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**SUBSTITUTE SENATE BILL 5262**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senators Haugen, Winsley, Drew, Sheldon, Heavey, McCaslin, Rasmussen, Wood, Franklin, Loveland, McAuliffe, Oke, Gaspard, Deccio, Bauer, Moyer, Owen, Palmer and Hochstatter)

Read first time 02/15/95.

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. This chapter is not intended to effect the definitions and  
9 provisions of initiative to the legislature No. 164.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (3) To be appointed as county ombudsman, a person shall be a member  
4 of the Washington state bar association, in good standing, and be  
5 familiar with the structure and procedures of state government and  
6 administrative agencies.

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

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

10 (b) Advise private property owners on issues involving or related  
11 to constitutional takings;

12 (c) Employ and terminate employees, or contract for special  
13 services, as necessary to implement this chapter, including legal  
14 counsel and other professional and administrative staff;

15 (d) Conduct investigations and inquiries and assemble evidence; and

16 (e) Decline jurisdiction over any matter that, at the time the  
17 complaint is received, is pending for investigation, review, hearing,  
18 or disposition before any review board, court, commission, or other  
19 body.

20 (2) The ombudsman shall:

21 (a) Receive complaints and inquiries from private property owners  
22 regarding constitutional takings;

23 (b) Advise record title owners of residential, noncommercial, small  
24 business, and agricultural properties concerning their complaints about  
25 alleged constitutional takings;

26 (c) If the ombudsman determines that a complaint is without merit,  
27 advise the complainant and close the matter;

28 (d) If the ombudsman determines that a complaint does have merit,  
29 act as the complainant's representative in negotiating a settlement of  
30 the matter;

31 (e) If the ombudsman determines that further settlement  
32 negotiations would be fruitless, advise the complainant and advise him  
33 or her to seek legal counsel;

34 (f) Allow legal counsel retained by the complainant access to the  
35 settlement file compiled on the complainant's behalf; and

36 (g) Within thirty days after the end of each calendar quarter,  
37 submit a report to the governor, president of the senate, and the

1 speaker of the house of representatives describing the activities and  
2 accomplishments of the office.

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

8 NEW SECTION. **Sec. 5.** Neither the ombudsman personally, nor the  
9 state of Washington has any liability to any person for any claim based  
10 on the ombudsman's decisions, actions, or failures to act in his or her  
11 official capacity.

12 NEW SECTION. **Sec. 6.** A charge of one dollar is imposed on each  
13 transaction filed with the county auditor, which transaction is subject  
14 to surcharge under RCW 36.22.170. The county may exempt or modify the  
15 charges imposed under this section for categories of instruments  
16 specified by ordinance. All moneys collected by a charge imposed under  
17 this section shall be dedicated exclusively to pay the costs of salary  
18 and operation of the office of the ombudsman.

19 NEW SECTION. **Sec. 7.** This act shall expire July 1, 2000.

20 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
21 a new chapter in Title 34 RCW.

22 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and shall take  
25 effect immediately.

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