
SENATE BILL 5267

State of Washington

62nd Legislature

2011 Regular Session

By Senator Swecker

Read first time 01/19/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

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

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.40 RCW
6 to read as follows:

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

11 (a) The private property that will be affected by the action;

12 (b) The existence and extent of any legitimate governmental purpose
13 for the action;

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

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

1 (e) The extent to which the action deprives property owners of
2 economically viable uses of the property;

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

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

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

11 (i) Alternative means which are less restrictive on private
12 property and which may accomplish the legitimate governmental purpose
13 for the regulation, including, but not limited to, voluntary
14 conservation or cooperative programs with willing property owners, or
15 other nonregulatory actions.

16 (2) For purposes of this act, the following definitions apply:

17 (a) "Private property" includes all real and personal property
18 interests protected by the fifth amendment to the United States
19 Constitution or Article I, section 16 of the state Constitution owned
20 by a nongovernmental entity, including, but not limited to, any
21 interest in land, buildings, crops, livestock, and mineral and water
22 rights.

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

27 (i) Prohibiting or restricting any use or size, scope, or intensity
28 of any use legally existing or permitted as of the effective date of
29 this section;

30 (ii) Prohibiting the continued operation, maintenance, replacement,
31 or repair of existing tidegates, bulkheads, revetments, or other
32 infrastructure reasonably necessary for the protection of the use or
33 value of private property;

34 (iii) Prohibiting or restricting operations and maintenance of
35 structures necessary for the operation of irrigation facilities,
36 including, but not limited to, diversions, operation structures,
37 canals, drainage ditches, flumes, or delivery systems;

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

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

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

9 (c)(i) "Damaging the use or value" does not include restrictions
10 that apply equally to all property subject to the agency's
11 jurisdiction, including:

12 (A) Restricting the use of property when necessary to prevent an
13 immediate threat to human health and safety;

14 (B) Requiring compliance with structural standards for buildings in
15 building or fire codes to prevent harm from earthquakes, flooding,
16 fire, or other natural disasters;

17 (C) Limiting the location or operation of sex offender housing or
18 adult entertainment;

19 (D) Requiring adherence to chemical use restrictions required by
20 the United States environmental protection agency;

21 (E) Requiring compliance with worker health and safety laws or
22 regulations;

23 (F) Requiring compliance with wage and hour laws;

24 (G) Requiring compliance with dairy nutrient management
25 restrictions or regulations in chapter 90.64 RCW; or

26 (H) Requiring compliance with local ordinances establishing
27 setbacks from property lines, provided the setbacks were established
28 prior to the effective date of this section.

29 (ii) This subsection (2)(c) must be construed narrowly to
30 effectuate the purposes of this act.

31 (d) "Compensation" means remuneration equal to the amount the fair
32 market value of the affected property has been decreased by the
33 application or enforcement of the ordinance, regulation, or rule. To
34 the extent any action requires any portion of property to be left in
35 its natural state or without beneficial use by its owner,
36 "compensation" means the fair market value of that portion of property
37 required to be left in its natural state or without beneficial use.

1 "Compensation" also includes any costs and attorneys' fees reasonably
2 incurred by the property owner in seeking to enforce this act.

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

5 An agency that decides to enforce or apply any ordinance,
6 regulation, or rule to private property that would result in damaging
7 the use or value of private property must first pay the property owner
8 compensation as defined in section 1 of this act. This section may not
9 be construed to limit agencies' ability to waive, or issue variances
10 from, other legal requirements. An agency that chooses not to take
11 action which will damage the use or value of private property is not
12 liable for paying remuneration under this section.

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

15 An agency may not charge any fee for considering whether to waive
16 or grant a variance from an ordinance, regulation, or rule in order to
17 avoid responsibility for paying compensation as provided in section 2
18 of this act.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW
20 to read as follows:

21 Development regulations adopted under this chapter may not prohibit
22 uses legally existing on any parcel prior to their adoption. Nothing
23 in this chapter may be construed to authorize an interference with the
24 duties in chapter 64.40 RCW.

25 NEW SECTION. **Sec. 5.** The provisions of this act are to be
26 liberally construed to effectuate the intent, policies, and purpose of
27 this act to protect private property owners.

28 NEW SECTION. **Sec. 6.** This act does not diminish any other remedy
29 provided under the United States Constitution or state Constitution, or
30 federal or state law, and this act does not modify or replace such a
31 remedy.

1 NEW SECTION. **Sec. 7.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 8.** This act may be known and cited as the
6 property fairness act.

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