

SENATE BILL REPORT

E2SSB 5262

As Passed Senate, March 13, 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: Senate Committee on Ways & Means (originally sponsored by Senators Haugen, Winsley, Drew, Sheldon, Heavey, McCaslin, Rasmussen, Wood, Franklin, Loveland, McAuliffe, Oke, Gaspard, Deccio, Bauer, Moyer, Owen, Palmer and Hochstatter).

Brief History:

Committee Activity: Government Operations: 2/2/95, 2/14/95 [DPS].

Ways & Means: 3/1/95, 3/3/95 [DP2S].

Passed Senate, 3/13/95, 37-10.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 5262 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Drew, Hale, Heavey, McCaslin and Winsley.

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 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 to 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 in the Office of Administrative Hearings. The ombudsman shall have only the authority to advise private property owners on issues of constitutional takings that arise in judicial, legislative or administrative proceedings involving governmental action.

Failure to reach a settlement constitutes exhaustion of administrative remedies. Any applicable statute of limitations is tolled during the period between the ombudsman's receipt of a complaint and the advertisement that further settlement negotiations would be fruitless.

Provisions are made for liability protection and funding of the office.

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

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

The office is funded by a surcharge on documents of 20 cents filed with county auditors. The revenue is deposited in a dedicated account, subject to appropriation.

The act expires July 1, 2000.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill is a constructive idea to help local jurisdictions to be more sensitive to the consequences of their regulations and to encourage negotiated solutions.

Testimony Against: None.

Testified: Mike Ryherd, 1000 Friends of WA; Bruce Wishart, Sierra Club; Naki Stevens, People for Puget Sound; Scott Merriman, WA Environmental Council; Ron Shultz, National Audubon.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5262 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Drew, Fraser, Gaspard, Hochstatter, Long, Pelz, Quigley, Sheldon, Spanel, Sutherland, West, Winsley and Wojahn.

Staff: Steve Jones (786-7440)

Testimony For: Many citizens can't afford legal advice where the value of their property has been reduced by government regulation. The measure is not an alternative to Initiative 164. Based on a successful program in Arizona, the ombudsman can assist and advise private citizens in the evaluation of their legal claims. The bill is funded by an assessment on documents filed with county auditors. Since the majority of these documents are real estate deeds, so there is a correlation between the revenue and the purpose of the ombudsman's office.

Testimony Against: None.

Testified: Senator Mary Margaret Haugen, prime sponsor (pro).