
SUBSTITUTE SENATE BILL 5431

State of Washington

53rd Legislature

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By Senate Committee on Natural Resources (originally sponsored by Senators Snyder, Amondson, Vognild, M. Rasmussen, Bauer, Jesernig, Hargrove, Williams, Sheldon, Newhouse, McCaslin, Erwin, Hochstatter, Moyer, Oke, McDonald, Nelson, Anderson, Roach, Bluechel, Sellar, L. Smith, Barr, von Reichbauer, Deccio, Loveland and Quigley)

Read first time 03/03/93.

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 of competent jurisdiction to have committed a regulatory taking
15 under section 1 of this act, such unit shall be liable for
16 compensation, measured by the owner's diminution in assessed value
17 caused by such taking from the time the scheme that regulated the use
18 of the owner's land became effective until the unit may grant an
19 exemption or choose to repeal such scheme. However, if the
20 governmental unit does not grant an exemption or choose to repeal the
21 regulatory scheme within a reasonable period of time, to be fixed by
22 the court, then the unit shall be liable for compensation for a
23 permanent taking, measured by the diminution of fair market sale value
24 caused by the taking, valued as of the date of trial. This section
25 shall not affect any further remedy that is 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.** If a county, city, or health district is
13 found by a court to have committed a regulatory taking under section 1
14 of this act, the court shall require that the compensation owed be paid
15 by the state if the scheme regulating the use of land was adopted or
16 implemented by the county or city in order to effectuate a policy or
17 requirement of state or federal law.

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

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

22 Any city or town subject to the provisions of this title is also
23 subject to sections 1 through 10 of this act.

24 NEW SECTION. **Sec. 12.** A new section is added to chapter 35A.21
25 RCW to read as follows:

26 Any code city subject to the provisions of this title is also
27 subject to sections 1 through 10 of this act.

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

30 Any county subject to the provisions of this title is also subject
31 to sections 1 through 10 of this act.

1 NEW SECTION. **Sec. 14.** Sections 1 through 10 of this act shall
2 constitute a new chapter in Title 8 RCW.

3 NEW SECTION. **Sec. 15.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect immediately.

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