
ENGROSSED SENATE BILL 6201

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By Senators Amondson, L. Smith, Snyder, Hayner, Owen, Oke, McCaslin, Sutherland, Metcalf, Rasmussen, Barr, Nelson, Newhouse, Thorsness, Saling, Conner, Patterson, Stratton, Erwin, Bailey, Anderson, Johnson, Craswell, Roach, von Reichbauer, McDonald, West, Cantu and Bauer

Read first time 01/21/92. Referred to Committee on Governmental Operations.

1 AN ACT Relating to regulatory takings of private property; adding
2 a new chapter to Title 8 RCW; adding a new section to chapter 35.21
3 RCW; adding a new section to chapter 35A.21 RCW; and adding a new
4 section to chapter 36.01 RCW.

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

6 NEW SECTION. **Sec. 1.** (1)(a) Whenever implementation by the
7 state or any of its political subdivisions of a scheme regulating the
8 use of land operates to reduce the fair market value of a parcel of
9 real property to less than fifty percent of the greater of either the
10 assessed valuation or the fair market value, immediately prior to such
11 implementation, the parcel is deemed to be taken for public use.

12 (b) The following definitions apply throughout this chapter:

1 (i) "Parcel" means all, or a discrete portion not less than twenty
2 percent of a contiguous land of an owner or an operating unit, though
3 comprising separate legal descriptions, whichever is less.

4 (ii) "Owner" includes one or more natural or legal persons who own
5 the parcel, whether as sole owner, marital community, cotenants, or
6 tenants in partnership.

7 (iii) "Scheme regulating the use of land" means one regulation or
8 government action affecting the use of land; or more than one such
9 regulation or action, though occurring at different times or by
10 different governmental entities, with the same policy objectives, such
11 as development moratoria, zoning, health regulations, safety
12 regulations, aesthetic regulations, sensitive-area regulations, and
13 environmental regulations, whether such regulation or action is interim
14 or permanent. A scheme regulating the use of land does not include any
15 regulation or government action of the federal government or regulation
16 or government action of the state or any local governmental entity
17 taken to comply with the minimum requirements of federal law or
18 regulation.

19 (2)(a) When a parcel of real property has been taken for public use
20 as provided in this chapter, the governmental unit or units that
21 implement the scheme regulating the use of land shall be liable to the
22 owner for compensation under this chapter, and the owner shall have an
23 action at law to recover such compensation. When more than one
24 governmental unit is involved, the court shall determine the proportion
25 each unit is required to contribute to the compensation.

26 (b) The compensation shall be for the full amount of the decrease
27 in fair market value and shall not be limited to the amount by which
28 the decrease in fair market value exceeds fifty percent. In addition,
29 an owner who prevails in an action for the recovery of such
30 compensation shall be entitled to costs, including reasonable sums for

1 attorneys' fees and for fees of experts, such as engineers and
2 appraisers, whose services are reasonably required to establish the
3 taking and the diminution of value.

4 (3) Governmental units subject to this chapter shall not make
5 waiver of the provisions of this chapter a condition for approval of
6 the use of real property or the issuance of any permit or other
7 entitlement. Plaintiffs may accept an approval of use, permit, or
8 other entitlement granted by the governmental unit without compromising
9 their rights under this chapter if:

10 (a) A written reservation of their rights is made at the time of
11 acceptance of the authorization, permit, or other entitlement; or

12 (b) An oral statement reserving their rights is made before the
13 governmental unit granting the authorization, permit, or other
14 entitlement at a public meeting at which the governmental unit renders
15 its decision.

16 NEW SECTION. **Sec. 2.** Compensation is not required by this
17 chapter if the scheme regulating the use of land is an exercise of the
18 police power to prevent or abate a public nuisance as defined at common
19 law.

20 NEW SECTION. **Sec. 3.** (1) The statute of limitations for
21 actions brought under this chapter is the statute of limitations for
22 actions for recovery of real property. The statute of limitations
23 begins to run upon the enactment of the scheme regulating the use of
24 land; or the final administrative decision implementing the scheme
25 regulating the use of land affecting plaintiffs' property or by a
26 showing by the plaintiff that application for administrative decision
27 is futile.

1 (2) A scheme regulating the use of land is implemented with respect
2 to an owner's or user's property when actually applied to that property
3 unless the enactment of the scheme by itself operates to reduce the
4 fair market value of real property, or any legally recognized interest
5 therein, to less than fifty percent of its fair market value for the
6 uses permitted at the time the owner acquired title, without further
7 governmental action and the scheme contains no provision allowing for
8 relief from the scheme's operation.

9 (3) This chapter applies to schemes regulating the use of land, all
10 or some part of which is implemented after the effective date of this
11 act. No part of a scheme shall be considered for purposes of this
12 chapter if the part was implemented more than ten years before the
13 effective date of this act.

14 NEW SECTION. **Sec. 4.** If a natural event or condition, not the
15 fault of the owner, threatens to deprive an owner of land of the land's
16 use or to cause serious damage to the land, and immediate corrective
17 action is required to prevent this deprivation or damage, but this
18 action will violate a state or local law or regulation unless official
19 waiver or permission is obtained, the owner may either:

20 (1) Apply to the governmental unit charged with enforcing such
21 regulation to take, or to permit the owner to take, the required
22 corrective action. If the governmental unit wrongfully denies waiver
23 or permission or fails to take reasonably timely action upon the
24 application, so that such deprivation or damage occurs, the
25 governmental unit shall be liable to the owner for the diminution in
26 value of the land which occurs; or

27 (2) Without notifying the governmental unit under subsection (1) of
28 this section, take such corrective action as is reasonably necessary to
29 prevent the threatened deprivation or damage. However, the owner shall

1 notify the governmental unit that he or she has undertaken the
2 corrective action within five days after commencing such action and
3 shall give a general description of the action undertaken. Thereafter,
4 in a legal action brought by the governmental unit, the owner shall be
5 liable for violation of the regulation if a court determines that there
6 was a violation and that an owner would not have qualified for any
7 available waiver or exemption.

8 NEW SECTION. **Sec. 5.** If a governmental unit is found by a
9 court to have committed a regulatory taking under section 1 of this
10 act, such unit shall be liable for compensation, measured by the
11 owner's diminution in fair market rental value caused by such taking
12 from the time the scheme that regulated the use of the owner's land
13 became effective until the unit may choose to repeal such scheme.
14 However, if the governmental unit does not choose to repeal the
15 regulatory scheme within a reasonable period of time, to be fixed by
16 the court, then the unit shall be liable for permanent compensation,
17 measured by the diminution of fair market sale value caused by the
18 taking, valued as of the date of trial. This section shall not affect
19 any further remedy that is constitutionally required.

20 (2) Any permit, authorization, or other entitlement granted under
21 a scheme repealed under subsection (1) of this section shall continue
22 to be valid.

23 NEW SECTION. **Sec. 6.** This chapter does not preclude any
24 action at law or equity that an owner would have had if this chapter
25 had not been enacted.

26 NEW SECTION. **Sec. 7.** If the state or any of its political
27 subdivisions imposes, changes, or implements any scheme regulating the

1 use of land in such a way as to reduce the previous fair market value
2 of a taxpayer's property, the county assessor shall, on or before the
3 ensuing April 1, adjust the property's assessed value downward by an
4 amount equal to the difference between the fair market value of the
5 property under the new scheme, and the previous fair market value.

6 NEW SECTION. **Sec. 8.** It is the policy of the state of
7 Washington that:

8 (1) If it is in the public interest, safety, health, or welfare
9 that wetlands subject to this chapter are to be purchased for public
10 use and enjoyment or purchased in the public interest, the wetlands
11 shall be appraised at their highest and best economic use, regulatory
12 and administrative rules notwithstanding, to encourage more willing
13 sellers.

14 (2) If wetlands subject to this chapter are to remain private, they
15 shall be taxed at open space rates.

16 (3) There shall be no condemnation in the public acquisition of
17 wetlands subject to this chapter.

18 (4)(a) Historical private hunting areas owned by private property
19 owners in wetlands subject to this chapter be preserved for their use
20 in the future.

21 (b) If hunting areas in wetlands subject to this chapter are to be
22 taken for public use, they shall be valued according to their highest
23 and best economic use, ordinances, rules, and regulations
24 notwithstanding.

25 NEW SECTION. **Sec. 9.** Whenever any compensation is paid to a
26 property owner by the state or by any local governmental entity to
27 compensate for a regulatory taking pursuant to the terms of this
28 chapter, the payor shall cause to be recorded with the county auditor

1 for the county in which the real property is located a notice of
2 compensation for regulatory taking. This notice shall contain a legal
3 description of the affected parcel of real estate, a statement of the
4 reason for compensation, the name of the payor, the name of the owner,
5 and the amount paid. This notice shall perfect a lien against the
6 property as of the time of filing, for the benefit of the payor in the
7 event: (1) The regulatory scheme for which compensation was paid is
8 repealed in whole or in part; (2) the compensated owner subsequently
9 sells all or a portion of the property; and (3) the sales price
10 reflects an enhanced fair market value resulting directly from the
11 repeal of all or part of the regulator scheme. This lien shall be
12 limited to either the amount of compensation originally paid or the
13 amount of enhancement in fair market value at the time of the sale
14 resulting from the repeal of all or part of the regulatory scheme,
15 whichever is smaller.

16 NEW SECTION. **Sec. 10.** This chapter shall be known and may be
17 cited as the private property protection act.

18 NEW SECTION. **Sec. 11.** A new section is added to chapter 35.21 RCW
19 to read as follows:

20 Any city or town subject to the provisions of this title is also
21 subject to sections 1 through 10 of this act.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 35A.21
23 RCW to read as follows:

24 Any code city subject to the provisions of this title is also
25 subject to sections 1 through 10 of this act.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 36.01 RCW
2 to read as follows:

3 Any county subject to the provisions of this title is also subject
4 to sections 1 through 10 of this act.

5 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act shall
6 constitute a new chapter in Title 8 RCW.

7 NEW SECTION. **Sec. 15.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.