
SENATE BILL 6773

State of Washington

54th Legislature

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By Senators Owen, A. Anderson, Hargrove, Swecker, Morton, Schow, McCaslin, Hochstatter, Oke, Sellar, Strannigan, Newhouse, Prince, Roach, West, McDonald and Zarelli

Read first time 02/07/96. Referred to Committee on Government Operations.

1 AN ACT Relating to regulation of private property; adding a new
2 chapter to Title 64 RCW; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** FINDINGS AND DECLARATION. The legislature
5 finds and declares:

6 (1) A person's right to own, possess, use, and dispose of private
7 property is fundamental to a free society and an integral part of the
8 American tradition of liberty and limited government;

9 (2) The miracle of private property is that it may be owned, used,
10 or divided in a myriad of ways that maximizes its value to both the
11 owner and society. For example, an owner may sell a conservation or
12 view easement to protect natural resources while retaining the right to
13 use the property in certain other ways, or an owner may divide
14 property, burdening the sold portion with restrictive covenants on
15 certain uses to the benefit of the retained parcel. Such property
16 interests as easements, covenants, leaseholds, and estates for years as
17 well as profits and rents are fixed and readily recognized at common
18 law and in Washington's statutes are fixed and readily recognized;

1 (3) Government regulation from time to time has the effect of
2 transferring some or all of an owner's private property interests into
3 the public domain without any compensation for the loss. For example,
4 regulations designed to preserve aesthetic values or create wildlife
5 habitat generally result in the transfer of a private property interest
6 akin to an easement or restrictive covenant to the public without
7 compensation to the landowner who is unfairly burdened by the
8 restriction. The result is that the value of the landowner's remaining
9 parcel is diminished by the loss of use or the imposition of such
10 restrictions and the public gains an interest in the land without
11 paying compensation. These types of regulations are de facto taxes
12 that fall disproportionately on individual landowners. In such cases,
13 private property owners are entitled to compensation;

14 (4) Not all government regulation, however, takes private property
15 when it imposes use restrictions. For example one of the principal
16 purposes of limited government is to protect private property. From
17 time to time, government may act to prevent one or more private
18 property owners from engaging in particular uses that cause injury to
19 the property of others or to protect the public's health or safety.
20 This type of antinuisance government action most often takes the form
21 of traditional zoning ordinances, such as height limitations or set-
22 back requirements, or land use regulation and would not require
23 government to compensate landowners for the resulting loss in value or
24 use of property. Thus, traditional zoning ordinances that are common
25 to the area around the affected property and burden all real property
26 within the same zone to the same degree generally did not give rise to
27 a compensable taking;

28 (5) Indeed, government has the power and the obligation to prevent,
29 mitigate, or abate activities that constitute a nuisance under the laws
30 of the state. The legislature specifically finds that the state's
31 nuisance laws are antiquated and in need of modernization to reflect
32 current circumstances and improved knowledge concerning those
33 activities by one or more property owners that may cause harm to the
34 person or property of others. To that end, the legislature intends to
35 review the state's public and private nuisance laws within one year
36 from the effective date of this act and make such amendments it finds
37 necessary and proper; and

38 (6) This act is necessary to ensure that landowners who are
39 burdened unfairly by government regulation or other actions that go

1 farther than necessary to prevent, mitigate, or abate a nuisance under
2 the laws of the state or to protect the public's health or safety
3 receive just compensation for the interest in property taken.

4 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
5 requires otherwise, the definitions in this section apply throughout
6 this chapter.

7 (1) "Compensation" means the payment of cash or other in-kind
8 payment of equal value for the fair market value of the private
9 property taken.

10 (2) "Government" or "government entity" means Washington state,
11 state agencies, agencies and commissions funded fully or partially by
12 the state, counties, cities, and other political subdivisions.

13 (3) "Government action" means an action taken by a government
14 entity, including but not limited to legislation, rules, regulations,
15 ordinances, permit conditions or requirements, dedications, or
16 exactions.

17 (4) "Private property" means all real property or an interest in
18 real property recognized under Washington law, including but not
19 limited to: Estates in fee; life estates; estates for years or
20 otherwise; inchoate interests in real property such as remainders and
21 future interests; personalty that is affixed to or appurtenant to real
22 property; easements; covenants; leaseholds; the right to use water or
23 the right to receive water; or rents, issues, and profits of land,
24 including minerals, timber, and crops.

25 (5) "Taking" or "regulatory taking" means a government action
26 whereby a de facto transfer of some or all of an owner's interest in
27 private property is transferred to the government, but not including a
28 de facto transfer that results from a government action taken to abate,
29 mitigate, or prevent a nuisance under the laws of the state.

30 NEW SECTION. **Sec. 3.** COMPENSATION. (1) Subject to any exceptions
31 in section 4 of this act, a private property owner must receive
32 compensation from government for a regulatory taking of private
33 property.

34 (2) In lieu of a cash payment, a government entity may enter into
35 an agreement with a private property owner to provide all or part of
36 the compensation required under this chapter in another form of equal
37 value, including but not limited to land exchanges, mitigation of

1 impact through transfer of development rights, density credits,
2 clustering development, or other such variances. However, the form of
3 compensation must be acceptable to the private property owner who
4 otherwise may elect compensation to be paid in cash.

5 (3) A government entity may not negotiate or require waiving
6 compensation under this section as a condition of approval of any use
7 of the subject property or other property or as a condition for
8 approving another permit.

9 NEW SECTION. **Sec. 4.** EXCEPTIONS TO COMPENSATION. The
10 compensation requirement in section 3 of this act does not apply if the
11 regulation or restriction giving rise to the taking is imposed to
12 prevent, mitigate, or abate a nuisance as defined by the laws of this
13 state.

14 NEW SECTION. **Sec. 5.** PROCEDURES. (1) A private property owner
15 seeking to enforce this chapter must request, in writing, compensation
16 from the government entity causing the regulatory taking, specifying
17 the nature of the government action giving rise to the taking and the
18 amount of compensation sought. A private property owner is not
19 required to pursue other administrative remedies before pursuing the
20 remedies provided by this chapter.

21 (2) The government entity shall either approve or reject a private
22 property owner's request for compensation within forty-five days or the
23 private property is deemed taken for purposes of this chapter and
24 compensation is required.

25 (3) If the private property owner's request is rejected in whole or
26 in part, this chapter may be enforced by the private property owner
27 against the government entity in superior court. Trial must be de novo
28 and the private property owner is entitled to a jury trial on the
29 amount of compensation required under this chapter. The government
30 entity has the burden of proof by clear and convincing evidence to
31 demonstrate that the regulatory taking falls within an exception to
32 payment of compensation under this chapter.

33 (4) The prevailing private property owner is entitled to reasonable
34 attorneys' and expert fees and costs incurred in enforcing this
35 chapter.

36 (5) If the private property owner's request is granted in whole or
37 in part, the government entity may rescind the regulation or

1 restriction and pay interim compensation for the temporary taking or
2 enforce the rule, regulation, or restriction in whole or in part and
3 pay full compensation to the private property owner.

4 (6) If compensation is paid, the private property owner shall
5 deliver to the government entity paying compensation title to whatever
6 interest accurately represents the private property that has been
7 taken. The county assessor has thirty days after a transfer of private
8 property under this chapter to adjust the assessed valuation of the
9 remaining private property.

10 (7) This chapter may not be construed to limit the rights of a
11 person to pursue a claim or cause of action under the state or federal
12 Constitution or other law nor may this chapter be deemed a condition
13 precedent to bringing such a claim or cause of action.

14 NEW SECTION. **Sec. 6.** STATUTE OF LIMITATIONS. A claim for
15 compensation under this chapter must be brought within the time period
16 specified in RCW 4.16.080.

17 NEW SECTION. **Sec. 7.** INTEREST. Compensation awarded under this
18 chapter bears interest at the maximum rate permitted under RCW
19 19.52.020 from either the date of entry of a judgment to the date of
20 payment of the judgment or at the time of the taking, whichever is
21 earliest. However, the interest must be compounded and accrue and be
22 added monthly to the principal sum of the compensation awarded and
23 unpaid amounts of the compensation and interest together form the new
24 principal sum for calculation of interest for each following month
25 until the sum is paid in full.

26 NEW SECTION. **Sec. 8.** EFFECTIVE DATE. This act shall take effect
27 on the earlier of:

28 (1) January 1, 1997; or

29 (2) On the earliest effective date of an amendment or revision to
30 any of RCW 7.48.120 through 7.48.140 or chapter 9.66 RCW.

31 NEW SECTION. **Sec. 9.** SAVINGS PROVISION. If any provision of this
32 act or its application to any person or circumstance is held invalid,
33 the remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** CAPTIONS NOT LAW. Captions as used in this
2 act do not constitute any part of the law.

3 NEW SECTION. **Sec. 11.** CODIFICATION. Sections 1 through 10 of
4 this act shall constitute a new chapter in Title 64 RCW.

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