
HOUSE BILL 1837

State of Washington

55th Legislature

1997 Regular Session

By Representative B. Thomas

Read first time 02/11/97. Referred to Committee on Government Reform & Land Use.

1 AN ACT Relating to the regulation of private property; and adding
2 a new chapter to Title 64 RCW.

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

4 NEW SECTION. **Sec. 1.** This chapter is intended to assure
5 protection to private property owners' rights under the state and
6 federal constitutions. This chapter is not intended to enlarge or
7 restrict existing constitutional rights. The provisions of this
8 chapter are to be liberally construed to effectuate the policies and
9 purposes of this chapter. In the event of conflict between this
10 chapter and any other statute, ordinance, rule, or executive order,
11 this chapter governs.

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

15 (1) "Compensation" means the reduction in the present fair market
16 value of property measured in dollars that is attributable to a
17 restriction on the use of private property.

1 (2) "Governmental entity" means Washington state, state agencies,
2 agencies and commissions funded fully or partially by the state,
3 counties, cities, and other political subdivisions.

4 (3) "Imposes" means for a governmental entity to apply any
5 restriction on land use to a particular piece of property in response
6 to the property owner's use or request to use the property in any
7 particular manner.

8 (4) "Private property" means a monetary interest in real property
9 recognized under Washington law, including:

10 (a) Land;

11 (b) An interest in land or improvements on the land;

12 (c) A proprietary water right; and

13 (d) Any crops, forest products, or resources capable of being
14 harvested or extracted.

15 (5) "Regulatory taking" occurs when a governmental entity imposes
16 a restriction which interferes with the owner's use of real property or
17 a portion of real property, with the owner's right to exclude others,
18 or with the right to transfer ownership or possession and that
19 decreases by twenty percent or more the fair market value of the
20 owner's entire monetary interest in the separate and legally created
21 parcel of property subject to the restriction in question.

22 (6) "Restriction" means a limitation, requirement, or restriction
23 by a governmental entity that limits the use of private property,
24 including ordinances, resolutions, rules, statutes, and conditions of
25 development approval.

26 (7) "Unreasonable use of property" means use of property that a
27 reasonable person would consider unreasonable in light of the
28 historically permitted uses of similar property within the same general
29 area as the subject property. This definition is intended to include
30 at a minimum all actions that constitute nuisances under common law.

31 NEW SECTION. **Sec. 3.** (1) A governmental entity shall pay
32 compensation to the owner of real property when it causes a regulatory
33 taking of any part of the property. Compensation need not be paid in
34 the form of cash as long as the value given by the governmental entity
35 at least equals the compensation required under this chapter.

36 (2) The compensation requirement in subsection (1) of this section
37 does not apply when the restriction:

1 (a) Is imposed under an ordinance, resolution, or rule adopted by
2 local government prior to January 1, 1997, or adopted by local
3 government because the restriction is required under a state law that
4 was adopted by the legislature prior to January 1, 1997. Restrictions
5 imposed under these ordinances, resolutions, or rules that are amended
6 after the effective date of this act create a duty to pay compensation
7 only to the extent the amendment increases the restriction;

8 (b) Only prevents, mitigates, or abates the injuries to another
9 person or property that are likely to be caused by an unreasonable use
10 of property;

11 (c) Only mitigates the adverse effects to another person or
12 property caused by the use of the property subject to the restriction;

13 (d) Is part of a zoning ordinance common to the area surrounding
14 the property that regulates the type or intensity of use permitted on
15 the property.

16 (3) Restrictions imposed by more than one governmental entity that
17 cumulatively decrease the property value by twenty percent or more
18 require each responsible governmental entity to pay its share of the
19 decrease.

20 (4) The compensation required under this section shall not exceed
21 four hundred thousand dollars to any landowner for any restriction on
22 land use of a separate and legally created parcel of real property.

23 (5) A governmental entity may not require waiving the compensation
24 under this section as a condition of approval of a use or another
25 permit or as a condition for subdivision of land.

26 (6) The state is responsible for the compensation liability of
27 other governmental entities for a restriction on the use of property
28 which is mandated by state law or a state agency.

29 (7) Claims for compensation as a result of a regulatory taking of
30 private property under this chapter must be brought within the time
31 period specified in RCW 4.16.080.

32 (8) When compensation under this chapter is ordered by a court or
33 accepted by a landowner, the property owner shall deliver to the
34 governmental entity paying compensation title to whatever accurately
35 represents the property interest that has been taken, such as a
36 conservation easement, view easement, or fee title.

37 NEW SECTION. **Sec. 4.** (1) A property owner seeking to enforce
38 this chapter must request compensation from the department of the

1 governmental entity that is imposing the restriction. A property owner
2 is not required to pursue any other administrative remedies relating to
3 a pending request for a permit to use the property in any particular
4 manner.

5 (2) The governmental entity has forty-five days to reject a
6 property owner's request for compensation under subsection (1) of this
7 section. If the request is rejected in whole or in part, this chapter
8 may be enforced in superior court against a governmental entity that
9 fails to comply with this chapter by the owner of the property subject
10 to the jurisdiction of that governmental entity. The property owner
11 may also raise any state or federal statutory or constitutional claims
12 arising from the government's decision to reject in whole or in part
13 the property owner's request for compensation. The property owner may
14 also request compensation from the executive, or designee, of the
15 governmental entity imposing the restriction. Such a request shall not
16 be a prerequisite to enforcing this chapter in superior court.

17 (3) The superior court shall rule on all issues de novo and give no
18 deference to findings issued by the government, if any, relating to the
19 government's compliance with this chapter. The property owner
20 enforcing this chapter has the burden to prove that the private
21 property was devalued by twenty percent or more and that the
22 devaluation was caused by the governmental entity's restriction on land
23 use. The government has the burden of proving that any exception to
24 the compensation requirement in section 3(2) of this act applies. Mere
25 assertion that the restriction is to prevent or alleviate public harm
26 is insufficient to insulate the government from responsibility for
27 paying compensation. A local government also has the burden of joining
28 the state in any litigation if the local government claims the state is
29 responsible for paying compensation under section 3(6) of this act.

30 (4) A prevailing property owner is entitled to recover the costs of
31 litigation, including reasonable attorneys' fees.

32 NEW SECTION. **Sec. 5.** This chapter may be known and cited as the
33 regulatory takings fairness act.

34 NEW SECTION. **Sec. 6.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 64 RCW.

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