
HOUSE BILL 1890

State of Washington

54th Legislature

1995 Regular Session

By Representatives Padden, Morris, Campbell, Casada, Stevens, Johnson, Benton and Smith

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1 AN ACT Relating to property owners' damages for governmental
2 actions; 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 all reasonable expenses and losses, (~~other~~
19 ~~than speculative losses or profits, incurred between the time a cause~~

1 of action arises and the time a holder of an interest in real property
2 is granted relief as provided in RCW 64.40.020. Damages must be caused
3 by 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)) regardless of its nature, which
6 can be awarded by law for actions that are prohibited by this chapter.
7 Damages shall specifically include diminution in property value.

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

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

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

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

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

34 (1) Owners of a property interest who have filed an application for
35 a permit have an action for damages or may bring any other legal action
36 to obtain relief from acts of an agency which are arbitrary,
37 capricious, unlawful, or exceed lawful authority, or relief from a
38 failure to act within time limits established by law(~~or~~ PROVIDED, That

1 ~~the action is unlawful or in excess of lawful authority only if the~~
2 ~~final decision of the agency was made with knowledge of its~~
3 ~~unlawfulness or that it was in excess of lawful authority, or it should~~
4 ~~reasonably have been known to have been unlawful or in excess of lawful~~
5 ~~authority)).~~

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

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

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

14 NEW SECTION. Sec. 3. RCW 64.40.030 and 1982 c 232 s 3 are each
15 repealed.

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