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HOUSE BILL 1419

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State of Washington

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By Representatives Quall, Schoesler, Blake, Sump, Grant, Eickmeyer, Orcutt, Morris, Hatfield, Sehlin, Benson, Sullivan, Bailey, Pearson and Linville

Read first time 01/24/2003. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to compensating property owners for damages caused  
2 by conditions in hydraulic project approvals; amending RCW 64.40.010  
3 and 64.40.020; adding a new section to chapter 64.40 RCW; adding a new  
4 section to chapter 77.55 RCW; and declaring an emergency.

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

6 **Sec. 1.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to read  
7 as follows:

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

10 (1) "Agency" means the state of Washington, any of its political  
11 subdivisions, including any city, town, or county, and any other public  
12 body exercising regulatory authority or control over the use of real  
13 property in the state.

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

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

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

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

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

24 (~~In any action brought pursuant to this chapter, a defense is~~  
25 ~~available to a political subdivision of this state that its act was~~  
26 ~~mandated by a change in statute or state rule or regulation and that~~  
27 ~~such a change became effective subsequent to the filing of an~~  
28 ~~application for a permit.))~~

29 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to read  
30 as follows:

31 (1) Owners of a property interest who have filed an application for  
32 a permit have an action for damages to obtain relief from acts of an  
33 agency which are arbitrary, capricious, unlawful, or exceed lawful  
34 authority, or relief from a failure to act within time limits  
35 established by law(~~(:—PROVIDED, That)~~). The action is unlawful or in  
36 excess of lawful authority only if the final decision of the agency was

1 made with knowledge of its unlawfulness or that it was in excess of  
2 lawful authority, or it should reasonably have been known to have been  
3 unlawful or in excess of lawful authority.

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

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

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

11 (5) In any action brought pursuant to this section, a defense is  
12 available to a political subdivision of this state that its act was  
13 mandated by a change in statute or state rule or regulation and that  
14 such a change became effective subsequent to the filing of an  
15 application for a permit.

16 NEW SECTION. Sec. 3. A new section is added to chapter 64.40 RCW  
17 to read as follows:

18 (1) In addition to the action authorized by RCW 64.40.020, an owner  
19 of a property interest in public or private property has an action for  
20 harm resulting from a condition imposed by the department of fish and  
21 wildlife in an approval issued according to chapter 77.55 RCW for a  
22 hydraulic project or other work if implementation of the condition:

23 (a) Is a requirement of the approval issued by the department under  
24 chapter 77.55 RCW for a hydraulic project or other work on the owner's  
25 property or on property affected by operation of the tide gate;

26 (b) Results in a change in the operating characteristics of a tide  
27 gate; and

28 (c) Harms the property interest of either the owner obtaining the  
29 approval or the owner of property affected by the operation of the tide  
30 gate.

31 (2) Before filing an action under this section, an owner shall file  
32 a written complaint with the department and the owner of the tide gate  
33 if owned by another person. The department shall investigate the  
34 complaint and shall respond within thirty days of receipt of the  
35 complaint.

36 (3) If the department finds that harm has occurred on the owner's  
37 property as a result of the change in the operating characteristics of

1 the tide gate, the department shall make an offer of compensation to  
2 the owner. If the department finds that the change in the operating  
3 characteristics of the tide gate is likely to result in future harm to  
4 the owner's property, the department's offer of compensation shall  
5 include compensation of future losses or a provision to revise its  
6 approval to eliminate the change in the operating characteristics of  
7 the tide gate determined to be causing the harm.

8 (4) If the department fails to respond within the time required by  
9 subsection (2) of this section or if the owner determines that the  
10 department's offer of compensation is insufficient, the owner may file  
11 an action in the superior court in the county in which the owner's  
12 property is located.

13 (a) The owner may seek a writ of mandamus according to chapter 7.16  
14 RCW regarding the department's failure to respond within the time  
15 required by subsection (2) of this section or the department's  
16 determination regarding the condition specified in subsection (1) of  
17 this section.

18 (b) The owner also may seek damages resulting from the conditions  
19 specified in subsection (1) of this section, including:

- 20 (i) Damages as defined in RCW 64.40.010(4);
- 21 (ii) Current or future decrease in property value;
- 22 (iii) Other current or future reasonable expenses and losses; and
- 23 (iv) Reasonable attorney fees and costs.

24 (5) For purposes of this section:

25 (a) "Change in the operating characteristics of a tide gate" means  
26 any change in the operation of the tide gate that impacts the flow or  
27 bed of any salt or fresh waters of the state and includes, but is not  
28 limited to, increasing the elevation of the water surface behind the  
29 tide gate, reducing the reservoir capacity behind the tide gate,  
30 decreasing the ability to drain the area behind the tide gate, and  
31 increasing the intrusion of saltwater into the area above the tide  
32 gate.

33 (b) "Department" means the department of fish and wildlife.

34 (c) "Harm" means negative impact to property and includes, but is  
35 not limited to, flooding, increased soil saturation, or reduced  
36 drainage; loss in production of growing agricultural crops; change in  
37 characteristics or quality of ground water or surface water affecting

1 the owner's ability to use the water; impediment to the operation of  
2 drain fields for septic systems; increase in soil toxicity; and  
3 reduction of soil productivity.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55 RCW  
5 to read as follows:

6 An owner of a property interest in public or private property may  
7 file an action pursuant to section 3 of this act for harm resulting  
8 from a condition imposed by the department of fish and wildlife in an  
9 approval issued according to this chapter. Any offers of compensation  
10 made pursuant to section 3 of this act and any damages awarded in an  
11 action filed pursuant to section 3 of this act shall be paid from the  
12 current funds appropriated to the division of the department that  
13 imposed the condition in the approval issued according to this chapter.

14 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 immediately.

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