

SENATE BILL REPORT

SB 5261

As of January 31, 1995

Title: An act relating to the creation of an ombudsman office for private property rights.

Brief Description: Creating an ombudsman office for private property rights.

Sponsors: Senators Haugen, Winsley, Drew, Sheldon, Rasmussen, McCaslin, Franklin, Wood, McAuliffe, Oke, Heavey, Deccio, Owen, Moyer, Palmer, Bauer and Hochstatter.

Brief History:

Committee Activity: Government Operations: 2/2/95.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Staff: Diane Smith (786-7410)

Background: The Fifth Amendment to the federal Constitution provides that no person may be deprived of property without due process of law and that no property may be taken for public use without just compensation. The state Constitution similarly provides that no private property shall be taken or damaged for public or private use without just compensation having first been made.

Legislation enacted in 1982 specifically authorized an action for damages to property owners who have filed an application for a permit where a government agency, in response, acts in an arbitrary, capricious, or unlawful manner, and the agency knows or should know that such acts are unlawful.

In 1991, legislation was enacted within the Growth Management Act to require the Attorney General to establish a regulatory takings checklist. This document now exists, and is available for the use of state agencies and local governments in evaluating their proposed actions to assure that no unconstitutional taking of private property results. Any local government that adopts a land use plan under the Growth Management Act is required to use the checklist.

Regulatory activities by governmental agencies at all levels have been increasingly the subject of lawsuits claiming that property has been "taken" without compensation, or that the owner has been deprived of a property right without due process of law.

When citizens believe that their constitutional rights against improper "takings" have been violated, they must first exhaust their administrative remedies prior seeking relief in the courts. These remedies may include seeking repeal, mitigation, or exception from the regulation that is causing the loss. Various civil claim procedures have been established to deal with claims against the state or federal government. The failure of claimants to exhaust their administrative remedies may be the basis for a court to refuse to consider a case unless the claimant can show that pursuing the administrative remedy would be futile.

These steps are time consuming and expensive.

Summary of Bill: An office of ombudsman for private property rights is established to advise and to represent private property owners in judicial, legislative or administrative proceedings involving governmental actions that raise the issue of constitutional takings.

The ombudsman serves in the office of and at the pleasure of the chief administrative law judge of the Office of Administrative Hearings.

The ombudsman is required to make quarterly reports to the Governor and the Legislature concerning his activities and accomplishments.

The ombudsman must keep records from which to derive the general concerns of private property owners.

The act expires July 1, 2000.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.