
SENATE BILL 5261

State of Washington

54th Legislature

1995 Regular Session

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

Read first time 01/17/95. Referred to Committee on Government Operations.

1 AN ACT Relating to the creation of an ombudsman office for private
2 property rights; adding a new chapter to Title 34 RCW; providing an
3 expiration date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to establish an
6 ombudsman for private property rights to advise private property owners
7 of their rights and interests in proceedings involving governmental
8 action.

9 NEW SECTION. **Sec. 2.** Unless the context clearly requires
10 otherwise, the definitions in this section apply throughout this
11 chapter.

12 (1) "Constitutional taking" or "taking" means that due to a
13 governmental action or proposed governmental action private property is
14 or will be taken and compensation to the owner of that property is
15 required by either:

16 (a) The fifth or fourteenth amendment of the Constitution of the
17 United States; or

18 (b) Article 1, section 16 of the state Constitution.

1 (2)(a) "Governmental action" or "action" means action by a state
2 agency consisting of:

3 (i) Proposed rules and emergency rules that if adopted and enforced
4 may limit the use of private property;

5 (ii) Proposed or implemented licensing or permitting conditions,
6 requirements, or limitations to the use of private property; or

7 (iii) Required dedications or exactions from owners of private
8 property.

9 (b) "Governmental action" or "action" does not include:

10 (i) Activity in which the power of eminent domain is formally
11 exercised;

12 (ii) Repealing rules to discontinue governmental programs or
13 amending rules in a manner that lessens interference with the use of
14 private property;

15 (iii) Law enforcement activity involving seizure or forfeiture of
16 private property for violations of law or as evidence in criminal
17 proceedings; or

18 (iv) Orders that are authorized by statute, that are issued by a
19 state agency or a court of law and that are issued as the result of a
20 violation of state law.

21 (3) "Private property" means any real or personal property in this
22 state that is protected by either:

23 (a) The fifth or fourteenth amendment of the Constitution of the
24 United States; or

25 (b) Article 1, section 16 of the state Constitution.

26 (4) "Small business" means a corporation, partnership, limited
27 liability company, sole proprietorship, or individual operating a
28 business for profit with not more than one hundred employees, including
29 employees employed in any subsidiary or affiliated corporation.

30 (5) "State agency" means an officer or unit of the executive branch
31 of state government that is authorized by law to adopt rules. "State
32 agency" does not include the legislative or judicial branches of state
33 government.

34 NEW SECTION. **Sec. 3.** (1) An ombudsman office is established in
35 the office of administrative hearings to represent the interests of
36 private property owners in proceedings involving governmental action.

37 (2) The chief administrative law judge shall appoint the ombudsman
38 who serves at the pleasure of the chief administrative law judge.

1 NEW SECTION. **Sec. 4.** (1) The ombudsman may:

2 (a) Research, study, and analyze issues that involve or relate to
3 or that may involve constitutional takings;

4 (b) Prepare and present briefs and arguments, intervene or appear
5 on behalf of private property owners in general or specific private
6 property owners in any judicial, legislative, or administrative hearing
7 or proceeding as a party or otherwise;

8 (c) Advise private property owners on issues involving or related
9 to constitutional takings;

10 (d) Employ and terminate employees, or contract for special
11 services, as necessary to implement this chapter, including legal
12 counsel and other professional and administrative staff that are
13 necessary to represent and advocate the interests of private property
14 owners; and

15 (e) Conduct investigations and inquiries and assemble and present
16 evidence.

17 (2) The ombudsman shall:

18 (a) Represent the interests of record title owners of residential,
19 noncommercial, small business, and agricultural properties before any
20 state agency, the legislature, and any court, including quiet title
21 actions, regarding any issues related to governmental actions;

22 (b) Receive complaints and inquiries from private property owners
23 regarding constitutional takings; and

24 (c) Within thirty days after the end of each calendar quarter,
25 submit a report to the governor, president of the senate, and the
26 speaker of the house of representatives describing the activities and
27 accomplishments of the office.

28 (3) The ombudsman's office shall record all contacts by private
29 property owners with regard to alleged constitutional takings to
30 determine general concerns of private property owners. The office may
31 advise private property owners of the services available from other
32 governmental and private agencies that may be of further assistance.

33 NEW SECTION. **Sec. 5.** This act shall expire July 1, 2000.

34 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute
35 a new chapter in Title 34 RCW.

1 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

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