

# HOUSE BILL REPORT

## ESHB 1890

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### As Passed House:

March 13, 1995

**Title:** An act relating to property owners' damages for governmental actions.

**Brief Description:** Protecting property owners.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by Representatives Padden, Morris, Campbell, Casada, Stevens, Johnson, Benton and Smith).

### Brief History:

#### Committee Activity:

Law & Justice: 2/24/95, 2/28/95 [DPS].

#### Floor Activity:

Passed House: 3/13/95, 79-17.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Costa, Assistant Ranking Minority Member; Cody; Thibaudeau and Veloria.

**Staff:** Edie Adams (786-7180).

**Background:** Property owners who file for a property use permit may bring an action for damages for agency acts which are arbitrary, capricious, unlawful, or exceed lawful authority, or for an agency's failure to act within time limits established by law. An act is not considered unlawful or in excess of lawful authority unless the agency knows or reasonably should know that the act is unlawful or exceeds lawful authority. The action must be commenced within 30 days after all administrative remedies have been exhausted.

"Agency" means the State of Washington, any of its political subdivisions, cities, towns, counties, and any other public body exercising regulatory authority or control over the use of real property in the state.

An "act" means any final agency decision which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by regulations in effect at the time the permit is filed. "Act" does not include a lawful act designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area. There is no cause of action for unintentional procedural or ministerial errors of an agency. It is a defense that the agency act was mandated by a change in statute or state rule or regulation which became effective after the application was filed.

The damages available for agency acts that are arbitrary, capricious, unlawful, or exceed lawful authority include reasonable expenses and losses incurred between the time a cause of action arises and the granting of relief. Speculative damages may not be recovered. Damages are not based on diminution in value of or damage to real property, or litigation expenses.

The prevailing party may be entitled to reasonable costs and attorneys' fees.

**Summary of Bill:** The statutory provisions creating a cause of action for arbitrary, capricious or unlawful agency acts are amended. The requirement is deleted that an agency act is unlawful or exceeds lawful authority only if the agency knew or should have known of its unlawfulness or that it exceeded lawful authority.

The provision entitling the prevailing party to an award of reasonable costs and attorney's fees is amended to provide that the award is only available to a prevailing party who commenced the action and adds that expenses of litigation may be awarded.

The section requiring that an action be commenced within 30 days after all administrative remedies are exhausted is repealed.

**Appropriation:** None.

**Fiscal Note:** Requested February 16, 1995.

**Effective Date of Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The current law places an unreasonable burden on people who are damaged by unlawful agency actions and are seeking compensation. The 30-day statute of limitations in current law is much too short a time period. The bill is necessary to level the playing field between government agencies and individuals and

to curb agency abuses against property owners who file for permits. The current law does not work because it exempts agency actions taken to promote the public health, safety, or welfare and almost any action can meet this standard.

**Testimony Against:** The bill contains provisions which would conflict with or amend Initiative 164 and it provides an unfunded mandate under Initiative 601. Removing the requirement that a person exhaust all administrative remedies before instituting a civil action is unprecedented and causes concerns because the administrative process is necessary to establish a record. This bill could result in the erosion of laws designed to protect property owners and will impose enormous financial burdens on taxpayers by allowing damages for speculative profits and losses.

**Testified:** Jim Sellers, Washington State Trial Lawyers Association (pro); Patty Vandebrook, Washington Apartment Association (pro); Jim Klauser, Northwest Legal Foundation (pro); Kay Regan, Friends of the Family (pro); John Woodring, Washington Association of Realtors (pro); Bob Mack, Association of Washington Cities (con); Peggy Bruton, citizen (con); and Mike Ryherd, 1000 Friends of Washington (con).