
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5262

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Haugen, Winsley, Drew, Sheldon, Heavey, McCaslin, Rasmussen, Wood, Franklin, Loveland, McAuliffe, Oke, Gaspard, Deccio, Bauer, Moyer, Owen, Palmer and Hochstatter)

Read first time 03/06/95.

1 AN ACT Relating to the creation of an ombudsman office for private
2 property rights; adding a new chapter to Title 34 RCW; providing an
3 effective date; providing an expiration date; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to establish an
7 ombudsman for private property rights to advise private property owners
8 of their rights and interests in proceedings involving governmental
9 action. This chapter is not intended to effect the definitions and
10 provisions of initiative to the legislature No. 164.

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

14 (1) "Constitutional taking" or "taking" means that due to a
15 governmental action or proposed governmental action private property
16 may have been or may be taken and compensation to the owner of that
17 property may be required by either:

1 (a) The fifth or fourteenth amendment of the Constitution of the
2 United States; or

3 (b) Article 1, section 16 of the state Constitution.

4 (2)(a) "Governmental action" or "action" means action by a state
5 agency consisting of:

6 (i) Proposed rules and emergency rules that if adopted and enforced
7 may limit the use of private property;

8 (ii) Proposed or implemented licensing or permitting conditions,
9 requirements, or limitations to the use of private property; or

10 (iii) Required dedications or exactions from owners of private
11 property.

12 (b) "Governmental action" or "action" does not include:

13 (i) Activity in which the power of eminent domain is formally
14 exercised;

15 (ii) Repealing rules to discontinue governmental programs or
16 amending rules in a manner that lessens interference with the use of
17 private property;

18 (iii) Law enforcement activity involving seizure or forfeiture of
19 private property for violations of law or as evidence in criminal
20 proceedings; or

21 (iv) Orders that are authorized by statute, that are issued by a
22 state agency or a court of law and that are issued as the result of a
23 violation of state law.

24 (3) "Private property" means any real or personal property in this
25 state that is protected by either:

26 (a) The fifth or fourteenth amendment of the Constitution of the
27 United States; or

28 (b) Article 1, section 16 of the state Constitution.

29 (4) "Small business" means a corporation, partnership, limited
30 liability company, sole proprietorship, or individual operating a
31 business for profit with not more than one hundred employees, including
32 employees employed in any subsidiary or affiliated corporation.

33 (5) "State agency" means an officer or unit of the executive branch
34 of state government that is authorized by law to adopt rules. "State
35 agency" does not include the legislative or judicial branches of state
36 government.

1 NEW SECTION. **Sec. 3.** (1) An ombudsman office is established in
2 the office of administrative hearings to represent the interests of
3 private property owners in proceedings involving governmental action.

4 (2) The chief administrative law judge shall appoint the ombudsman
5 who serves at the pleasure of the chief administrative law judge.

6 (3) To be appointed as ombudsman, a person shall be a member of the
7 Washington state bar association, in good standing, and be familiar
8 with the structure and procedures of state government and
9 administrative agencies.

10 NEW SECTION. **Sec. 4.** (1) The ombudsman may:

11 (a) Research, study, and analyze issues that involve or relate to
12 or that may involve constitutional takings;

13 (b) Advise private property owners on issues involving or related
14 to constitutional takings;

15 (c) Employ and terminate employees, or contract for special
16 services, as necessary to implement this chapter, including legal
17 counsel and other professional and administrative staff;

18 (d) Conduct investigations and inquiries and assemble evidence; and

19 (e) Decline jurisdiction over any matter that, at the time the
20 complaint is received, is pending for investigation, review, hearing,
21 or disposition before any review board, court, commission, or other
22 body.

23 (2) The ombudsman shall:

24 (a) Receive complaints and inquiries from private property owners
25 regarding constitutional takings;

26 (b) Advise record title owners of residential, noncommercial, small
27 business, and agricultural properties concerning their complaints about
28 alleged constitutional takings;

29 (c) If the ombudsman determines that a complaint is without merit,
30 advise the complainant and close the matter;

31 (d) If the ombudsman determines that a complaint does have merit,
32 act as the complainant's representative in negotiating a settlement of
33 the matter;

34 (e) If the ombudsman determines that further settlement
35 negotiations would be fruitless, advise the complainant and advise him
36 or her to seek legal counsel;

37 (f) Allow legal counsel retained by the complainant access to the
38 settlement file compiled on the complainant's behalf; and

1 (g) Within thirty days after the end of each calendar quarter,
2 submit a report to the governor, president of the senate, and the
3 speaker of the house of representatives describing the activities and
4 accomplishments of the office.

5 (3) The ombudsman's office shall record all contacts by private
6 property owners with regard to alleged constitutional takings to
7 determine general concerns of private property owners. The office may
8 advise private property owners of the services available from other
9 governmental and private agencies that may be of further assistance.

10 NEW SECTION. **Sec. 5.** The failure to reach a settlement after
11 negotiation under this chapter constitutes exhaustion of all
12 administrative remedies available to the complainant. Any applicable
13 statute of limitations shall be tolled during the period between the
14 filing of a complaint and the advisement that further settlement
15 negotiations would be fruitless.

16 NEW SECTION. **Sec. 6.** Neither the ombudsman personally, nor the
17 state of Washington has any liability to any person for any claim based
18 on the ombudsman's decisions, actions, or failures to act in his or her
19 official capacity.

20 NEW SECTION. **Sec. 7.** A charge of twenty cents is imposed on each
21 transaction filed with the county auditor, which transaction is subject
22 to surcharge under RCW 36.22.170. All moneys collected by the charge
23 imposed under this section shall be transmitted monthly to the state
24 treasurer and deposited in the ombudsman account, hereby created in the
25 state treasury. Expenditures from the account shall be made, subject
26 to appropriation, exclusively for the purposes of the ombudsman office.

27 NEW SECTION. **Sec. 8.** This act shall expire July 1, 2000.

28 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute
29 a new chapter in Title 34 RCW.

30 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect July 1, 1995.

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