

2 **SSB 5372** - S AMD TO S AMD (S-2313.1/93)

3 By Senators Snyder, Hochstatter, Nelson, Owen, Amondson, Hargrove
4 and McCaslin

5 SCOPE D - RULED OUT OF ORDER 3/15/93

6 On page 32, after line 2 of the amendment, insert the following:

7 "NEW SECTION. **Sec. 41.** (1)(a) Whenever implementation by the
8 state or any of its political subdivisions of a scheme directly or
9 indirectly regulating the use of land operates to reduce the assessed
10 value of a parcel of real property 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:

13 (i) "Compensation" means cash or in-kind payment, if the affected
14 property owner agrees to in-kind payment and then agrees to the in-kind
15 payment actually offered, including but not limited to clustering;
16 transfer of development rights; staging of concurrency; land trades;
17 environmental mitigation credits for prior activity of owners; density
18 bonuses; or adjustments to restrictions on lot size, number of units,
19 or building dimensions.

20 (ii) "Parcel" means one or more contiguous tax lots of an owner.

21 (iii) "Owner" includes one or more natural or legal persons who own
22 the parcel, whether as sole owner, marital community, cotenants, or
23 tenants in partnership or as a corporation.

24 (iv) "Scheme regulating the use of land" means one regulation or
25 government action affecting the use of land; or more than one such
26 regulation or action, though occurring at different times or by
27 different governmental entities, with the same or similar policy
28 objectives, such as development moratoria, zoning, health regulations,
29 safety regulations, aesthetic regulations, fish and wildlife
30 regulations, sensitive-area regulations, and environmental regulations,
31 whether such regulation or action is interim or permanent. A scheme
32 regulating the use of land does not include any regulation or
33 government action of the federal government or regulation or government
34 action of the state or any local governmental entity taken to comply
35 with the minimum requirements of federal law or regulation.

36 (2)(a) When a parcel of real property has been taken for public use
37 as provided in this chapter, the governmental unit or units that

1 implement the scheme regulating the use of land shall be liable to the
2 owner for compensation under this chapter, and the owner shall have an
3 action at law to recover such compensation. When more than one
4 governmental unit is involved, the court shall determine the proportion
5 each unit is required to contribute to the compensation.

6 (b) The compensation shall be for the full amount of the decrease
7 in assessed value. In addition, an owner who prevails either through
8 settlement or verdict in an action for the recovery of such
9 compensation shall be entitled to reasonable costs, expenses of
10 litigation, and sums for attorneys' fees.

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 their rights is made at the time of
18 acceptance of the authorization, permit, or other entitlement; or

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

23 NEW SECTION. **Sec. 42.** Compensation is required by this chapter
24 unless the scheme regulating the use of land is an exercise of the
25 police power solely to prevent or abate a public nuisance as defined at
26 common law or an application of the public trust doctrine as it relates
27 to navigable water only.

28 NEW SECTION. **Sec. 43.** (1) The statute of limitations for actions
29 brought under this chapter is the statute of limitations for actions
30 for recovery of real property. The statute of limitations begins to
31 run upon the enactment of the scheme regulating the use of land; or the
32 final administrative decision implementing the scheme regulating the
33 use of land affecting plaintiffs' property or by a showing by the
34 plaintiff that application for administrative decision is futile.

35 (2) A scheme regulating the use of land is implemented with respect
36 to an owner's or user's property when actually applied to that property
37 unless the enactment of the scheme by itself operates to reduce the

1 fair market value of real property for the uses permitted at the time
2 the owner acquired title, without further governmental action and the
3 scheme contains no provision allowing for just relief from the scheme's
4 operation.

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

10 NEW SECTION. **Sec. 44.** If a natural event or condition threatens
11 to deprive an owner of land of the land's use or to cause serious
12 damage to the land, and immediate corrective action is required to
13 prevent this deprivation or damage, but this action will violate a
14 state or local law or regulation unless official waiver or permission
15 is obtained, the owner may either:

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

24 (2) Without notifying the governmental unit under subsection (1) of
25 this section, take such corrective action as is reasonably necessary to
26 prevent the threatened deprivation or damage. However, the owner shall
27 notify the governmental unit that he or she has undertaken the
28 corrective action within five days after commencing such action and
29 shall give a general description of the action undertaken. Thereafter,
30 in a legal action brought by the governmental unit, the owner shall be
31 liable for violation of the regulation if a court determines that there
32 was a violation and that an owner would not have qualified for any
33 available waiver or exemption.

34 NEW SECTION. **Sec. 45.** (1) If a governmental unit is found by a
35 court of competent jurisdiction to have committed a regulatory taking
36 under section 41 of this act, such unit shall be liable for
37 compensation, measured by the owner's diminution in assessed value

1 caused by such taking from the time the scheme that regulated the use
2 of the owner's land became effective until the unit may grant an
3 exemption or choose to repeal such scheme. However, if the
4 governmental unit does not grant an exemption or choose to repeal the
5 regulatory scheme within a reasonable period of time, to be fixed by
6 the court, then the unit shall be liable for compensation for a
7 permanent taking, measured by the diminution of fair market sale value
8 caused by the taking, valued as of the date of trial. This section
9 shall not affect any further remedy that is constitutionally required.

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

13 NEW SECTION. **Sec. 46.** This chapter does not preclude any action
14 at law or equity that an owner would have had if this chapter had not
15 been enacted.

16 NEW SECTION. **Sec. 47.** If the state or any of its political
17 subdivisions imposes, changes, or implements any scheme regulating the
18 use of land in such a way as to reduce the previous assessed value of
19 a taxpayer's property, the county assessor shall, on or before the
20 ensuing April 1, adjust the property's assessed value downward by an
21 amount equal to the difference between the assessed value of the
22 property under the new scheme, and the previous assessed value.

23 NEW SECTION. **Sec. 48.** Whenever any compensation is paid to a
24 property owner by the state or by any local governmental entity
25 pursuant to a judgment or agreement to compensate for a regulatory
26 taking under this chapter, the payor shall cause to be recorded with
27 the county auditor for the county in which the real property is located
28 a notice of compensation for regulatory taking. This notice shall
29 contain a legal description of the affected parcel of real estate, a
30 statement of the reason for compensation, the name of the payor, the
31 name of the owner, and the amount paid.

32 NEW SECTION. **Sec. 49.** If a county, city, or health district is
33 found by a court to have committed a regulatory taking under section 41
34 of this act, the court shall require that the compensation owed be paid
35 by the state if the scheme regulating the use of land was adopted or

1 implemented by the county or city in order to effectuate a policy or
2 requirement of state or federal law.

3 NEW SECTION. **Sec. 50.** This chapter shall be known and may be
4 cited as the private property protection act.

5 NEW SECTION. **Sec. 51.** A new section is added to chapter 35.21 RCW
6 to read as follows:

7 Any city or town subject to the provisions of this title is also
8 subject to sections 41 through 50 of this act.

9 NEW SECTION. **Sec. 52.** A new section is added to chapter 35A.21
10 RCW to read as follows:

11 Any code city subject to the provisions of this title is also
12 subject to sections 41 through 50 of this act.

13 NEW SECTION. **Sec. 53.** A new section is added to chapter 36.01 RCW
14 to read as follows:

15 Any county subject to the provisions of this title is also subject
16 to sections 41 through 50 of this act.

17 NEW SECTION. **Sec. 54.** Sections 41 through 50 of this act shall
18 constitute a new chapter in Title 8 RCW.

19 NEW SECTION. **Sec. 55.** If any provision of sections 41 through 50
20 of this act or its application to any person or circumstance is held
21 invalid, the remainder of the act or the application of the provision
22 to other persons or circumstances is not affected."

23 Renumber the following sections consecutively and correct internal
24 references accordingly.

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29 On page 32, line 9 of the amendment, after "16" strike "and 17" and
30 insert ", 17, and 41 through 55"

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5 On page 32, line 25 of the title amendment, after "84.52 RCW;"
6 insert "adding a new section to chapter 35.21 RCW; adding a new section
7 to chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW;
8 adding a new chapter to Title 8 RCW;"

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