
HOUSE BILL 1569

State of Washington

54th Legislature

1995 Regular Session

By Representatives Johnson, Sheldon, Stevens and Buck

Read first time 01/31/95. Referred to Committee on Government Operations.

1 AN ACT Relating to property owners' damages for governmental
2 actions; and amending RCW 64.40.010, 64.40.020, and 64.40.030.

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

4 **Sec. 1.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to read
5 as follows:

6 As used in this chapter, the terms in this section shall have the
7 meanings indicated unless the context clearly requires otherwise.

8 (1) "Agency" means the state of Washington including any state
9 agency, any of its political subdivisions, including any city, town, or
10 county, and any other public body exercising regulatory authority or
11 control over the use of real property in the state.

12 (2) "Permit" means any governmental approval required by law before
13 an owner of a property interest may improve, sell, transfer, or
14 otherwise put real property to use.

15 (3) "Property interest" means any interest or right in real
16 property in the state.

17 (4) "Damages" means all reasonable expenses and losses, (~~other~~
18 ~~than speculative losses or profits, incurred between the time a cause~~
19 ~~of action arises and the time a holder of an interest in real property~~

1 ~~is granted relief as provided in RCW 64.40.020. Damages must be caused~~
2 ~~by an act, necessarily incurred, and actually suffered, realized, or~~
3 ~~expended, but are not based upon diminution in value of or damage to~~
4 ~~real property, or litigation expenses)) regardless of their nature,~~
5 ~~which can be awarded by law for actions that are prohibited by this~~
6 ~~chapter. Damages shall include "consequential damages" which means any~~
7 ~~general or particular loss proximately resulting from a violation of~~
8 ~~this chapter by an agency. Damages shall specifically include~~
9 ~~diminution in property value resulting from a violation of this chapter~~
10 ~~by an agency.~~

11 (5) "Regulation" means any ordinance, resolution, (~~(or other)~~) rule
12 (~~(or)~~), regulation, or any other law adopted pursuant to the authority
13 provided by state law, which imposes or alters restrictions,
14 limitations, (~~(or)~~) conditions (~~(or)~~), or in any other manner relates
15 to the use of real property.

16 (6) "Act" means a final decision by an agency which places
17 requirements, limitations, or conditions upon the use of real property
18 in excess of those allowed by applicable regulations in effect on the
19 date an application for a permit is filed. "Act" also means the
20 failure of an agency to act within time limits established by law in
21 response to a property owner's application for a permit: PROVIDED,
22 That there is no "act" within the meaning of this section when the
23 owner of a property interest agrees in writing to extensions of time,
24 or to the conditions or limitations imposed upon an application for a
25 permit. (~~("Act" shall not include lawful decisions of an agency which~~
26 ~~are designed to prevent a condition which would constitute a threat to~~
27 ~~the health, safety, welfare, or morals of residents in the area.~~

28 ~~In any action brought pursuant to this chapter, a defense is~~
29 ~~available to a political subdivision of this state that its act was~~
30 ~~mandated by a change in statute or state rule or regulation and that~~
31 ~~such a change became effective subsequent to the filing of an~~
32 ~~application for a permit.))~~

33 (7) "Legal action" means any action filed with a court enforcing
34 this chapter and includes seeking relief in the form of damages.

35 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to read
36 as follows:

37 (1) Owners of a property interest who have filed an application for
38 a permit have an action for damages or may bring any other legal action

1 to obtain relief from acts of an agency which are arbitrary,
2 capricious, unlawful, or exceed lawful authority, or relief from a
3 failure to act within time limits established by law(~~(: PROVIDED, That~~
4 ~~the action is unlawful or in excess of lawful authority only if the~~
5 ~~final decision of the agency was made with knowledge of its~~
6 ~~unlawfulness or that it was in excess of lawful authority, or it should~~
7 ~~reasonably have been known to have been unlawful or in excess of lawful~~
8 ~~authority)).~~

9 (2) The prevailing party in ((an)) any legal action brought
10 pursuant to this chapter may be entitled to reasonable costs, expenses
11 of litigation, and attorney's fees.

12 (3) (~~No cause of action is created for relief from unintentional~~
13 ~~procedural or ministerial errors of an agency.~~

14 (4)) Invalidation of any regulation in effect prior to the date an
15 application for a permit is filed with the agency shall not constitute
16 a cause of action under this chapter.

17 **Sec. 3.** RCW 64.40.030 and 1982 c 232 s 3 are each amended to read
18 as follows:

19 Any action to assert claims under the provisions of this chapter
20 shall be commenced only (~~within thirty days after all administrative~~
21 ~~remedies have been exhausted)) after filing with the agency any such
22 claim requesting damages. The agency shall act on the damage claim
23 within ninety days of the claim being filed with the agency.~~

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