
HOUSE BILL 1695

State of Washington

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By Representatives Wilson, Morton, Forner, Fuhrman, Van Luven, Holland, May, Hargrove, Betrozoff, Broback, Miller, Paris, D. Sommers, Chandler, Ballard, McLean, Orr, Nealey, P. Johnson, Brumsickle, Bowman, Sheldon and Morris.

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1 AN ACT Relating to compensation for government interference with
2 private property rights; adding a new chapter to Title 64 RCW; and
3 declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature hereby finds and
6 declares that land use regulation and the fair distribution of burdens
7 created by land use regulation are matters of compelling public
8 interest. The legislature further finds and declares that vigorous and
9 intelligent employment of land use regulation by the state and its
10 political subdivisions to protect the environment, natural resources,
11 and ecosystems, to control growth, and to ensure sound land use
12 planning is in the public interest, but that regulation unaccompanied
13 by a plain, speedy, and adequate means of just distribution of the
14 burdens generated thereby, often results in the imposition of unfair

1 and substantial economic burdens on individual property owners for the
2 benefit of the public as a whole.

3 It is therefore the policy of this chapter to distribute the
4 economic burdens proximately resulting from land use regulations
5 according to the benefits created, so that no person is required to
6 assume more than a fair share of these burdens. Payment of fair and
7 adequate compensation to property owners under this chapter is a fair
8 and preferred means of distributing these economic burdens. Existing
9 constitutional law contains the requirement that private property be
10 paid for which is taken or damaged by actions of government that
11 constitute acts of eminent domain or inverse condemnation. Provisions
12 are made in statutory law for measuring the value of property so taken
13 or damaged. This chapter creates an additional cause of action for
14 private property owners to sue, obtain, and measure compensation
15 resulting from government acts which do not constitute a
16 constitutionally compensable taking or damaging of their property, but
17 which nevertheless cause economic burdens.

18 NEW SECTION. **Sec. 2.** As used in this chapter, the following
19 terms have the meanings indicated unless the context clearly requires
20 otherwise:

21 (1) "Regulation" means any written enactment or expression,
22 including a legislative act, ordinance, resolution, initiative,
23 referendum, policy statement, or other governmental action involving
24 the exercise of the legislative power of the enacting entity which
25 imposes or alters restrictions, limitations, or conditions on the use
26 of property.

27 (2) "Act" means any action by a public entity other than a
28 regulation, whether formal or informal, whether affirmative or
29 negative, whether written or not written, whether involving or not

1 involving the police power or legislative power of the public entity,
2 and whether initiated by the public entity itself or accomplished in
3 response to a referendum, initiative, or a petition, application,
4 motion, or other act of a property owner. Acts may include the
5 enactment, granting, or denial of a change of zoning, permitted use,
6 variance, subdivision rights, or building or other permits, or any
7 other official act, prohibition, representation, or policy affecting
8 the value, marketability, use, or economic return of real property.

9 "Act" also means a public entity's failure to act in response to a
10 property owner's application for a change in land use regulation, or in
11 response to a property owner's application for a permit.

12 (3) "Permit" means any governmental approval required by law before
13 a property owner may improve, sell, or otherwise put property to use.

14 (4) "Property" means any interest and right in real property
15 including the right to possess, use, encumber, and dispose of the real
16 property.

17 (5) "Property owner" means any person holding any legal or
18 equitable interest or right in any real property in the state.

19 (6) "Litigation expenses" means all actual expenses incurred in
20 pursuing remedies under this chapter, including filing fees, attorneys'
21 fees, appraisal fees, costs of record reproduction and transcription,
22 and the costs of the appearance of witnesses.

23 (7) "Public entity" means the state, any of its political
24 subdivisions, any regional land use control commission, any other
25 public body exercising or purporting to exercise legislative or
26 regulatory authority over land use, any subdivision of these bodies,
27 and any other bodies, including public utilities or other
28 nongovernmental bodies, empowered by the state or any of the entities
29 listed in this subsection with legislative, regulatory, or eminent
30 domain authority or control over real property in the state.

1 (8) "Interim damages" means reasonable costs, expenses, and losses
2 incurred between the time a cause of action vests under section 3 of
3 this act and the time the property owner is compensated for the taking
4 or damaging of his or her property. Interim damages must be
5 proximately caused by a regulation or act, necessarily incurred and
6 actually suffered, realized, or expended, but are not based upon
7 diminution of value of, or damage to, real property, or litigation
8 expenses. Interim damages include, but are not limited to, ad valorem
9 taxes paid, interest paid, and rents paid or actually lost.

10 NEW SECTION. **Sec. 3.** If the economic effect of a regulation
11 or act of a public entity upon real property destroys or substantially
12 impairs its value or use, or substantially impairs its marketability or
13 economic return, or substantially interferes with a property right, a
14 cause of action for damages vests in the property owner when the
15 economic effect occurs.

16 This chapter does not create a cause of action for:

17 (1) Insubstantial economic impairment caused by a regulation or act
18 of a public entity. Economic impairment is insubstantial if the
19 property is reduced in value by no more than five thousand dollars or
20 twenty percent of its total value.

21 (2) Damage caused solely by good faith general or preliminary
22 planning functions of a public entity unless the planning, in the
23 context of all pertinent facts and circumstances, results in
24 substantial impairment to the marketability of the property or is
25 accompanied by a direct legal restraint on the property, or oppressive
26 conduct or unreasonable delay by the public entity.

27 (3) The refusal of a public entity to affirmatively confer a
28 benefit upon a property not enjoyed by surrounding or comparable
29 properties or to confer a benefit increasing the property's market

1 value beyond that of surrounding and comparable properties, unless the
2 refusal, in the context of all pertinent facts and circumstances,
3 prohibits reasonable use and development.

4 (4) The regulation, control, or abatement of any nuisance or
5 similar noxious activity or land use that is inimical to public health
6 or safety. This provision is not applicable to lawful activities or
7 land uses which are not harmful to public health or safety and are
8 sought to be abated solely to transform the use of the affected land to
9 a more publicly beneficial use.

10 (5) Damage or loss of value arising because of regulatory
11 provisions or acts applicable to property other than the property
12 experiencing the damage or loss.

13 (6) Damage or loss of value because of loss of road access, or
14 because of the removal or imposition of traffic regulations, which is
15 not also compensable under a constitutional theory.

16 NEW SECTION. **Sec. 4.** (1) In determining whether the economic
17 effect of a regulation or act is substantial, and whether relief under
18 this chapter should be provided, a court may consider all relevant
19 evidence, including the following:

20 (a) Diminution in fair market value of the property in percentage
21 terms and in terms of the actual monetary loss;

22 (b) The regulatory status and use of adjacent property and other
23 comparable property in the same geographic area;

24 (c) The reasonable economic expectations of the property owner;

25 (d) Any acts, omissions, policies, or representations of the public
26 entity or its officers, employees, representatives, or agents which,
27 considered in the full factual context, impose a direct legal restraint
28 upon the property or tend to show an intent to acquire or appropriate
29 the property for public use or benefit; and

1 (e) Whether the regulation or act was accompanied by oppressive
2 acts, unreasonable delay by the public entity or its agents, or by
3 representations of the public entity or its agents upon which the
4 property owner reasonably and detrimentally relied, whether or not the
5 agents have authority to legally bind the public entity.

6 (2) Any evidence which may by law be considered by a jury in
7 determining the existence and amount of taking or damaging under
8 Article I, section 16 of the state Constitution, or which shows loss of
9 value or damage, may be considered in determining whether compensation
10 should be conferred under this chapter.

11 (3) Value shall be determined as of the last business day prior to
12 the date set for the beginning of the most recent hearings or
13 proceedings at which the question of value will be determined.

14 NEW SECTION. **Sec. 5.** A property owner affected by a public
15 entity's regulation or act who brings an action under sections 3 and 4
16 of this act shall be entitled to judicial relief in the manner provided
17 in this section. The trial of any action brought under this chapter
18 shall be bifurcated as follows:

19 (1) The court shall first determine whether and the extent to which
20 the property of the plaintiff has been taken or damaged by the
21 regulation or act within the meaning of Article I, section 16 of the
22 state Constitution. If the court determines that a taking or damaging
23 has occurred, the cause shall be deemed an ordinary inverse
24 condemnation action to that extent and submitted to a jury, or to the
25 court if a jury is waived, for the determination of just compensation,
26 and judgment shall be entered on the verdict.

27 (2) If the court determines that no taking or damaging within the
28 meaning of Article I, section 16 of the state Constitution has
29 occurred, but that the owner is entitled to monetary relief under the

1 provisions of this chapter, the court shall make an order so finding.
2 The executive or the legislative body of the defendant public entity
3 shall have sixty days from the order, or to the end of the next special
4 or regular session if the public entity is the state legislature, to
5 elect to either:

6 (a) Withdraw or rescind the offending regulation or act, or correct
7 or amend it to remove its offending aspect or aspects, and pay the
8 property owner's interim damages and litigation expenses. In taking
9 this action, it is not necessary for the executive or legislative body
10 to follow the procedural requirements of any other law except to comply
11 with public hearing notice requirements applicable to the executive or
12 legislative body.

13 (i) The correcting of the act or regulation may be by amendment,
14 repeal, granting the use earlier denied through permit variance or
15 otherwise, or in any other appropriate way.

16 (ii) If this course of action is selected, the court shall retain
17 jurisdiction and review the corrective act of the public entity. If in
18 the judgment of the court, the proposed corrective act does not provide
19 adequate relief or do substantive justice to the property owner, the
20 court may treat this failure as an affirmation of the regulation or
21 act, and proceed as provided in subsection (4) of this section.

22 (b) Affirm the regulation or act.

23 (3) If the public entity takes no action within sixty days of the
24 finding described in subsection (2) of this section, or by the end of
25 the next session if the public entity is the state legislature, it is
26 deemed to have affirmed the regulation or act as a matter of law.

27 (4) If the entity affirms its regulation or act, the trial shall
28 continue. In the second phase of the trial, the jury, or the court if
29 a jury is waived, shall determine:

1 (a) The value of the entire property interest owned by the
2 plaintiff; and

3 (b) The amount of damages actually suffered by the plaintiff
4 proximately caused by the regulation or act, not including interim
5 damages.

6 (5) If the entire property interest which is the subject matter of
7 the action is less than the full fee interest in the property in
8 question, the defendant public entity may request the finder of fact to
9 determine the value of the full fee interest, in addition to the two
10 determinations required in subsection (4) of this section.

11 (6) Once the determinations required by subsections (4) and (5) of
12 this section have been made, the defendant public entity shall have
13 ninety days to elect to either:

14 (a) Pay the property owner the damages as determined under
15 subsection (4)(b) of this section, plus interim damages and litigation
16 expenses;

17 (b) Pay the amount determined to be the value of the property
18 interest as determined under subsection (4)(a) of this section; or

19 (c) If the property interest is less than the full fee, and the fee
20 value has been determined, and there is public use and necessity for
21 the full fee interest, pay the value of the fee interest as determined
22 under subsection (5) of this section. If the public entity chooses to
23 pay the full value of the fee or lesser property interest, the court
24 shall order the plaintiff to convey all right, title, and interest in
25 the fee or lesser property interest, as appropriate, to the public
26 entity, and award the property owner interim damages, court costs, and
27 litigation expenses.

28 (7) If the public entity does not make the election described in
29 subsection (6) of this section within the time period specified, the
30 court shall enter its order and judgment awarding the property owner

1 the damages as determined in subsection (4)(b) of this section, plus
2 interim damages, court costs, and litigation expenses.

3 NEW SECTION. **Sec. 6.** The remedies provided by this chapter
4 are in addition to any other remedies provided by law. The provisions
5 of this chapter shall be liberally construed to fulfill the policies
6 stated in section 1 of this act.

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

9 NEW SECTION. **Sec. 8.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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