

HOUSE BILL REPORT

HB 1162

*As Reported By House Committee on:
Judiciary*

Title: An act relating to governmental regulatory action.

Brief Description: Providing a statutory basis for the implementation of an inverse condemnation suit.

Sponsor(s): Representatives D. Sommers, Hargrove, Padden, Paris, Kremen, Tate, Rasmussen, McLean, Grant, Lisk, Chandler, Ferguson, Pruitt, Ballard, Wood, P. Johnson, Forner, Casada, Horn, Sheldon, Brumsickle, Mielke, Hochstatter, Broback, Van Luven, May, Fuhrman, Morton, Edmondson, Brough, Basich, Mitchell, Wynne, Bowman, Moyer and Orr.

Brief History:

Reported by House Committee on:
Judiciary, March 5, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1162 be substituted therefor, and the substitute bill do pass.* Signed by 15 members: Representatives Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Do not pass.* Signed by 3 members: Representatives Appelwick, Chair; Belcher; and Inslee.

Staff: Jill Teutsch (786-7623).

Background: State and federal common law dictate the standards for a successful inverse condemnation suit, distinguishing between regulatory takings and physical takings. Courts more readily find a taking when the government action effects a physical intrusion upon the land. A regulatory taking, however, occurs when the government action falls short of a physical invasion, but denies a landowner all economically viable use of his/her property or fails to advance a legitimate state interest. These standards are difficult for the landowner to prove.

Courts can often find some residual economic value to the land and only rarely does a regulation lack a legitimate state interest.

Washington courts have further limited inverse condemnation suits by exempting a broad class of regulations from such actions. Regulations that protect the public interest in the health, safety, environment and fiscal integrity of an area are not subject to inverse condemnation proceedings.

When a court does find a taking, the government must pay the landowner just compensation for the period during which the land was burdened by the regulation. Even temporary regulations may give rise to a compensable taking.

Summary of Substitute Bill: A new chapter is added to provide a statutory basis for inverse condemnation suits. A regulatory program, that does not prevent a noxious use or demonstrable harm to the public health and safety, requires compensation if it reduces the fair market value of real property to less than 50 percent of its former value. The former fair market value is based on the uses allowed immediately prior to enactment of the regulatory program. The landowner may elect to require condemnation and just compensation, or compensation for the reduction in value. In either case, the landowner has a right to a jury determination of the amount of compensation.

A governmental unit required to condemn the land and compensate the landowner may elect instead to relax the regulatory program to the level of regulation in place either when the owner acquired title or on January 1, 1992, whichever is later. The governmental unit must compensate the landowner for the costs of the inverse condemnation action and any actual economic loss caused by the regulation during its effective period.

Substitute Bill Compared to Original Bill: The substitute bill changes the date on which the fair market value of the property is determined for purposes of evaluating whether a taking has occurred. In the original bill, the fair market value is determined by the value of the property for the uses permitted as of the later of January 1, 1992, or the time the owner acquired title. The substitute bill evaluates the fair market value immediately prior to the implementation of the regulatory program.

The substitute bill deletes a section that provides that a change in the fair market value as a result of regulation be reflected for property tax purposes.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill provides a necessary safeguard to prevent deprivation of property rights by overly burdensome regulation.

Testimony Against: The 50 percent threshold for evaluating regulations that amount to takings is too high; any deduction in property value should be compensated. The judiciary is better equipped to determine whether a regulation amounts to a taking. The bill would upset the balance between property rights and government regulation established by case law.

Witnesses: Original Bill: Ted Cowan, Washington Rivers Coalition (supports concept, opposes bill); Tom Tochtermann (in favor); Tom Bjorgen, Thurston County Prosecuting Attorney (opposes bill); Ron Main, King County (opposes bill); Ann Schindler, King County Prosecuting Attorney (opposes bill); Nick Adams, Washington Association of Realtors (in favor); Hal Woosley, Bellevue Chamber of Commerce (in favor); and Jeff Parsons, National Audubon Society (opposes bill).