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HOUSE BILL 2222

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Mastin, Grant, B. Thomas, Sheldon, Chandler, Johnson, Sump, Koster, Schoesler, Buck, Clements, Cairnes, McMorris, DeBolt and Backlund

Read first time 02/27/97. Referred to Committee on Government Reform & Land Use.

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

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

31 (6) This act is necessary to ensure that landowners who are  
32 burdened unfairly by government regulation or other actions that go  
33 farther than necessary to prevent, mitigate, or abate a nuisance under  
34 the laws of the state or to protect the public's health or safety  
35 receive just compensation for the interest in property taken.

36 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
37 section apply throughout this chapter unless the context clearly  
38 requires otherwise.

1 (1) "Compensation" means the payment in cash or other in-kind  
2 payment of equal value for the fair market value of the private  
3 property taken. A property tax credit is evidenced by a property tax  
4 credit voucher issued by a taxing agency or district.

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

8 (3) "Private property" means all real property or an interest in  
9 real property recognized under Washington law, including but not  
10 limited to: Estates in fee; life estates; estates for years or  
11 otherwise; inchoate interests in real property such as remainders and  
12 future interests; personalty that is affixed to or appurtenant to real  
13 property; easements; covenants; leaseholds; the right to use water or  
14 the right to receive water; or rents, issues, and profits of land,  
15 including minerals, timber, and crops.

16 (4) "Taking" means a government action whereby a de facto loss to  
17 the owner of some or all of an owner's interest in private property  
18 occurs, regardless of whether there is a transferee of the property  
19 interest or whoever the transferee may be. However, a de facto loss  
20 that results from a government action taken to abate, mitigate, or  
21 prevent a nuisance under the laws of the state may not be considered a  
22 taking.

23 (5) "Nuisance" means use of real property that a reasonable person  
24 in the community would consider unreasonable in light of the  
25 historically permitted uses of the subject real property and of similar  
26 real property within the same general area as the subject real  
27 property. "Nuisance" also means all actions that constitute a nuisance  
28 under common law.

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

33 (2) A government entity may enter into a freely negotiated written  
34 agreement with a private property owner to provide all or part of the  
35 compensation required under this chapter in cash or another form of  
36 equal value, or other devices as may be mutually agreed in writing  
37 between the government and the private property owner.

1        NEW SECTION.        **Sec. 4.**        EXCEPTIONS TO COMPENSATION.        The

2 compensation requirement in section 3 of this act does not apply to the  
3 extent the taking:

4        (1) Is imposed to prevent, mitigate, or abate a nuisance as defined  
5 by the laws of this state;

6        (2) Is part of a zoning regulation common to the area surrounding  
7 the property;

8        (3) Creates limitations that burden every parcel of property with  
9 the same zoning designation equally; or

10       (4) Has the effect of compensating all property owners subject to  
11 the restrictions due to the reciprocal nature of the restrictions.

12       NEW SECTION.       **Sec. 5.**       PROCEDURES.       (1) A private property owner

13 seeking to enforce this chapter must request, in writing, compensation  
14 from the government entity causing the taking, specifying the nature of  
15 the government action giving rise to the taking and the amount of  
16 compensation sought. A private property owner is not required to  
17 pursue or exhaust other administrative remedies before pursuing the  
18 remedies provided by this chapter.

19       (2) If the government entity intends to reject a private property  
20 owner's request for compensation, the government entity must notify the  
21 property owner within forty-five days of receipt of the request. This  
22 time limit is subject to subsection (3) of this section.

23       (3) When a local government concludes that all or part of the  
24 alleged taking is required by state regulation, the local government  
25 must submit a request to the responsible state agency.

26       The state agency must respond within thirty days of the local  
27 government request. In response, the state must clarify what portion  
28 of the restriction as applied is required by state regulation and law.

29       (4) If the private property owner's request is rejected in whole or  
30 in part, this chapter may be enforced by the private property owner  
31 against the government entity in superior court.

32       (5) Trial must be de novo and the private property owner is  
33 entitled to a jury trial on all issues, including whether there is a  
34 taking and the amount and in-kind form of compensation required under  
35 this chapter. The private property owner has the burden of proving by  
36 a preponderance of the evidence that there has been a taking. The  
37 government entity has the burden of proving by clear and convincing  
38 evidence that the alleged taking falls within an exception to payment

1 of compensation under this chapter. The government entity has the  
2 burden of proving by the preponderance of the evidence the fair market  
3 value due as compensation and the propriety of the in-kind form.

4 (6) A prevailing plaintiff or petitioner is entitled to recover the  
5 costs incurred in enforcing this chapter, including reasonable  
6 attorneys' fees. A private property owner prevails under this chapter  
7 if he or she receives more compensation than offered as settlement by  
8 the government entity prior to commencement of the action.

9 (7) If the private property owner's request is granted in whole or  
10 in part, the government entity may rescind any regulation or  
11 restriction and terminate any taking, if possible, and pay interim  
12 compensation for the temporary taking, or enforce any such rule,  
13 action, regulation, or restriction in whole or in part and pay full  
14 compensation to the private property owner.

15 (8) If compensation is paid, the private property owner shall  
16 deliver to the government entity paying compensation title to whatever  
17 interest accurately represents the private property that has been  
18 taken. The government entity shall refund any property taxes that are  
19 based on the property interest taken which become due and the owner  
20 pays after the date the restriction giving rise to the taking is  
21 imposed.

22 (9) This chapter may not be construed to limit the rights of a  
23 person to pursue a claim or cause of action under the state or federal  
24 Constitution or other law nor may this chapter be deemed a condition  
25 precedent to bringing such a claim or cause of action.

26 (10) In defending against a claim for compensation filed in the  
27 superior court, a government entity that intends to rely on section  
28 4(1) of this act for liability by the state must join the state as a  
29 defendant within thirty days of the service of the original complaint  
30 seeking compensation under this chapter.

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

34 NEW SECTION. **Sec. 7.** INTEREST. Compensation awarded under this  
35 chapter bears interest at the maximum rate permitted under RCW  
36 19.52.020 from either the date of entry of a judgment to the date of  
37 payment of the judgment or at the time of the taking, whichever is

1 earliest. However, the interest must be compounded and accrue and be  
2 added monthly to the principal sum of the compensation awarded and  
3 unpaid amounts of the compensation and interest together form the new  
4 principal sum for calculation of interest for each following month  
5 until the sum is paid in full.

6 NEW SECTION. **Sec. 8.** EMINENT DOMAIN. This chapter does not apply  
7 to actions by government entities in their exercise of the power of  
8 eminent domain.

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

13 NEW SECTION. **Sec. 10.** CAPTIONS NOT LAW. Captions used in this  
14 chapter are not any part of the law.

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

17 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and takes effect  
20 immediately.

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