits such as these rarely occur now because the rule is well-settled. These lawsuits will be expensive not only for property owners, but for the municipalities that will have to defend them. When there is so little reason to change a fundamental principal of land use law, there is no sense to exposing the public with such legal costs.

Violate basic principals of fairness and equity. We all learned early in our lives that it is not fair to change the rules in the middle of the game. This principal, in fancier language, is the foundation on which Washington's courts have – for more than half a century – held that our constitution requires that vesting occurs at the time an application is filed.

Solve a problem that does not exist. The cities, towns, and counties of this state have applied this rule without significant problems and their representatives have not supported this bill. If there were large-scale problems justifying a statewide change in basic land use law, you would expect that our cities, towns, and counties would be leading the effort to make such a change. They are not because no such problem exists.

Ignore that municipalities already have the power to limit or prevent vesting – thus, this bill is not necessary. When a municipality reconsiders its comprehensive plan or zoning, it already has the authority to declare a moratorium – preventing the acquisition of vested rights – if the municipality determines that it is necessary or appropriate to do so. This bill would deprive every municipality of the right to make such a choice and would require every municipality to impose such a moratorium whether or not the municipality believed this was in the best interests of its community.
