

HOUSE BILL REPORT

HB 1334

*As Reported By House Committee on:
Judiciary*

Title: An act relating to regulatory takings and other unconstitutional interferences with the use of private property by governmental bodies.

Brief Description: Safeguarding private property interests.

Sponsor(s): Representatives Hargrove, Rayburn, Heavey, Grant, Forner, P. Johnson, Chandler, Rasmussen, Morton, R. Meyers, Morris, Kremen, Dorn, Bowman, Basich, Tate, Ballard, D. Sommers, Riley, Fuhrman, Paris, Holland, Winsley, Lisk, Hochstatter, Wynne, Edmondson, Broback, Betrozoff, Mielke, Van Luven and Miller.

Brief History:

Reported by House Committee on:
Judiciary, March 1, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1334 be substituted therefor, and the substitute bill do pass.* Signed by 14 members: Representatives Appelwick, Chair; Paris, Assistant Ranking Minority Member; Broback; Forner; Inslee; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Ludwig, Vice Chair; and Belcher.

Staff: Jill Teutsch (786-7623).

Background: The United States Constitution and the constitution of the state of Washington protect private property from undue government interference. The taking clauses of both constitutions require just compensation be paid for any taking of private property for public use. The due process clauses prohibit any deprivation of private property without due process of law. The remedy for a due process violation is invalidation of the unconstitutional government action.

Governmental bodies have no required procedures for assessing the impact of their actions on private property rights. Property owners must bring suit against the governmental body to seek relief from an unduly burdensome interference with their property rights.

In 1990, the Legislature passed a measure that required government to assess the potential impact of its policies on private property. A substantially similar measure is being proposed this year. The governor vetoed the 1990 legislation, noting his concern that the legislation was an oversimplification of a complex and fluid legal area, and that it created an additional burdensome layer of administrative government.

Summary of Substitute Bill: The attorney general must develop a checklist and guidelines by October 1, 1991, to assist state and local government agencies in identifying and evaluating policies that have constitutional implications. Policies that have constitutional implications are those that could effect a taking or violate due process requirements. The attorney general must review the checklist and guidelines annually.

State and local government agencies proposing or implementing policies that have constitutional implications must designate a person with responsibility for ensuring compliance with this law. The designated person must prepare a constitutional impact assessment, including analysis of the effects on private property, alternatives that would reduce effects on private property, and an estimate of the cost to the government agency. Failure to comply with this procedure will result in reduction of the agency's budget of any amount awarded to private property owners for unconstitutional interferences with private property.

Private property owners who successfully sue for takings or violations of due process are entitled to recover their reasonable costs and attorneys' fees.

Assessments for taxes and levies must reflect the effect of policies with constitutional implications on the fair market value of property.

Substitute Bill Compared to Original Bill: The substitute limits the definition of private property to real property.

Fiscal Note: Requested January 28, 1991.

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

Testimony For: An administrative course of redress is provided for landowners subject to unconstitutional interference with the use of their land; agencies are required to implement policies with the least interference with landowners' rights.

Testimony Against: Regulating bodies are hampered from implementing meaningful land use regulations; an additional layer of bureaucracy in the land use permit process is created; an inflexible definition for the fact-specific judicial concept of "takings" is created.

Witnesses: Ted Cowan, Washington Rivers Coalition (in favor); Marlyta Deck, Washington Cattlemen's Association (in favor); Merrill English, Washington Property Owners Coalition (in favor); Thomas Tochtermann (in favor); Tom Bjorgen, Thurston County (in opposition); Ron Main, King County (in opposition); Ann Schindler, King County (in opposition); Nick Adams, Washington Association of Realtors (in favor); Hal Woosley, Bellevue Chamber of Commerce (in favor); Nels Hanson, Washington Farm Forestry Association (in favor); Jeff Parsons, National Audubon Society (in opposition); and Robert Mack, City of Tacoma (in opposition).