
SENATE BILL 5475

State of Washington

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By Senators Amondson, Snyder, M. Rasmussen, Hargrove, Deccio, Moyer, Prince, L. Smith, Cantu, Anderson, Oke, Erwin, McCaslin, Bluechel, Roach, Barr, Sellar, Newhouse, Quigley and Hochstatter

Read first time 01/29/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to regulatory takings of private property; adding
2 a new section to chapter 35.21 RCW; adding a new section to chapter
3 35A.21 RCW; adding a new section to chapter 36.01 RCW; adding a new
4 chapter to Title 8 RCW; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1)(a) Whenever implementation by the state
7 or any of its political subdivisions of a scheme directly or indirectly
8 regulating the use of land operates to reduce the fair market value of
9 a parcel of real property immediately prior to such implementation, the
10 parcel is deemed to be taken for public use. For purposes of this
11 chapter the fair market value of wetlands is their highest and best use
12 value.

13 (b) The following definitions apply throughout this chapter:

14 (i) "Compensation" means cash or in-kind payment, if the affected
15 property owner agrees to in-kind payment and then agrees to the in-kind
16 payment actually offered, including but not limited to clustering;
17 transfer of development rights; staging of concurrency; land trades;
18 environmental mitigation credits for prior activity of owners; density

1 bonuses; or adjustments to restrictions on lot size, number of units,
2 or building dimensions.

3 (ii) "Parcel" means one or more contiguous tax lots of an owner.

4 (iii) "Owner" includes one or more natural or legal persons who own
5 the parcel, whether as sole owner, marital community, cotenants, or
6 tenants in partnership or as a corporation.

7 (iv) "Scheme regulating the use of land" means one regulation or
8 government action affecting the use of land; or more than one such
9 regulation or action, though occurring at different times or by
10 different governmental entities, with the same or similar policy
11 objectives, such as development moratoria, zoning, health regulations,
12 safety regulations, aesthetic regulations, fish and wildlife
13 regulations, sensitive-area regulations, and environmental regulations,
14 whether such regulation or action is interim or permanent. A scheme
15 regulating the use of land does not include any regulation or
16 government action of the federal government or regulation or government
17 action of the state or any local governmental entity taken to comply
18 with the minimum requirements of federal law or regulation.

19 (v) "Wetlands" or "wetland area" means the same as defined in RCW
20 90.58.030.

21 (2)(a) When a parcel of real property has been taken for public use
22 as provided in this chapter, the governmental unit or units that
23 implement the scheme regulating the use of land shall be liable to the
24 owner for compensation under this chapter, and the owner shall have an
25 action at law to recover such compensation. When more than one
26 governmental unit is involved, the court shall determine the proportion
27 each unit is required to contribute to the compensation.

28 (b) The compensation shall be for the full amount of the decrease
29 in fair market value. In addition, an owner who prevails either
30 through settlement or verdict in an action for the recovery of such
31 compensation shall be entitled to reasonable costs, expenses of
32 litigation, and sums for attorneys' fees.

33 (3) Governmental units subject to this chapter shall not make
34 waiver of the provisions of this chapter a condition for approval of
35 the use of real property or the issuance of any permit or other
36 entitlement. Plaintiffs may accept an approval of use, permit, or
37 other entitlement granted by the governmental unit without compromising
38 their rights under this chapter if:

1 (a) A written reservation of their rights is made at the time of
2 acceptance of the authorization, permit, or other entitlement; or

3 (b) An oral statement reserving their rights is made before the
4 governmental unit granting the authorization, permit, or other
5 entitlement at a public meeting at which the governmental unit renders
6 its decision.

7 NEW SECTION. **Sec. 2.** Compensation is required by this chapter
8 unless the scheme regulating the use of land is an exercise of the
9 police power solely to prevent or abate a public nuisance as defined at
10 common law or an application of the public trust doctrine as it relates
11 directly to navigable water only.

12 NEW SECTION. **Sec. 3.** (1) The statute of limitations for actions
13 brought under this chapter is the statute of limitations for actions
14 for recovery of real property. The statute of limitations begins to
15 run upon the enactment of the scheme regulating the use of land; or the
16 final administrative decision implementing the scheme regulating the
17 use of land affecting plaintiffs' property or by a showing by the
18 plaintiff that application for administrative decision is futile.

19 (2) A scheme regulating the use of land is implemented with respect
20 to an owner's or user's property when actually applied to that property
21 unless the enactment of the scheme by itself operates to reduce the
22 fair market value of real property for the uses permitted at the time
23 the owner acquired title, without further governmental action and the
24 scheme contains no provision allowing for just relief from the scheme's
25 operation.

26 (3) This chapter applies to schemes regulating the use of land, all
27 or some part of which is implemented after the effective date of this
28 act. No part of a scheme shall be considered for purposes of this
29 chapter if the part was implemented more than ten years before the
30 effective date of this act.

31 NEW SECTION. **Sec. 4.** If a natural event or condition threatens to
32 deprive an owner of land of the land's use or to cause serious damage
33 to the land, and immediate corrective action is required to prevent
34 this deprivation or damage, but this action will violate a state or
35 local law or regulation unless official waiver or permission is
36 obtained, the owner may either:

1 (1) Apply to the governmental unit charged with enforcing such
2 regulation to take, or to permit the owner to take, the required
3 corrective action. If the governmental unit wrongfully denies waiver
4 or permission or fails to take reasonably timely action upon the
5 application, so that such deprivation or damage occurs, the
6 governmental unit shall be liable to the owner for the diminution in
7 value of the land which occurs unless the natural event or condition
8 was the fault of the owner; or

9 (2) Without notifying the governmental unit under subsection (1) of
10 this section, take such corrective action as is reasonably necessary to
11 prevent the threatened deprivation or damage. However, the owner shall
12 notify the governmental unit that he or she has undertaken the
13 corrective action within five days after commencing such action and
14 shall give a general description of the action undertaken. Thereafter,
15 in a legal action brought by the governmental unit, the owner shall be
16 liable for violation of the regulation if a court determines that there
17 was a violation and that an owner would not have qualified for any
18 available waiver or exemption.

19 NEW SECTION. **Sec. 5.** (1) If a governmental unit is found by a
20 court to have committed a regulatory taking under section 1 of this
21 act, such unit shall be liable for compensation, measured by the
22 owner's diminution in fair market value caused by such taking from the
23 time the scheme that regulated the use of the owner's land became
24 effective until the unit may grant an exemption or choose to repeal
25 such scheme. However, if the governmental unit does not grant an
26 exemption or choose to repeal the regulatory scheme within a reasonable
27 period of time, to be fixed by the court, then the unit shall be liable
28 for compensation for a permanent taking, measured by the diminution of
29 fair market sale value caused by the taking, valued as of the date of
30 trial. This section shall not affect any further remedy that is
31 constitutionally required.

32 (2) Any permit, authorization, or other entitlement granted under
33 a scheme repealed under subsection (1) of this section shall continue
34 to be valid.

35 NEW SECTION. **Sec. 6.** This chapter does not preclude any action at
36 law or equity that an owner would have had if this chapter had not been
37 enacted.

1 NEW SECTION. **Sec. 7.** If the state or any of its political
2 subdivisions imposes, changes, or implements any scheme regulating the
3 use of land in such a way as to reduce the previous fair market value
4 of a taxpayer's property, the county assessor shall, on or before the
5 ensuing April 1, adjust the property's assessed value downward by an
6 amount equal to the difference between the fair market value of the
7 property under the new scheme, and the previous fair market value.

8 NEW SECTION. **Sec. 8.** Whenever any compensation is paid to a
9 property owner by the state or by any local governmental entity
10 pursuant to a judgment or agreement to compensate for a regulatory
11 taking under this chapter, the payor shall cause to be recorded with
12 the county auditor for the county in which the real property is located
13 a notice of compensation for regulatory taking. This notice shall
14 contain a legal description of the affected parcel of real estate, a
15 statement of the reason for compensation, the name of the payor, the
16 name of the owner, and the amount paid.

17 NEW SECTION. **Sec. 9.** This chapter shall be known and may be cited
18 as the private property protection act.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 35.21 RCW
20 to read as follows:

21 Any city or town subject to the provisions of this title is also
22 subject to sections 1 through 9 of this act.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 35A.21
24 RCW to read as follows:

25 Any code city subject to the provisions of this title is also
26 subject to sections 1 through 9 of this act.

27 NEW SECTION. **Sec. 12.** A new section is added to chapter 36.01 RCW
28 to read as follows:

29 Any county subject to the provisions of this title is also subject
30 to sections 1 through 9 of this act.

31 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act shall
32 constitute a new chapter in Title 8 RCW.

1 NEW SECTION. **Sec. 14.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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

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