

~~Government Reform and Land~~ Use Committee

BILL ANALYSIS ESSB 6497

Title of the Bill: Taking private property.

What this Bill Does: Requires state agencies and local governments to make findings and conclusions regarding whether government action would result in an unconstitutional taking of private property and authorizes local governments to seek reimbursement for any increased service levels associated with this new requirement.

Sponsors: Senate Committee on Government Operations (originally sponsored by Senators McCaslin, T. Sheldon, Anderson and Oke).

Hearing Date: 2/23/98

Fiscal Note: Note requested.

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BACKGROUND:

The federal and Washington state constitutions provide that private property may not be taken for public use without just compensation. The Washington Supreme Court has concluded that a land use regulation is not a taking if it substantially advances a legitimate state interest and does not deprive the owner of economically viable use of the owner's land.

The Growth Management Act (GMA) requires certain counties, and the cities located in those counties, to plan according to the statutory requirements. Counties and cities subject to all the GMA requirements are typically referred to counties and cities that plan under the GMA. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county and the cities located in that county plan under all of the GMA requirements.

The basic GMA planning requirements are:

- Identification and protection of all critical areas;

- Designation and conservation of natural resource lands;
- Adoption of county-wide planning policies;
- Designation of urban growth areas;
- Adoption of a comprehensive plan with certain required elements; and
- Adoption of development regulations implementing the comprehensive plan.

Counties and cities that do not plan under the GMA must identify and protect critical areas and designate (but not conserve) natural resource lands.

The attorney general was required in 1991 to adopt guidelines for state agencies and local governments planning under the GMA to evaluate whether proposed actions constitute an unconstitutional taking of private property. The attorney general was also required to develop, in coordination with the Washington State Bar Association, a continuing legal education program regarding such takings evaluations.

Under Initiative Measure 601, the legislature is prohibited from imposing upon local governments responsibility for new programs or increased levels of service under existing programs unless the legislature fully reimburses the local government for the costs associated with the new programs or increased levels of service.

Procedures for filing actions and seeking payment of claims against the state of Washington is provided in chapter 4.92 RCW.

SUMMARY:

The legislature's purpose in requiring takings evaluations with respect to government actions is specified to include a public policy of making state agencies and local governments recognize and account for regulations which may impact property owners' constitutional rights and to reduce the risk that government action may create undue burdens on private property rights.

For any government action requiring a public hearing, state agencies and local governments are required to:

- address the attorney general's guidelines in the public hearing process; and
- make written findings and conclusions regarding whether the government action may result in an unconstitutional taking of private property.

The requirement for developing a continuing legal education program is deleted.

Local governments are authorized to submit claims for reimbursements to the legislature under chapter 4.92 RCW if the requirement to perform the takings analysis mandates an increased level of service as defined by Initiative Measure No. 601.