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HOUSE BILL 1843

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State of Washington

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By Representatives Morris, Rayburn, Kessler, Brumsickle, Jones, Basich, Chappell, Sheldon, Kremen, King, Karahalios, Peery, Schoesler, Zellinsky, Dorn, Riley, R. Meyers, Springer, Campbell, Edmondson, Ballard, Carlson, Vance, Long, Cooke, Brough, Fuhrman, Van Luven, Forner, Casada, Hansen, Padden, Silver and Wood

Read first time 02/10/93. Referred to Committee on Judiciary.

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

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

6 NEW SECTION. **Sec. 1.** (1)(a) Whenever implementation by the state  
7 or any of its political subdivisions of a scheme directly or indirectly  
8 regulating the use of land operates to reduce the assessed value of a  
9 parcel of real property immediately prior to such implementation, the  
10 parcel is deemed to be taken for public use.

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

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

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

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

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

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

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

28 (3) Governmental units subject to this chapter shall not make  
29 waiver of the provisions of this chapter a condition for approval of  
30 the use of real property or the issuance of any permit or other  
31 entitlement. Plaintiffs may accept an approval of use, permit, or  
32 other entitlement granted by the governmental unit without compromising  
33 their rights under this chapter if:

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

36 (b) An oral statement reserving their rights is made before the  
37 governmental unit granting the authorization, permit, or other  
38 entitlement at a public meeting at which the governmental unit renders  
39 its decision.

1        NEW SECTION.    **Sec. 2.**    Compensation is required by this chapter  
2 unless the scheme regulating the use of land is an exercise of the  
3 police power solely to prevent or abate a public nuisance as defined at  
4 common law or an application of the public trust doctrine as it relates  
5 to navigable water only.

6        NEW SECTION.    **Sec. 3.**    (1) The statute of limitations for actions  
7 brought under this chapter is the statute of limitations for actions  
8 for recovery of real property. The statute of limitations begins to  
9 run upon the enactment of the scheme regulating the use of land; or the  
10 final administrative decision implementing the scheme regulating the  
11 use of land affecting plaintiffs' property or by a showing by the  
12 plaintiff that application for administrative decision is futile.

13        (2) A scheme regulating the use of land is implemented with respect  
14 to an owner's or user's property when actually applied to that property  
15 unless the enactment of the scheme by itself operates to reduce the  
16 fair market value of real property for the uses permitted at the time  
17 the owner acquired title, without further governmental action and the  
18 scheme contains no provision allowing for just relief from the scheme's  
19 operation.

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

25        NEW SECTION.    **Sec. 4.**    If a natural event or condition threatens to  
26 deprive an owner of land of the land's use or to cause serious damage  
27 to the land, and immediate corrective action is required to prevent  
28 this deprivation or damage, but this action will violate a state or  
29 local law or regulation unless official waiver or permission is  
30 obtained, the owner may either:

31        (1) Apply to the governmental unit charged with enforcing such  
32 regulation to take, or to permit the owner to take, the required  
33 corrective action. If the governmental unit wrongfully denies waiver  
34 or permission or fails to take reasonably timely action upon the  
35 application, so that such deprivation or damage occurs, the  
36 governmental unit shall be liable to the owner for the diminution in

1 value of the land which occurs unless the natural event or condition  
2 was the fault of the owner; or

3 (2) Without notifying the governmental unit under subsection (1) of  
4 this section, take such corrective action as is reasonably necessary to  
5 prevent the threatened deprivation or damage. However, the owner shall  
6 notify the governmental unit that he or she has undertaken the  
7 corrective action within five days after commencing such action and  
8 shall give a general description of the action undertaken. Thereafter,  
9 in a legal action brought by the governmental unit, the owner shall be  
10 liable for violation of the regulation if a court determines that there  
11 was a violation and that an owner would not have qualified for any  
12 available waiver or exemption.

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

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

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

32 NEW SECTION. **Sec. 7.** If the state or any of its political  
33 subdivisions imposes, changes, or implements any scheme regulating the  
34 use of land in such a way as to reduce the previous assessed value of  
35 a taxpayer's property, the county assessor shall, on or before the  
36 ensuing April 1, adjust the property's assessed value downward by an

1 amount equal to the difference between the assessed value of the  
2 property under the new scheme, and the previous assessed value.

3 NEW SECTION. **Sec. 8.** Whenever any compensation is paid to a  
4 property owner by the state or by any local governmental entity  
5 pursuant to a judgment or agreement to compensate for a regulatory  
6 taking under this chapter, the payor shall cause to be recorded with  
7 the county auditor for the county in which the real property is located  
8 a notice of compensation for regulatory taking. This notice shall  
9 contain a legal description of the affected parcel of real estate, a  
10 statement of the reason for compensation, the name of the payor, the  
11 name of the owner, and the amount paid.

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

14 NEW SECTION. **Sec. 10.** A new section is added to chapter 35.21 RCW  
15 to read as follows:

16 Any city or town subject to the provisions of this title is also  
17 subject to sections 1 through 9 of this act.

18 NEW SECTION. **Sec. 11.** A new section is added to chapter 35A.21  
19 RCW to read as follows:

20 Any code city subject to the provisions of this title is also  
21 subject to sections 1 through 9 of this act.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 36.01 RCW  
23 to read as follows:

24 Any county subject to the provisions of this title is also subject  
25 to sections 1 through 9 of this act.

26 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act shall  
27 constitute a new chapter in Title 8 RCW.

28 NEW SECTION. **Sec. 14.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and shall take  
6 effect immediately.

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