

2 SB 6201 - S AMD

3 By Senators Amondson, Madsen and Sutherland

4 ADOPTED 2/17/92

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. (1)(a) Whenever implementation by the
8 state or any of its political subdivisions of a scheme regulating the
9 use of land operates to reduce the fair market value of a parcel of
10 real property to less than fifty percent of the greater of either the
11 assessed valuation or the fair market value, immediately prior to such
12 implementation, the parcel is deemed to be taken for public use.

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

14 (i) "Parcel" means all, or a discrete portion not less than twenty
15 percent of a contiguous land of an owner or an operating unit, though
16 comprising separate legal descriptions, whichever is less.

17 (ii) "Owner" includes one or more natural or legal persons who own
18 the parcel, whether as sole owner, marital community, cotenants, or
19 tenants in partnership.

20 (iii) "Scheme regulating the use of land" means one regulation or
21 government action affecting the use of land; or more than one such
22 regulation or action, though occurring at different times or by
23 different governmental entities, with the same policy objectives, such
24 as development moratoria, zoning, health regulations, safety
25 regulations, aesthetic regulations, sensitive-area regulations, and
26 environmental regulations, whether such regulation or action is interim
27 or permanent. A scheme regulating the use of land does not include any
28 regulation or government action of the federal government or regulation

1 or government action of the state or any local governmental entity
2 taken to comply with the minimum requirements of federal law or
3 regulation.

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

11 (b) The compensation shall be for the full amount of the decrease
12 in fair market value and shall not be limited to the amount by which
13 the decrease in fair market value exceeds fifty percent. In addition,
14 an owner who prevails in an action for the recovery of such
15 compensation shall be entitled to costs, including reasonable sums for
16 attorneys' fees and for fees of experts, such as engineers and
17 appraisers, whose services are reasonably required to establish the
18 taking and the diminution of value.

19 (3) Governmental units subject to this chapter shall not make
20 waiver of the provisions of this chapter a condition for approval of
21 the use of real property or the issuance of any permit or other
22 entitlement. Plaintiffs may accept an approval of use, permit, or
23 other entitlement granted by the governmental unit without compromising
24 their rights under this chapter if:

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

27 (b) An oral statement reserving their rights is made before the
28 governmental unit granting the authorization, permit, or other
29 entitlement at a public meeting at which the governmental unit renders
30 its decision."

1 "NEW SECTION. Sec. 2. Compensation is not required by this
2 chapter if the scheme regulating the use of land is an exercise of the
3 police power to prevent or abate a public nuisance as defined at common
4 law."

5 "NEW SECTION. Sec. 3. (1) The statute of limitations for
6 actions brought under this chapter is the statute of limitations for
7 actions for recovery of real property. The statute of limitations
8 begins to run upon the enactment of the scheme regulating the use of
9 land; or the final administrative decision implementing the scheme
10 regulating the use of land affecting plaintiffs' property or by a
11 showing by the plaintiff that application for administrative decision
12 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, or any legally recognized interest
17 therein, to less than fifty percent of its fair market value for the
18 uses permitted at the time the owner acquired title, without further
19 governmental action and the scheme contains no provision allowing for
20 relief from the scheme's operation.

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

26 "NEW SECTION. Sec. 4. If a natural event or condition, not the
27 fault of the owner, threatens to deprive an owner of land of the land's
28 use or to cause serious damage to the land, and immediate corrective

1 action is required to prevent this deprivation or damage, but this
2 action will violate a state or local law or regulation unless official
3 waiver or permission is obtained, the owner may either:

4 (1) Apply to the governmental unit charged with enforcing such
5 regulation to take, or to permit the owner to take, the required
6 corrective action. If the governmental unit wrongfully denies waiver
7 or permission or fails to take reasonably timely action upon the
8 application, so that such deprivation or damage occurs, the
9 governmental unit shall be liable to the owner for the diminution in
10 value of the land which occurs; or

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

21 "NEW SECTION. Sec. 5. If a governmental unit is found by a
22 court to have committed a regulatory taking under section 1 of this
23 act, such unit shall be liable for compensation, measured by the
24 owner's diminution in fair market rental value caused by such taking
25 from the time the scheme that regulated the use of the owner's land
26 became effective until the unit may choose to repeal such scheme.
27 However, if the governmental unit does not choose to repeal the
28 regulatory scheme within a reasonable period of time, to be fixed by
29 the court, then the unit shall be liable for permanent compensation,

1 measured by the diminution of fair market sale value caused by the
2 taking, valued as of the date of trial. This section shall not affect
3 any further remedy that is constitutionally required.

4 (2) Any permit, authorization, or other entitlement granted under
5 a scheme repealed under subsection (1) of this section shall continue
6 to be valid."

7 "NEW SECTION. Sec. 6. This chapter does not preclude any
8 action at law or equity that an owner would have had if this chapter
9 had not been enacted."

10 "NEW SECTION. Sec. 7. If the state or any of its political
11 subdivisions imposes, changes, or implements any scheme regulating the
12 use of land in such a way as to reduce the previous fair market value
13 of a taxpayer's property, the county assessor shall, on or before the
14 ensuing April 1, adjust the property's assessed value downward by an
15 amount equal to the difference between the fair market value of the
16 property under the new scheme, and the previous fair market value."

17 "NEW SECTION. Sec. 8. It is the policy of the state of
18 Washington that:

19 (1) If it is in the public interest, safety, health, or welfare
20 that wetlands subject to this chapter are to be purchased for public
21 use and enjoyment or purchased in the public interest, the wetlands
22 shall be appraised at their highest and best economic use, regulatory
23 and administrative rules notwithstanding, to encourage more willing
24 sellers.

25 (2) If wetlands subject to this chapter are to remain private, they
26 shall be taxed at open space rates.

1 (3) There shall be no condemnation in the public acquisition of
2 wetlands subject to this chapter.

3 (4)(a) Historical private hunting areas owned by private property
4 owners in wetlands subject to this chapter be preserved for their use
5 in the future.

6 (b) If hunting areas in wetlands subject to this chapter are to be
7 taken for public use, they shall be valued according to their highest
8 and best economic use, ordinances, rules, and regulations
9 notwithstanding."

10 "NEW SECTION. Sec. 9. Whenever any compensation is paid to a
11 property owner by the state or by any local governmental entity to
12 compensate for a regulatory taking pursuant to the terms of this
13 chapter, the payor shall cause to be recorded with the county auditor
14 for the county in which the real property is located a notice of
15 compensation for regulatory taking. This notice shall contain a legal
16 description of the affected parcel of real estate, a statement of the
17 reason for compensation, the name of the payor, the name of the owner,
18 and the amount paid. This notice shall perfect a lien against the
19 property as of the time of filing, for the benefit of the payor in the
20 event: (1) The regulatory scheme for which compensation was paid is
21 repealed in whole or in part; (2) the compensated owner subsequently
22 sells all or a portion of the property; and (3) the sales price
23 reflects an enhanced fair market value resulting directly from the
24 repeal of all or part of the regulator scheme. This lien shall be
25 limited to either the amount of compensation originally paid or the
26 amount of enhancement in fair market value at the time of the sale
27 resulting from the repeal of all or part of the regulatory scheme,
28 whichever is smaller."

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

3 "NEW SECTION. **Sec. 11.** A new section is added to chapter 35.21
4 RCW to read as follows:

5 Any city or town subject to the provisions of this title is also
6 subject to sections 1 through 10 of this act."

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

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

11 "NEW SECTION. **Sec. 13.** A new section is added to chapter 36.01
12 RCW to read as follows:

13 Any county subject to the provisions of this title is also subject
14 to sections 1 through 10 of this act."

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

17 "NEW SECTION. **Sec. 15.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected."

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4 On page 1, line 1 of the title, after "property;" strike the
5 remainder of the title and insert "adding a new chapter to Title 8 RCW;
6 adding a new section to chapter 35.21 RCW; adding a new section to
7 chapter 35A.21 RCW; and adding a new section to chapter 36.01 RCW."