
HOUSE BILL 3311

State of Washington 59th Legislature 2006 Regular Session

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1 AN ACT Relating to providing fairness in government regulation of
2 private property; adding new sections to chapter 64.40 RCW; adding a
3 new section to chapter 36.70A RCW; and creating new sections.

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

5 **INTENT TO REQUIRE FAIRNESS WHEN GOVERNMENT REGULATES PRIVATE PROPERTY**

6 NEW SECTION. **Sec. 1.** This act is intended to protect the use and
7 value of private property while providing for a healthy environment and
8 ensuring that government agencies do not damage the use or value of
9 private property except if necessary to prevent threats to human health
10 and safety. The legislature also intends to recognize and promote
11 unique interests, knowledge, and abilities private property owners have
12 to protect the environment and land. To this end, government agencies
13 must consider whether voluntary cooperation of property owners will
14 meet the legitimate interests of the government instead of inflexible
15 regulation of private property.

16 The legislature finds that over the last decade, governmental
17 restrictions on the use of property have increased substantially,
18 creating hardships for many, and destroying reasonable expectations of

1 being able to make reasonable beneficial use of property. Article I,
2 section 16 of the Washington state Constitution requires that
3 government not take or damage property without first paying just
4 compensation to the property owner. The legislature finds that
5 government entities should provide compensation for damage to property
6 as provided in this act, but should also first evaluate whether the
7 government's decision that causes damage is necessary and in the public
8 interest.

9 The legislature finds that eminent domain is an extraordinary power
10 in the hands of government and potentially subject to misuse. When
11 government threatens to take or takes private property under eminent
12 domain, it should not take property which is unnecessary for public use
13 or is primarily for private use, nor should it take property for a
14 longer period of time than is necessary.

15 Responsible fiscal management and fundamental principles of good
16 government require that government decision makers evaluate carefully
17 the effect of their administrative, regulatory, and legislative actions
18 on constitutionally protected rights in property. Agencies should
19 review their actions carefully to prevent unnecessary taking or
20 damaging of private property. Agencies should review their actions to
21 assist governmental agencies in undertaking reviews and in proposing,
22 planning, and implementing actions with due regard for the
23 constitutional protections of property and to reduce the risk of
24 inadvertent burdens on the public in creating liability for the
25 government or undue burdens on private properties.

26 **FAIRNESS WHEN GOVERNMENT REGULATES PRIVATE PROPERTY BY REQUIRING**
27 **CONSIDERATION OF IMPACTS BEFORE TAKING ACTION**

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.40 RCW
29 to read as follows:

30 (1) To avoid damaging the use or value of private property, prior
31 to enacting or adopting any ordinance, regulation, or rule which may
32 damage the use or value of private property, an agency must consider
33 and document:

- 34 (a) The private property that will be affected by the action;
- 35 (b) The existence and extent of any legitimate governmental purpose
36 for the action;

1 (c) The existence and extent of any nexus or link between any
2 legitimate government interest and the action;

3 (d) The extent to which the regulation's restrictions are
4 proportional to any impact of a particular property on any legitimate
5 government interest, in light of the impact of other properties on the
6 same governmental interests;

7 (e) The extent to which the action deprives property owners of
8 economically viable use of property;

9 (f) The extent to which the action derogates or takes away a
10 fundamental attribute of property ownership, including, but not limited
11 to, the right to exclude others, to possess, to beneficial use,
12 enjoyment, or to dispose of property;

13 (g) The extent to which the action enhances or creates a publicly
14 owned right in property;

15 (h) Estimated compensation that may need to be paid under this act;
16 and

17 (i) Alternative means which are less restrictive on private
18 property and which may accomplish the legitimate governmental purpose
19 for the regulation, including, but not limited to, voluntary
20 conservation or cooperative programs with willing property owners, or
21 other nonregulatory actions.

22 (2) For purposes of this section and section 3 of this act, the
23 following definitions apply:

24 (a) "Private property" means all real and personal property
25 interests protected by the fifth amendment to the United States
26 Constitution or Article I, section 16 of the Washington state
27 Constitution owned by a nongovernmental entity, including, but not
28 limited to, any interest in land, buildings, crops, livestock, and
29 mineral and water rights.

30 (b) "Damaging the use or value" means to prohibit or restrict the
31 use of private property to obtain benefit to the public the cost of
32 which in all fairness and justice should be borne by the public as a
33 whole, and includes, but is not limited to:

34 (i) Prohibiting or restricting any use or size, scope or intensity
35 of any use legally existing or permitted as of January 1, 1996;

36 (ii) Prohibiting the continued operation, maintenance, replacement,
37 or repair of existing tidegates, bulkheads, revetments, or other

1 infrastructure reasonably necessary for the protection of the use or
2 value of private property;

3 (iii) Prohibiting or restricting operations and maintenance of
4 structures necessary for the operation of irrigation facilities,
5 including, but not limited to, diversions, operation structures,
6 canals, drainage districts, flumes, or delivery systems;

7 (iv) Prohibiting actions by a private property owner reasonably
8 necessary to prevent or mitigate harm from fire, flooding, erosion, or
9 other natural disasters or conditions that would impair the use or
10 value of private property;

11 (v) Requiring a portion of property to be left in its natural state
12 or without beneficial use to its owner, unless necessary to prevent
13 immediate harm to human health and safety; or

14 (vi) Prohibiting maintenance or removal of trees or vegetation.

15 (c) "Damaging the use or value" does not include restrictions that
16 apply equally to all property subject to the agency's jurisdiction,
17 including:

18 (i) Restricting the use of property when necessary to prevent an
19 immediate threat to human health and safety;

20 (ii) Requiring compliance with structural standards for buildings
21 in building or fire codes to prevent harm from earthquakes, flooding,
22 fire, or other natural disasters;

23 (iii) Limiting the location or operation of sex offender housing or
24 adult entertainment;

25 (iv) Requiring adherence to chemical use restrictions that have
26 been adopted by the United States environmental protection agency;

27 (v) Requiring compliance with worker health and safety laws or
28 regulations;

29 (vi) Requiring compliance with wage and hour laws;

30 (vii) Requiring compliance with dairy nutrient management
31 restrictions in chapter 90.64 RCW;

32 (viii) Requiring compliance with local ordinances establishing
33 setbacks from property lines, provided the setbacks were required prior
34 to January 1, 1996.

35 The exemptions in this subsection shall be construed narrowly to
36 effectuate the purposes of this act.

37 (d) "Compensation" means remuneration equal to the amount the fair
38 market value of the affected property has been decreased by the

1 application or enforcement of the ordinance, regulation, or rule. To
2 the extent any action requires any portion of property to be left in
3 its natural state or without beneficial use by its owner,
4 "compensation" means the fair market value of that portion of property
5 required to be left in its natural state without beneficial use.
6 "Compensation" also includes any costs and attorneys' fees reasonably
7 incurred by the property owner in seeking to enforce this act.

8 **FAIRNESS WHEN GOVERNMENT DIRECTLY REGULATES PRIVATE PROPERTY**

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW
10 to read as follows:

11 An agency that decides to enforce or apply any ordinance,
12 regulation, or rule to private property that would result in damaging
13 the use or value of private property shall first pay the property owner
14 compensation, as defined in section 2 of this act. This section shall
15 not be construed to limit agencies' ability to wave, or issue variances
16 from other legal requirements. An agency that chooses not to take
17 action which will damage the use or value of private property is not
18 liable for paying remuneration under this section.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW
20 to read as follows:

21 An agency may not charge a fee for considering whether to waive or
22 grant a variance from an ordinance, regulation, or rule in order to
23 avoid responsibility for paying compensation as provided in section 3
24 of this act.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW
26 to read as follows:

27 Development regulations adopted under this chapter shall not
28 prohibit uses legally existing on any parcel prior to their adoption.
29 Nothing in this chapter shall be construed to authorize an interference
30 with the duties in chapter 64.40 RCW.

31 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 6.** The provisions of this act are to be
2 liberally construed to effectuate the intent, policies, and purpose of
3 this act to protect private property owners.

4 NEW SECTION. **Sec. 7.** Nothing in this act shall diminish any other
5 remedy provided under the United States or Washington state
6 Constitutions, or federal or state law, and this act is not intended to
7 modify or replace any such remedy.

8 NEW SECTION. **Sec. 8.** Subheadings used in this act are not any
9 part of the law.

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

14 NEW SECTION. **Sec. 10.** This act shall be known and cited as the
15 property fairness act.

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