
SENATE BILL 6201

State of Washington

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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) Whenever implementation by the state
7 or any of its political subdivisions of any regulatory program operates
8 to reduce the fair market value of real property to less than fifty
9 percent of its fair market value for the uses permitted at the time the
10 owner acquired the title, the property is deemed to have been taken for
11 the use of the public. These regulatory programs include, but are not
12 limited to, land use planning or zoning programs.

13 (2)(a) The owner or user has the right to require condemnation by
14 and just compensation from the governmental unit, or units, when more

1 than one governmental unit is involved, imposing the regulation
2 resulting in decreased value, or to receive compensation for the
3 reduction in value caused by government action, and in either case to
4 have this compensation determined by a jury. When more than one
5 governmental unit is involved, the court shall determine the proportion
6 each unit is required to contribute to the compensation.

7 (b) The compensation shall be for the full value of the interest
8 taken or for the full amount of the decrease in fair market value and
9 shall not be limited to the amount by which the decrease in fair market
10 value exceeds fifty percent.

11 (3) Governmental units subject to this chapter shall not make
12 waiver of the provisions of this chapter a condition for approval of
13 the use of real property or the issuance of any permit or other
14 entitlement. Plaintiffs may accept an approval of use, permit, or
15 other entitlement granted by the governmental unit without compromising
16 their rights under this chapter if:

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

19 (b) An oral statement is made before the governmental unit granting
20 the authorization, permit, or other entitlement at a public meeting at
21 which the governmental unit renders its decision.

22 NEW SECTION. **Sec. 2.** Compensation is not required by this
23 chapter if the regulatory program is an exercise of the police power to
24 prevent uses noxious in fact or demonstrable harm to the health and
25 safety of the public. "Noxious use" means that the use amounts to a
26 public nuisance in fact. Determination by the governmental unit or
27 units involved that a use is a noxious use or poses a demonstrable harm
28 to public health and safety is not binding upon the court. Review of
29 the governmental unit or units' determination shall be de novo.

1 NEW SECTION. **Sec. 3.** (1) The statute of limitations for
2 actions brought under this chapter is the statute of limitations for
3 ordinary actions brought for injuries to real property. The statute of
4 limitations begins to run upon the final administrative decision
5 implementing the regulatory program affecting plaintiffs' property.

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

14 (3) This chapter applies to new regulatory programs and to the
15 application of regulatory programs in effect on the effective date of
16 this act, including, but not limited to, land use law or zoning laws
17 and regulations to the owner's property.

18 NEW SECTION. **Sec. 4.** If a property owner is deprived of the
19 use of his or her property by an exigent natural condition and
20 mitigating action is regulated by state or local code, the owner may:

21 (1) Wait for the regulating agency to permit abatement of the
22 condition or mitigating action. If the agency response is too slow to
23 prevent substantial property damage that a reasonably timely response
24 would have avoided, the owner may be compensated to the extent of the
25 harm; or

26 (2) Contact the regulating agency and if it appears administrative
27 action will not allow the owner to abate or mitigate the condition
28 action in time to avoid substantial property damage, the owner may take
29 reasonable action to mitigate immediate property damage. The owner

1 must consult the regulating agency within five days of the mitigating
2 action that is taken and give the reason for such action. The agency
3 may assess penalties against the owner for violation of the code or
4 ordinance if the owner's actions are determined by the agency to be
5 substantially without merit.

6 NEW SECTION. **Sec. 5.** (1) If a governmental unit is found to
7 have committed a regulatory taking under section 1 of this act, it may
8 avoid paying compensation by recalling the regulation in question, or
9 granting an exemption to the specific property to the level of
10 regulation previously in place, except in the case of exigent
11 circumstances. In such event, the governmental unit is liable to the
12 plaintiff landowner or user for the reasonable and necessary costs of
13 the regulatory taking action, plus any actual and demonstrable economic
14 losses caused the plaintiff by the regulation during the period in
15 which it was in effect. This section does not affect any remedy that
16 is constitutionally required.

17 (2) Any permit, authorization, or other entitlement granted under
18 a program rolled back under subsection (1) of this section shall
19 continue to be valid.

20 NEW SECTION. **Sec. 6.** This chapter does not preclude property
21 owners from bringing legal challenges to regulatory programs affected
22 by this chapter in instances where the regulatorily caused diminution
23 in value of the property or the use thereof does not exceed fifty
24 percent of fair market value for the uses permitted at the time the
25 owner acquired title. It also does not preclude property owners from
26 bringing legal challenges to regulatory programs affected by this
27 chapter based on other provisions of law.

1 NEW SECTION. **Sec. 7.** If the state or any of its political
2 subdivisions imposes, changes, or implements any land use planning,
3 zoning, or other regulatory program in such a way as to reduce the
4 previous fair market value of a taxpayer's property, the county
5 assessor shall, on or before the ensuing April 1, adjust the property's
6 assessed value downward by an amount equal to the difference between
7 the fair market value of the property under the new regulatory program,
8 and the previous fair market value.

9 NEW SECTION. **Sec. 8.** This chapter shall be known and may be
10 cited as the private property protection act.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW
12 to read as follows:

13 Any city or town subject to the provisions of this title is also
14 subject to sections 1 through 8 of this act.

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21
16 RCW to read as follows:

17 Any code city subject to the provisions of this title is also
18 subject to sections 1 through 8 of this act.

19 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.01 RCW
20 to read as follows:

21 Any county subject to the provisions of this title is also subject
22 to sections 1 through 8 of this act.

23 NEW SECTION. **Sec. 12.** Sections 1 through 8 of this act shall
24 constitute a new chapter in Title 8 RCW.

1 NEW SECTION. **Sec. 13.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.