
ENGROSSED SENATE BILL 5797

State of Washington

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1991 Regular Session

By Senators McCaslin, Thorsness, L. Smith, Matson, Amondson, Hayner, Newhouse, Oke, Anderson, Barr, Sellar, Johnson, Cantu and Patterson.

Read first time February 21, 1991. Referred to Committee on Governmental Operations.

1 AN ACT Relating to property rights; amending RCW 64.40.010,
2 64.40.020, and 64.40.030; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that on many
5 occasions the burden of a benefit to the public has been borne by
6 individual private property owners. It is the intent of this act that
7 the diminution in value of privately owned real property for a public
8 good will be compensated by the public, which receives that benefit.

9 **Sec. 2.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to read
10 as follows:

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

13 (1) "Agency" means the state of Washington, any of its political
14 subdivisions, including any city, town, or county, and any other public

1 body exercising regulatory authority or control over the use of real
2 property in the state.

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

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

8 (4) "Damages" means reasonable expenses and losses, other than
9 speculative losses or profits, incurred between the time a cause of
10 action arises and the time a holder of an interest in real property is
11 granted relief as provided in RCW 64.40.020. Damages must be caused by
12 an act, necessarily incurred, and actually suffered, realized, or
13 expended(~~(, but are not based upon diminution in value of or damage to~~
14 ~~real property, or litigation expenses)~~).

15 (5) "Regulation" means any ordinance, resolution, or other rule or
16 regulation adopted pursuant to the authority provided by state law,
17 which imposes or alters restrictions, limitations, or conditions on the
18 use of real property.

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

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

6 **Sec. 3.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to read
7 as follows:

8 (1) Owners of a property interest (~~who have filed an application~~
9 ~~for a permit~~) have an action for damages to obtain relief from acts of
10 an agency which (~~are arbitrary, capricious, unlawful, or exceed lawful~~
11 ~~authority, or relief from a failure to act within time limits~~
12 ~~established by law: PROVIDED, That the action is unlawful or in excess~~
13 ~~of lawful authority only if the final decision of the agency was made~~
14 ~~with knowledge of its unlawfulness or that it was in excess of lawful~~
15 ~~authority, or it should reasonably have been known to have been~~
16 ~~unlawful or in excess of lawful authority)) diminish the value of or
17 damage their property interest.~~

18 (2) The prevailing party in an action brought pursuant to this
19 chapter may be entitled to reasonable costs and attorney's fees.

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

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

25 **Sec. 4.** RCW 64.40.030 and 1982 s 232 s 3 are each amended to read
26 as follows:

27 Any action to assert claims under the provisions of this chapter
28 shall be commenced only within thirty days after all administrative

1 remedies have been exhausted or within one year of actions that have
2 caused a diminution of value of real property interests if no
3 administrative remedies are available.