

---

HOUSE BILL 2223

---

State of Washington

54th Legislature

1996 Regular Session

By 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

Read first time 01/08/96. Referred to Committee on Government Operations.

1 AN ACT Relating to the protection of private property; amending RCW  
2 4.16.100; adding a new section to chapter 4.84 RCW; adding a new  
3 chapter to Title 64 RCW; and providing effective dates.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

6 (1) Article I, section 16 of the state Constitution promises  
7 protection of the people's rights in their private property by  
8 providing that "No private property shall be taken or damaged for  
9 public or private use without just compensation having been first  
10 made." This act is intended to avoid the damaging of private property  
11 by regulation and provide a practical remedy when private property is  
12 damaged by government regulation;

13 (2) The Fifth Amendment to the United States Constitution's  
14 guarantee that private property shall not be taken for public use  
15 without just compensation was designed to bar government from forcing  
16 some people alone to bear public burdens which in all fairness and  
17 justice should be borne by the public as a whole;

1 (3) The private right to own, possess, and use private property is  
2 a fundamental civil right and an essential feature of living in a free  
3 society;

4 (4) The public has an interest in protecting natural,  
5 environmental, and aesthetic resources. The public desire to provide  
6 such public amenities should be supported by public funds;

7 (5) The cumulative reduction in the value of private property  
8 rendered practically unusable by government regulation limits the tax  
9 base and drives up the property tax rates of others;

10 (6) The economy of Washington state is harmed by uncompensated or  
11 unmitigated restrictions on real property by reducing the net worth of  
12 privately held real estate which could be used productively in creating  
13 businesses and jobs for Washington citizens;

14 (7) The crucial goal of making housing affordable has been hampered  
15 by restrictions on the use of land which reduce the supply of viable  
16 building sites by driving up the price of such sites;

17 (8) Many restrictions on land use exist to protect environmental  
18 considerations which, due to the lack of protection over the decades,  
19 has resulted in negative cumulative impacts of land use on the  
20 environment. Fairness and justice require that the public, which  
21 cumulatively over time has contributed to negative environmental  
22 impacts, pay the costs of providing remedies, rather than forcing a few  
23 members of society to pay for the necessary remedies; and

24 (9) This act is necessary to ensure that when the public desires  
25 natural, environmental, scenic, or aesthetic values on private property  
26 which leave the owner of the private property owner with no practical  
27 use of any portion of private property, the public will either mitigate  
28 the damage to the private property owner caused by restrictions on land  
29 use or provide compensation.

30 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
31 otherwise, the definitions in this section apply throughout this  
32 chapter.

33 (1) "Compensation" means remuneration which equals the reduction in  
34 the fair market value of private real property that is attributable to  
35 a restriction on the use of the property or any part thereof.

36 (2) "Government entity" means Washington state, state agencies,  
37 agencies and commissions funded, in whole or in part, by the state,

1 counties, cities, towns, special districts, municipal corporations, or  
2 quasi-municipal corporations.

3 (3) "Impose" means for an official or employee of a government  
4 entity to apply a restriction on land use to a particular piece of real  
5 property in response to the property owner's use or project permit  
6 application under chapter 36.70B RCW.

7 (4) "Real property" means any interest in real property recognized  
8 under Washington law, including water, crops, forest products,  
9 minerals, or other natural resources.

10 (5) "Reasonable economically beneficial or productive uses" are  
11 uses of property which are more than nominal or passive and which are  
12 proportionate to the owner's reasonable economic expectations in light  
13 of the historically permitted uses of the property and property within  
14 the same general area as the subject property in addition to any other  
15 factors relating to reasonable expectations.

16 (6) "Restriction" or "restricting" means a limitation, requirement,  
17 regulation, or restriction by a government entity that limits the use  
18 of real property, including those imposed by the application of  
19 ordinances, resolutions, rules, regulations, policies, statutes, and  
20 conditions of land use approval.

21 (7) "Unreasonable use of real property" means use of real property  
22 that a reasonable person in the community where the real property is  
23 located would consider unreasonable in light of the historically  
24 permitted uses of the subject real property and of similar real  
25 property within the same general area as the subject real property.  
26 This definition is intended to include all actions that constitute  
27 nuisances under common law.

28 (8) "Land use legislation" means any plan, ordinance, resolution,  
29 policy, or rule which has general application and which is adopted by  
30 a local government entity that restricts, or authorizes restrictions on  
31 the use of all or a portion of the private real property.

32 NEW SECTION. **Sec. 3.** (1) Except in cases of emergency that  
33 require the imposition of moratoria or prohibitions on development that  
34 are effective for a period not to exceed sixty days to protect life or  
35 prevent physical damage to property, land use legislation may be  
36 enacted after the effective date of this section only after the  
37 procedural requirements of this section have been followed.

1 (2) A government entity may not enact land use legislation without  
2 holding a public hearing on the proposed land use legislation. The  
3 required public hearing may be held by the governing body, a planning  
4 commission, or both. Notice of the public hearing shall be published  
5 at least thirty and not more than forty days in advance of the public  
6 hearing in the most widely circulated newspaper in the jurisdiction of  
7 the government entity, with the advertisement intentionally designed to  
8 attract public attention. The advertisement shall be of a size no  
9 smaller than four inches by four inches and shall be placed  
10 consistently in the same section or location in the paper other than  
11 with classified advertisements. The published notice must notify  
12 readers of the following:

13 (a) A general description of the proposed land use legislation;

14 (b) The time, date, and location of the public hearing for  
15 consideration of the proposed land use legislation;

16 (c) Where members of the public may inspect the text of the  
17 proposed land use legislation;

18 (d) All of the purposes of the proposed land use legislation;

19 (e) The right of persons to propose alternatives to the proposed  
20 land use legislation which must be submitted in writing prior to the  
21 public hearing; and

22 (f) The obligation of the government entity to respond to each  
23 alternative in writing.

24 (3) Any person affected by the proposed legislation may offer  
25 alternatives to the proposed legislation to fulfill the stated  
26 purposes. Alternatives must be submitted in writing prior to the  
27 public hearing required by subsection (2) of this section. Prior to  
28 the adoption of the land use legislation, the government entity must  
29 consider all proposed alternatives and must respond in writing stating  
30 the reason or reasons each alternative was rejected or accepted in  
31 whole or in part. These written responses must be made available to  
32 the public.

33 (4) The county treasurer must include with each property tax  
34 statement required under RCW 84.56.050 a statement identifying the  
35 dates during the following year at which notices required by subsection  
36 (2) of this section will be published on behalf of all government  
37 entities within the county. The statement must also identify the paper  
38 in which the notice will be published. The county treasurer may adopt  
39 a reasonable timeline and fee applicable to government entities to

1 cover the cost of submitting the information required for inclusion in  
2 this statement.

3 (5) Any resident or real property owner subject to the land use  
4 legislation may enforce the requirements under this section in the  
5 superior court in the county where the government entity is located by  
6 filing a petition for a writ of prohibition pursuant to chapter 7.16  
7 RCW, prohibiting the adoption, implementation, or enforcement of the  
8 land use legislation without complying with the procedural requirements  
9 of this section. In enforcing this section, the superior court may  
10 only consider whether the government entity complied with the  
11 procedural requirements of this section, but may not substitute its  
12 judgment for the judgment of the government entity in deciding to enact  
13 the proposed land use legislation or in deciding to reject or accept  
14 alternatives.

15 (6) This section does not preclude any action at law or equity  
16 that a real property owner would have had if this chapter had not been  
17 enacted.

18 NEW SECTION. **Sec. 4.** (1) If a government entity imposes a  
19 restriction on the use of any portion of real property and that  
20 restriction damages the property by decreasing the fair market value of  
21 the real property by either precluding an existing or previously  
22 existing use, which is not an unreasonable use of property, or  
23 precluding substantially all reasonable economically beneficial or  
24 productive uses of any portion of private real property, then the  
25 government entity shall:

26 (a) Pay compensation to the owner of a parcel of real property; or

27 (b) With the property owner's consent, mitigate the damage to the  
28 real property caused by the restriction by using methods of mitigation  
29 which include, but are not limited to, those recognized in RCW  
30 36.70A.070(5) and 36.70A.090, such as:

31 (i) Adjusting landing development or permit standards, such as  
32 clustering;

33 (ii) Increasing or modifying the density, intensity, or use of  
34 areas of development;

35 (iii) Allowing transfer development rights; or

36 (iv) Exchanging surplus property owned by the government entity.

37 (2) The mitigation or compensation requirement in subsection (1) of  
38 this section does not apply when:

1 (a) The restriction only prevents, mitigates, or abates injuries to  
2 another person or property that the government entity is able to  
3 demonstrate are likely to be directly caused by an unreasonable use of  
4 the real property; or

5 (b) The restriction:

6 (i) Is part of a zoning ordinance common to the area surrounding  
7 the real property;

8 (ii) Creates limitations that burden every parcel of real property  
9 with the same zoning designation equally, including property line set  
10 back restrictions and building height limitations, but not including  
11 set back restrictions which vary based on the particular natural  
12 environmental conditions of the real property, such as buffers for  
13 wetlands or wildlife habitat; and

14 (iii) In effect compensates all property owners subject to the  
15 restrictions by the reciprocal nature of the restrictions; or

16 (c) Federal law mandates the imposition of the restriction.

17 (3) The state is responsible for compensation and costs awarded  
18 when other government entities impose a restriction on the use of real  
19 property that is mandated by state law or a state agency. When a  
20 state-mandated restriction falls within the jurisdiction of a state  
21 agency, payment of compensation must be from the operating funds  
22 appropriated to the agency. Agencies paying compensation and costs  
23 under this section shall report all payments to the office of financial  
24 management within five days of payment.

25 (4) An award or payment of compensation under this section shall  
26 operate to grant to and vest in any government entity that pays  
27 compensation the right, title, and interest in the property for which  
28 the compensation has been paid and, upon receipt of the compensation,  
29 the property owner shall deliver to the government entity a deed to the  
30 property interest taken by the restriction. If the real property owner  
31 and government entity cannot agree, the superior court shall determine  
32 the interest that accurately represents the real property interest  
33 which has been purchased by the government entity, such as a  
34 conservation easement or fee title, and determine the form of the deed  
35 to be delivered. Filing of the deed is at the government entity's  
36 expense and the government entity shall refund any property taxes the  
37 owner pays for the property transferred after the date the restriction  
38 was imposed.

1        NEW SECTION.    **Sec. 5.**    (1) A real property owner seeking to enforce  
2 the requirements under section 4 of this act must request compensation  
3 from the government entity imposing the restriction by filing a written  
4 request for compensation that identifies the restriction at issue and  
5 specifies the level of compensation or type of mitigation requested.  
6 A real property owner is not required to pursue any other  
7 administrative remedies relating to use or a pending request for a  
8 permit to use the real property in any particular manner to establish  
9 a justiciable claim under this chapter.

10        (2) The government entity has thirty days to reject or accept a  
11 real property owner's request for compensation under subsection (1) of  
12 this section. The government entity may choose not to impose the  
13 restriction, to grant a variance from the restriction, to pay  
14 compensation, to offer to mitigate the burden caused by the imposition  
15 of the restriction, or any combination of these options.

16        (3) The requirements under section 4 of this act may be enforced in  
17 superior court against a government entity by the owner of real  
18 property subject to the restriction within the time period established  
19 in RCW 4.16.100. Property owners may also raise any state or federal  
20 statutory or constitutional claims arising from the government entity's  
21 imposition of the restriction or the decision to reject in whole or in  
22 part the property owner's request for compensation. It is not  
23 necessary for the restriction to be challenged under any other basis or  
24 for a property owner to seek relief through any other process before a  
25 claim for compensation can be made.

26        (4) The superior court shall rule on all issues de novo and give no  
27 deference to findings, if any, issued by the government entity relating  
28 to its compliance with this chapter. Property owners are entitled to  
29 a jury trial on the amount of compensation required under this chapter  
30 as in cases under eminent domain. In calculating the amount of  
31 compensation to be paid, the court may consider the value of mitigation  
32 offered by the government entity under section 4(1)(b) of this act.

33        (5) In defending against a claim for compensation, a government  
34 entity that intends to rely on the exceptions set forth in section 4(2)  
35 of this act has the burden to demonstrate by clear and convincing  
36 evidence that the restriction qualifies as an exception and is exempt  
37 from the compensation requirement of this chapter.

38        (6) In defending against a claim for compensation filed in the  
39 superior court, a government entity that intends to rely on section

1 4(4) of this act for liability by the state, must join the state as a  
2 defendant within thirty days of the service of the original complaint  
3 seeking compensation under this chapter.

4 (7) A prevailing plaintiff or petitioner is entitled to recover the  
5 costs incurred in enforcing this chapter as provided in section 8 of  
6 this act.

7 NEW SECTION. **Sec. 6.** This act does not apply to actions by  
8 government entities in their exercise of the power of eminent domain.

9 **Sec. 7.** RCW 4.16.100 and Code 1881 s 29 are each amended to read  
10 as follows:

11 Within two years:

12 (1) An action for libel, slander, assault, assault and battery, or  
13 false imprisonment.

14 (2) An action upon a statute for a forfeiture or penalty to the  
15 state.

16 (3) An action under the private property protection act, chapter  
17 64.-- RCW (sections 1 through 6 and 9 through 11 of this act).

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 4.84 RCW  
19 to read as follows:

20 A prevailing plaintiff or petitioner is entitled to recover the  
21 costs incurred in enforcing chapter 64.-- RCW (sections 1 through 6 and  
22 9 through 11 of this act), including reasonable attorneys' fees. A  
23 real property owner prevails under section 4 of this act if he or she  
24 receives more compensation than offered by the government entity under  
25 section 5(2) of this act.

26 NEW SECTION. **Sec. 9.** This chapter may be known and cited as the  
27 private property protection act.

28 NEW SECTION. **Sec. 10.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.



1        NEW SECTION.    **Sec. 11.**    Section 3(4) of this act shall take effect  
2    January 1, 1997.    The remainder of this act shall take effect June 15,  
3    1996, and apply prospectively to restrictions imposed after that date.

4        NEW SECTION.    **Sec. 12.**    Sections 1 through 6 and 9 through 11 of  
5    this act shall constitute a new chapter in Title 64 RCW.

--- END ---