

HOUSE BILL REPORT

HB 2223

As Reported By House Committee On:

Government Operations

Title: An act relating to the protection of private property.

Brief Description: Protecting private property.

Sponsors: Representatives Foreman, Schoesler, Mastin, Mulliken, Sheldon, Grant, D. Sommers, Honeyford, Koster, Robertson, Campbell, Smith, Huff, L. Thomas, Sheahan, Fuhrman, Thompson, McMorris, Stevens, Boldt, Backlund, Hargrove, Benton and McMahan.

Brief History:

Committee Activity:

Government Operations: 1/12/96, 1/31/96 [DPS].

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Goldsmith, Vice Chairman; Honeyford; Hymes; Mulliken; D. Schmidt and Van Loven.

Minority Report: Do not pass. Signed by 6 members: Representatives Rust, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Conway; R. Fisher; Scheuerman and Wolfe.

Staff: Steve Lundin (786-7127).

Background:

A. Constitutional provisions relating to "takings" of private property.

The state constitution includes several provisions relating to government actions and property.

One type of state constitutional provision generally precludes governments from giving or lending anything of value to persons or private entities. (See Article VIII,

Sections 5 and 7, Washington State Constitution.) The federal constitution does not include similar provisions.

Another type of state constitutional provision prohibits governments from taking property for public use without paying just compensation and prohibits governments from depriving a person of property without due process of law. (See Article I, Section 16, Washington State Constitution, which relates to eminent domain and actions that are commonly called "takings" of private property; and Article I, Section 12, Washington State Constitution, which is the Privileges and Immunities provision and includes what is commonly known as the Due Process and Equal Protection provisions.) The federal constitution includes similar provisions.

In a variety of lawsuits, courts have determined whether a particular government action is an unconstitutional taking of private property. Initially, courts only considered an actual physical occupation of land to constitute an unconstitutional taking of private property. However, in various decisions this century, courts have expanded restrictions contained in these constitutional provisions and have held that a regulation of private property could constitute an unconstitutional taking of private property. This newer type of taking is called a "regulatory taking" of private property or an "inverse condemnation."

Among other factors, a court considers the following when determining if a regulation is an unconstitutional taking of private property: