
ENGROSSED SUBSTITUTE HOUSE BILL 1890

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Padden, Morris, Campbell, Casada, Stevens, Johnson, Benton and Smith)

Read first time 03/01/95.

1 AN ACT Relating to property owners' damages for governmental
2 actions; and amending RCW 64.40.010 and 64.40.020; and repealing RCW
3 64.40.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to read
6 as follows:

7 As used in this chapter, the terms in this section shall have the
8 meanings indicated unless the context clearly requires otherwise.

9 (1) "Agency" means the state of Washington including any state
10 agency, any of its political subdivisions, including any city, town, or
11 county, and any other public body exercising regulatory authority or
12 control over the use of real property in the state.

13 (2) "Permit" means any governmental approval required by law before
14 an owner of a property interest may improve, sell, transfer, or
15 otherwise put real property to use.

16 (3) "Property interest" means any interest or right in real
17 property in the state.

18 (4) "Damages" means reasonable expenses and losses, other than
19 speculative losses or profits, incurred between the time a cause of

1 action arises and the time a holder of an interest in real property is
2 granted relief as provided in RCW 64.40.020. Damages must be caused by
3 an act, necessarily incurred, and actually suffered, realized, or
4 expended, but are not based upon diminution in value of or damage to
5 real property, or litigation expenses.

6 (5) "Regulation" means any ordinance, resolution, ~~((or other))~~ rule
7 ~~((or))~~, regulation, or any other law adopted pursuant to the authority
8 provided by state law, which imposes or alters restrictions,
9 limitations, ~~((or))~~ conditions ~~((or))~~, or in any other manner relates
10 to the use of real property.

11 (6) "Act" means a final decision by an agency which places
12 requirements, limitations, or conditions upon the use of real property
13 in excess of those allowed by applicable regulations in effect on the
14 date an application for a permit is filed. "Act" also means the
15 failure of an agency to act within time limits established by law in
16 response to a property owner's application for a permit: PROVIDED,
17 That there is no "act" within the meaning of this section when the
18 owner of a property interest agrees in writing to extensions of time,
19 or to the conditions or limitations imposed upon an application for a
20 permit. "Act" shall not include lawful decisions of an agency which
21 are designed to prevent a condition which would constitute a threat to
22 the health, safety, welfare, or morals of residents in the area.

23 In any action brought pursuant to this chapter, a defense is
24 available to a political subdivision of this state that its act was
25 mandated by a change in statute or state rule or regulation and that
26 such a change became effective subsequent to the filing of an
27 application for a permit.

28 (7) "Legal action" means any action filed with a court enforcing
29 this chapter and includes seeking relief in the form of damages.

30 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to read
31 as follows:

32 (1) Owners of a property interest who have filed an application for
33 a permit have an action for damages or may bring any other legal action
34 to obtain relief from acts of an agency which are arbitrary,
35 capricious, unlawful, or exceed lawful authority, or relief from a
36 failure to act within time limits established by law ~~((: PROVIDED, That~~
37 ~~the action is unlawful or in excess of lawful authority only if the~~
38 ~~final decision of the agency was made with knowledge of its~~

1 ~~unlawfulness or that it was in excess of lawful authority, or it should~~
2 ~~reasonably have been known to have been unlawful or in excess of lawful~~
3 ~~authority)).~~

4 (2) The prevailing party (~~in~~) who has commenced an action brought
5 pursuant to this chapter may be entitled to reasonable costs, expenses
6 of litigation, and attorney's fees.

7 (3) No cause of action is created for relief from unintentional
8 procedural or ministerial errors of an agency.

9 (4) Invalidation of any regulation in effect prior to the date an
10 application for a permit is filed with the agency shall not constitute
11 a cause of action under this chapter.

12 NEW SECTION. **Sec. 3.** RCW 64.40.030 and 1982 c 232 s 3 are each
13 repealed.

--- END ---