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SENATE BILL 5539

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Amondson, Owen, Patterson, Snyder, Conner, Oke, Barr, Sellar, McCaslin, Hayner, Craswell, Bailey, L. Smith, Bauer, Matson, Sutherland, Newhouse, Thorsness, Johnson, Cantu, Metcalf and Rasmussen.

Read first time February 5, 1991. Referred to Committee on Governmental Operations.

1 AN ACT Relating to protection of private property rights; amending  
2 RCW 34.05.320, 34.05.325, 34.05.345, and 34.05.620; adding new sections  
3 to Title 64 RCW; and providing for submission of this act to a vote of  
4 the people.

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

6 **Sec. 1.** RCW 34.05.320 and 1989 c 175 s 7 are each amended to read  
7 as follows:

8 (1) At least twenty days before the rule-making hearing at which  
9 the agency receives public comment regarding adoption of a rule, the  
10 agency shall cause notice of the hearing to be published in the state  
11 register. The publication constitutes the proposal of a rule. The  
12 notice shall include all of the following:

13 (a) A title, a description of the rule's purpose, and any other  
14 information which may be of assistance in identifying the rule or its  
15 purpose;

1 (b) Citations of the statutory authority for adopting the rule and  
2 the specific statute the rule is intended to implement;

3 (c) A summary of the rule and a statement of the reasons supporting  
4 the proposed action;

5 (d) The agency personnel, with their office location and telephone  
6 number, who are responsible for the drafting, implementation, and  
7 enforcement of the rule;

8 (e) The name of the person or organization, whether private,  
9 public, or governmental, proposing the rule;

10 (f) Agency comments or recommendations, if any, regarding statutory  
11 language, implementation, enforcement, and fiscal matters pertaining to  
12 the rule;

13 (g) Whether the rule is necessary as the result of federal law or  
14 federal or state court action, and if so, a copy of such law or court  
15 decision shall be attached to the purpose statement;

16 (h) When, where, and how persons may present their views on the  
17 proposed rule;

18 (i) The date on which the agency intends to adopt the rule;

19 (j) A short explanation of the rule, its purpose, and anticipated  
20 effects, including in the case of a proposal that would modify existing  
21 rules, a short description of the changes the proposal would make; and

22 (k) A copy of the small business economic impact statement, if  
23 applicable.

24 (2) Upon filing notice of the proposed rule with the code reviser,  
25 the adopting agency shall have copies of the notice on file and  
26 available for public inspection and shall forward three copies of the  
27 notice to the rules review committee.

28 (3) No later than three days after its publication in the state  
29 register, the agency shall cause a copy of the notice of proposed rule  
30 adoption to be mailed to each person who has made a request to the

1 agency for a mailed copy of such notices. An agency may charge for the  
2 actual cost of providing individual mailed copies of these notices.

3 (4) In addition to the notice required by subsections (1) and (2)  
4 of this section, an institution of higher education shall cause the  
5 notice to be published in the campus or standard newspaper of the  
6 institution at least seven days before the rule-making hearing.

7 (5) In addition to the notice required by subsections (1) and (2)  
8 of this section, an agency that proposes a rule that would restrict the  
9 property rights of landowners shall identify those landowners, and at  
10 the time of filing notice, shall mail to each landowner the information  
11 required by subsection (1) of this section. The agency shall also  
12 state in the notice (a) any reasonable, less-restrictive (with regards  
13 to property rights) alternative means of accomplishing the object of  
14 the proposed rule and (b) why the alternatives were rejected by the  
15 agency. For the purposes of this subsection, the term "landowner"  
16 includes any person with an identifiable interest in real property.  
17 "Landowner" specifically includes a person with a contingent,  
18 expectant, life, or leasehold interest.

19 **Sec. 2.** RCW 34.05.325 and 1988 c 288 s 304 are each amended to  
20 read as follows:

21 (1) The agency shall make a good faith effort to insure that the  
22 information on the proposed rule published pursuant to RCW 34.05.320  
23 accurately reflects the rule to be presented and considered at the oral  
24 hearing on the rule. Written comment about a proposed rule, including  
25 supporting data, shall be accepted by an agency if received no later  
26 than the time and date specified in the notice, or such later time and  
27 date established at the rule-making hearing.

28 (2) The agency shall provide an opportunity for oral comment to be  
29 received by the agency in a rule-making hearing, and when RCW

1 34.05.320(5) is applicable, the hearing shall be held in the county  
2 wherein the majority of affected land is situated, and the agency shall  
3 permit every landowner affected by a proposed rule to give oral  
4 testimony at the hearing.

5 (3) The agency head, a member of the agency head, or a presiding  
6 officer designated by the agency head shall preside at the rule-making  
7 hearing. Rule-making hearings shall be open to the public. The agency  
8 shall cause a record to be made of the hearing by stenographic,  
9 mechanical, or electronic means. Unless the agency head presides or is  
10 present at substantially all the hearings, the presiding official shall  
11 prepare a memorandum for consideration by the agency head, summarizing  
12 the contents of the presentations made at the rule-making hearing. The  
13 summarizing memorandum is a public document and shall be made available  
14 to any person in accordance with chapter 42.17 RCW.

15 (4) Rule-making hearings are legislative in character and shall be  
16 reasonably conducted by the presiding official to afford interested  
17 persons the opportunity to present comment. Rule-making hearings may  
18 be continued to a later time and place established on the record  
19 without publication of further notice under RCW 34.05.320.

20 **Sec. 3.** RCW 34.05.345 and 1988 c 288 s 308 are each amended to  
21 read as follows:

22 Except for emergency rules adopted under RCW 34.05.350, when twenty  
23 days notice of intended action to adopt, amend, or repeal a rule has  
24 not been published in the state register and mailed to the appropriate  
25 landowners, as required by RCW 34.05.320, the code reviser shall not  
26 publish such rule and such rule shall not be effective for any purpose.

27 **Sec. 4.** RCW 34.05.620 and 1988 c 288 s 602 are each amended to  
28 read as follows:

1           Whenever a majority of the members of the rules review committee  
2 determines that a proposed rule is not within the intent of the  
3 legislature as expressed in the statute which the rule implements, or,  
4 if the proposed rule affects private property rights, that a less-  
5 restrictive alternative could accomplish the object of the proposed  
6 rule the committee shall give the affected agency written notice of its  
7 decision. The notice shall be given at least seven days prior to any  
8 hearing scheduled for consideration of or adoption of the proposed rule  
9 pursuant to RCW 34.05.320. The notice shall include a statement of the  
10 review committee's findings and the reasons therefor. When the agency  
11 holds a hearing on the proposed rule, the agency shall consider the  
12 review committee's decision.

13           NEW SECTION.   **Sec. 5.** A new section is added to Title 64 RCW to  
14 read as follows:

15           Private property shall not be taken or damaged for private or  
16 public use unless the owner has received just compensation for his or  
17 her loss. Title for any private property taken for public use shall be  
18 held by the state or local government, and shall not be sold or  
19 otherwise transferred to any private individual or organization unless  
20 first offered to the original owner or his or her heirs or successors  
21 for fair compensation. Private property taken for public use must be  
22 for the actual use of the public and must be open and available to the  
23 public for its designated use. A taking of private property for the  
24 public benefit, welfare, or interest alone does not constitute public  
25 use.

26           NEW SECTION.   **Sec. 6.** A new section is added to Title 64 RCW to  
27 read as follows:

1 (1) A county or city, or any political subdivision or agency  
2 thereof, that proposes an ordinance or rule that would restrict the  
3 property rights of landowners shall mail to each landowner the  
4 information required of the state by RCW 34.05.320 (1) and (5).

5 (2) No zoning ordinance or land use regulation enacted or adopted  
6 after the effective date of this act that deprives any landowner of the  
7 ability to make a reasonably profitable use of any portion of his or  
8 her real property without just compensation is valid.

9 (3) For purposes of this section, the term "landowner" includes any  
10 person with an identifiable interest in real property located within  
11 the state.

12 NEW SECTION. **Sec. 7.** A new section is added to Title 64 RCW to  
13 read as follows:

14 The state of Washington shall, when requested by the landowner,  
15 provide legal representation to any owner of land located in the state  
16 where the owner has been deprived of the profitable use of any portion  
17 of his or her land without just compensation by the federal government,  
18 the state, a county or city, or any political subdivision or agency  
19 thereof. Representation extends only to securing just compensation on  
20 behalf of the landowner, and any sums recovered as attorney fees are  
21 the property of the state. For purposes of this section, any  
22 governmentally imposed restriction upon the control over property  
23 typically accorded landowners is presumed to constitute a deprivation  
24 of profitable use. If the state fails to provide legal representation  
25 in accordance with the terms of this section, the state is liable to  
26 the landowner for the reasonable attorney fees expended by him or her  
27 in securing just compensation and in securing reimbursement from the  
28 state for such fees.

1        NEW SECTION.    **Sec. 8.**        This act shall be submitted to the  
2 people for their adoption and ratification, or rejection, at the next  
3 succeeding general election to be held in this state, in accordance  
4 with Article II, section 1 of the state Constitution, as amended, and  
5 the laws adopted to facilitate the operation thereof.