



Association of Washington Business

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Washington state's
chamber of commerce

February 1, 2008

The Honorable Darlene Fairley
Chair, Senate Government Operations
and Elections Committee
227 John A. Cherberg Building
P.O. Box 40432
Olympia, WA 98504-0432

Re: SB 6784 – Changing Washington's Vesting Laws

Dear Senator Fairley:

We, the undersigned, are writing in strong opposition to SB 6784 which would significantly change Washington's real property development vesting laws. As you know, this bill was heard in committee on January 28, 2008.

We'd like to take this opportunity to share three (3) of our many specific concerns with you. Those concerns are as follows:

1. **SB 6784 would have a negative impact on an already struggling real estate market, stifle current affordable housing goals and have a dampening effect on our state's economy.**

This bill will result in tremendous economic waste for landowners, small business contractors, and developers of large public and private projects. This will, in turn, have a dampening effect on our state's economy. If development rights don't vest until final action (including any appeals) on an application, both private developers and public facilities will be at risk of losing hundreds of thousands or even millions of dollars invested in obtaining land use approvals and building permits under the existing codes. This uncertainty will translate to higher housing costs and higher public costs for essential infrastructure funded by state, local and special purpose governments.

Moreover, by stifling development, this bill would significantly reduce state monies generated by the Real Estate Excise Tax (REET).

2. **SB 6784 would undo years of regulatory reform and is inconsistent with other land use laws including the Growth Management Act (GMA).**

This bill is inconsistent not only with multiple goals of the GMA but with the comprehensive regulatory reform bill enacted in 1995. That legislation amended the State Environmental Policy Act (SEPA) and created chapter 36.70B RCW in order to provide more predictability and certainty for landowners. It also incorporated the vested rights doctrine into the GMA in the balance manner recommended by the Governor's Task Force on Regulatory Reform. This bill would completely undo this consensus-based legislation and the balance that it achieved, and promote the interests of those who want to maximize the opportunity to stop development, even though that development is entirely consistent with local comprehensive plans and development regulations.

Although other states may have later vesting dates, those states also recognize and allow development agreements that permit project proponents to vest their projects sooner in time. California is one state where these agreements have been used extensively. This bill would place land owners in Washington in an even worse position than land owners in other states.

Unlike other states that set later vesting dates, Washington State requires thoughtful planning at the front end of the development process through the GMA, SEPA and the Shoreline Management Act (SMA). This substantive authority gives local governments the power to address and mitigate the impacts of development at the front end of the development process as well as at the end of the process. Any unplanned changes in circumstance can be effectively dealt with by means of existing tools such as interim controls.

3. **Washington's courts have held that the Vested Rights Doctrine is a fundamental due process right based on our Constitution. It is not a "loophole" or "exception" as proponents of the bill claim.**

Washington's Vested Rights Doctrine was first enunciated by our courts in 1954. Our Supreme Court held that it is a fundamental due process right protected by our Constitution.

The Legislature, recognizing the benefits that a clear and definite rule would have for all participants in the land use process, expanded the scope of the vested rights doctrine in 1987: RCW 19.27.095 for building permits; RCW 58.17.033 for subdivisions. An important aspect of the doctrine also is codified in the GMA: RCW 36.70A.302, which protects vested rights against determinations by the Growth Management Hearings Board that regulations are not in compliance with the GMA.

This bill attempts to repeal the constitutional protections that have served us well for more than 50 years and also would reverse the carefully considered fundamental policy decisions of the Legislature that expanded the scope of these constitutional rights.

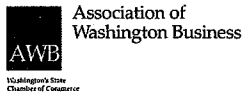
In conclusion, Washington's existing vested rights doctrine strikes a very appropriate balance between the authority of local governments to change regulations and the rights of individuals to plan their affairs with reasonable certainty about what will be permitted by those local governments. This doctrine has created clear and certain guidelines that cities, towns, and counties know how to follow. Changing this rule would result in great confusion that could only be resolved through extensive litigation. Such confusion and the needless expense it would impose on local governments would not be in anyone's interest.

Again, SB 6784 would have a negative impact on an already struggling real estate market, stifle current affordable housing goals, drive up the costs of public infrastructure, and have a dampening effect on our state's economy.

We, therefore, urge your opposition to SB 6784.

Thank you for your time and consideration of this important issue.

Gary Chandler
Association of Washington Business



Rick Slunaker
Associated General Contractors



Stan Bowman
American Institute of Architects
Washington Council



Greg Hanon
National Association of Industrial
and Office Properties



Geoffrey Thomas
Phoenix Development, Inc. and
Sundquist Homes, LLC

David L. Nunes, President
Pope Resources



Pope Resources
A Limited Partnership

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Quadrant Homes



Ada Healy
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Washington Aggregates &
Concrete Association



Denny Eliason
Washington Bankers Association



Larry Stout
Washington Realtors



Dan Wood
Washington State Farm Bureau
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FARM BUREAU



Scott Dahlman
Washington State Grange



Andrew Cook
Building Industry Association of
Washington



cc: Senator Eric Oemig, Vice Chair
Senator Pam Roach, Ranking Minority Member
Senator Don Benton
Senator Adam Kline
Senator Craig Pridemore
Senator Dan Swecker
Senator Lisa Brown, Senate Majority Leader
Senator Mike Hewitt, Senate Minority Leader



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The Honorable Geoff Simpson
Chair, House Local Government Committee
426 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

Re: HB 3202 – Changing Washington's Vesting Laws

Dear Representative Simpson:

We, the undersigned, are writing in opposition to HB 3202 which would significantly change Washington's real property development vesting laws. As you know, this bill was heard in committee on January 29, 2008.

We'd like to take this opportunity to share three (3) of our many specific concerns with you. Those concerns are as follows:

1. **HB 3202 would have a negative impact on an already struggling real estate market, stifle current affordable housing goals and have a dampening effect on our state's economy.**

This bill will result in tremendous economic waste for landowners, small business contractors, and developers of large public and private projects. This will, in turn, have a dampening effect on our state's economy. If development rights don't vest until final action (including any appeals) on an application, both private developers and public facilities will be at risk of losing hundreds of thousands or even millions of dollars invested in obtaining land use approvals and building permits under the existing codes. This uncertainty will translate to higher housing costs and higher public costs for essential infrastructure funded by state, local and special purpose governments.

Moreover, by stifling development, this bill would significantly reduce state monies generated by the Real Estate Excise Tax (REET).

2. **HB 3202 would undo years of regulatory reform and is inconsistent with other land use laws including the Growth Management Act (GMA).**

This bill is inconsistent not only with multiple goals of the GMA but with the comprehensive regulatory reform bill enacted in 1995. That legislation amended the State Environmental Policy Act (SEPA) and created chapter 36.70B RCW in order to provide more predictability and certainty for landowners. It also incorporated the vested rights doctrine into the GMA in the balance manner recommended by the Governor's Task Force on Regulatory Reform. This bill would completely undo this consensus-based legislation and the balance that it achieved, and promote the interests of those who want to maximize the opportunity to stop development, even though that development is entirely consistent with local comprehensive plans and development regulations.

Although other states may have later vesting dates, those states also recognize and allow development agreements that permit project proponents to vest their projects sooner in time. California is one state where these agreements have been used extensively. This bill would place land owners in Washington in an even worse position than land owners in other states.

Unlike other states that set later vesting dates, Washington State requires thoughtful planning at the front end of the development process through the GMA, SEPA and the Shoreline Management Act (SMA). This substantive authority gives local governments the power to address and mitigate the impacts of development at the front end of the development process as well as at the end of the process. Any unplanned changes in circumstance can be effectively dealt with by means of existing tools such as interim controls.

3. **Washington's courts have held that the Vested Rights Doctrine is a fundamental due process right based on our Constitution. It is not a "loophole" or "exception" as proponents of the bill claim.**

Washington's Vested Rights Doctrine was first enunciated by our courts in 1954. Our Supreme Court held that it is a fundamental due process right protected by our Constitution.

The Legislature, recognizing the benefits that a clear and definite rule would have for all participants in the land use process, expanded the scope of the vested rights doctrine in 1987: RCW 19.27.095 for building permits; RCW 58.17.033 for subdivisions. An important aspect of the doctrine also is codified in the GMA: RCW 36.70A.302, which protects vested rights against determinations by the Growth Management Hearings Board that regulations are not in compliance with the GMA.

This bill attempts to repeal the constitutional protections that have served us well for more than 50 years and also would reverse the carefully considered fundamental policy decisions of the Legislature that expanded the scope of these constitutional rights.

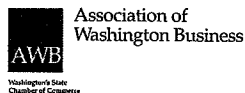
In conclusion, Washington's existing vested rights doctrine strikes a very appropriate balance between the authority of local governments to change regulations and the rights of individuals to plan their affairs with reasonable certainty about what will be permitted by those local governments. This doctrine has created clear and certain guidelines that cities, towns, and counties know how to follow. Changing this rule would result in great confusion that could only be resolved through extensive litigation. Such confusion and the needless expense it would impose on local governments would not be in anyone's interest.

Again, HB 3202 would have a negative impact on an already struggling real estate market, stifle current affordable housing goals, drive up the costs of public infrastructure, and have a dampening effect on our state's economy.

We, therefore, urge your opposition to HB 3202.

Thank you for your time and consideration of this important issue.

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Ada Healy
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Bruce Chattin
Washington Aggregates &
Concrete Association



Denny Eliason
Washington Bankers Association



Larry Stout
Washington Realtors



Dan Wood
Washington State Farm Bureau
FB WASHINGTON FARM BUREAU

Scott Dahlman
Washington State Grange



Andrew Cook
Building Industry Association of
Washington



cc: Representative Dean Takko, Vice Chair
Representative Judy Warnick, Ranking Minority Member
Representative Lynn Schindler, Assistant Ranking Minority Member
Representative Deborah Eddy
Representative Sharon Nelson
Representative Joe Schmick
Representative Frank Chopp, Speaker of the House
Representative Richard DeBolt, House Minority Leader