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HOUSE BILL 1693

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Wilson, Fuhrman, Van Luven, May, Hargrove, Betrozoff, Broback, Miller, Paris, D. Sommers, Ballard, McLean, Orr, Nealey, P. Johnson, Brumsickle, Bowman, Sheldon and Morris.

Read first time February 6, 1991.                      Referred to Committee on Judiciary\Appropriations.

1            AN ACT Relating to compensation to landowners for economic loss due  
2 to shoreline management; adding a new chapter to Title 90 RCW; and  
3 declaring an emergency.

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

5            NEW SECTION.    **Sec. 1.**            Because the management of land use  
6 through zoning ordinances and other regulatory action, including the  
7 preservation of open spaces, is necessary to promote the orderly  
8 development and environmental amenities of this state, it is declared  
9 by the legislature that this regulation, conservation, and preservation  
10 constitutes a valid public purpose justifying public expenditure.

11            Because the regulation in present form disregards resulting  
12 economic impact upon landowners, and in some cases may be so extreme  
13 that absent some type of compensation it constitutes the equivalent of  
14 an unjust taking, it is further declared that compensation of

1 landowners for economic loss resulting from the regulation is a valid  
2 public purpose.

3 The funding of such compensation is deemed to be the responsibility  
4 of the state and its political subdivisions in a case in which the  
5 regulation is of state-wide significance.

6 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
7 otherwise, the definitions in this section shall apply throughout this  
8 chapter.

9 (1) "Regulating body" means the specific city, county, or state  
10 government or agency enacting a land use ordinance required by chapter  
11 90.58 RCW, or an agency employing the methods of land management  
12 prescribed in this chapter, resulting in economic loss to a landowner.

13 (2) "Regulation" refers to a restrictive action of a regulating  
14 body acting under chapter 90.58 RCW.

15 NEW SECTION. **Sec. 3.** Whenever a regulating body imposes  
16 regulations which restrict the reasonable use of land and result in  
17 significant economic loss to an owner of affected land, the regulating  
18 body shall, on request of the landowner, mitigate the loss by offering  
19 compensation under one of the following methods established by this  
20 chapter:

21 (1) Acquisition of the restricted interest in the property under  
22 section 5 of this act; or

23 (2) Establishment of a guaranteed sale price under section 9 of  
24 this act.

25 NEW SECTION. **Sec. 4.** (1) The affected landowner may, within  
26 one year of receiving notice of the regulation, request compensation  
27 under this chapter from the regulating body. In the request the

1 landowner may elect which of the two forms of compensation is  
2 acceptable. Within ninety days of a request for compensation the  
3 regulating body shall evaluate the economic loss and offer the  
4 landowner appropriate compensation under this chapter for a significant  
5 economic loss resulting from a restriction on the reasonable use of the  
6 affected land.

7 (2) If compensation is deemed unjustified by the regulating body,  
8 the request may be denied. The landowner may appeal the denial to the  
9 superior court of the county in which the property is located.

10 NEW SECTION. **Sec. 5.** (1) If compensation is found to be  
11 justified, and if the landowner elects, the regulating body shall offer  
12 to acquire the interest in the fee simple title which the regulation  
13 has unreasonably taken from the landowner. The amount to be offered by  
14 the regulating body is the difference between the fair market value of  
15 the landowner's interest in the property immediately before and after  
16 the imposition of the regulation as determined by the county assessor  
17 or other appraiser chosen by mutual agreement of the parties. In no  
18 case shall the amount offered exceed twenty percent of the fair market  
19 value of the fee simple interest in the property prior to the  
20 regulation.

21 (2) If the amount of compensation under this section is contested  
22 by the landowner, the dispute shall be submitted to binding arbitration  
23 under the procedures of chapter 7.04 RCW.

24 NEW SECTION. **Sec. 6.** (1) If an award for compensation is  
25 offered under section 5 of this act, the landowner may reject the offer  
26 and retain full title in the affected property. If the compensation  
27 under section 5 of the act is accepted, the landowner shall execute and  
28 deliver to the regulating body the necessary deed, covenant, servitude,

1 or other document, to transfer to the regulating body the interest in  
2 the fee simple title which the regulation has unreasonably taken from  
3 the landowner. The document may be recorded in the office of the  
4 recording officer of the county where the property is situated and a  
5 restriction imposed shall run with the land and shall be considered by  
6 the county assessor in establishing the fair market value of the  
7 property.

8 (2) Payments to the landowner under section 5 of this act shall be  
9 amortized over a period of ten years at the prevailing prime rate of  
10 interest, except that in cases of undue hardship the regulating body  
11 may accelerate the payments or make one lump sum payment.

12 NEW SECTION. **Sec. 7.** If an interest is acquired in property  
13 under section 5 of this act, the regulating body acquiring the interest  
14 may not develop, use, or otherwise alter the property except for  
15 maintenance and repair or as permitted under existing land use laws at  
16 the time of the acquisition.

17 NEW SECTION. **Sec. 8.** (1) If at a time subsequent to an  
18 acquisition, under section 5 of this act, the restriction imposed by  
19 the regulation at issue is removed by repeal, amendment, or otherwise,  
20 repurchase of the acquired interest by the then current landowner is  
21 mandatory.

22 (2) The repurchase price is the greater of the following two sums:

23 (a) The amount originally paid by the regulating body plus interest  
24 at the prevailing prime rate; or

25 (b) That amount that bears the same proportion to the current fair  
26 market value of the property as the amount originally paid by the  
27 regulating body bore to the then current fair market value, as

1 determined by the county assessor or other appraiser chosen by mutual  
2 agreement of the parties.

3 (3) if the amount of the repurchase price is contested by the  
4 landowner, the dispute shall be submitted to binding arbitration under  
5 the procedures of chapter 7.04 RCW. Until paid, the repurchase price  
6 shall constitute a lien on the property.

7 NEW SECTION. **Sec. 9.** (1) If compensation is found to be  
8 justified, and if the landowner elects, the regulating body may enter  
9 into an agreement with the landowner establishing a guaranteed sale  
10 price. By this agreement the regulating body shall guarantee the  
11 landowner that a future sale of the property will bring a specified  
12 price, to be subsequently adjusted to reflect the rate of inflation  
13 evidenced by the United States department of labor national consumer  
14 price index.

15 (2) The guaranteed sale price is the fair market value of the  
16 affected property prior to the imposition of the regulation as  
17 determined by the county assessor or other appraiser chosen by mutual  
18 agreement of the parties. If the amount is disputed by the landowner,  
19 it shall be settled by binding arbitration under the procedures of  
20 chapter 7.04 RCW.

21 (3) The owner of the property on which there has been established  
22 a guaranteed sale price under this section shall notify the regulating  
23 body of an intent to sell the affected property. On such notice the  
24 regulating body shall have the right of first refusal to purchase the  
25 property for the adjusted guaranteed sale price. If the purchase is  
26 declined by the regulating body, and the property is subsequently sold  
27 at a price less than the adjusted guaranteed sale price, the regulating  
28 body shall pay to the landowner the difference.

1 (4) If at a time subsequent to a guaranteed sale price agreement  
2 the restriction imposed by the regulation is removed by repeal,  
3 amendment, or otherwise, the guaranteed sale price agreement shall be  
4 null and void.

5 NEW SECTION. **Sec. 10.** By declining to request or accept  
6 compensation under this chapter, an affected landowner is deemed to  
7 have accepted the regulation as reasonable and valid and is not  
8 entitled to further appeal. Nothing in this chapter shall prevent a  
9 landowner from contesting a regulation on grounds other than that the  
10 regulation constitutes an unreasonable restriction on the use and  
11 enjoyment of the affected property.

12 NEW SECTION. **Sec. 11.** The methods of compensation and appeal,  
13 shall constitute the exclusive methods of compensation for land use  
14 regulations as defined in this chapter. Nothing in this chapter shall  
15 prevent a regulating body from acquiring interests in land or employing  
16 another land use planning device or program.

17 NEW SECTION. **Sec. 12.** There is created in the general fund the  
18 land use compensation fund under the control of the director of the  
19 department of ecology. There shall be placed in that fund any moneys  
20 as may be appropriated by the legislature or received by the state  
21 under section 8 of this act, which moneys shall be used solely for the  
22 purposes of this chapter.

23 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act shall  
24 constitute a new chapter in Title 90 RCW.

1        NEW SECTION.    **Sec. 14.**        This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.