

SENATE BILL 5122

State of Washington

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By Senators McCaslin, Patterson, Rasmussen, Thorsness, Hansen, Metcalf, Barr, Hayner, Amondson, Matson, Craswell, Vognild, Stratton, Roach, Oke and Erwin.

Read first time January 21, 1991. Referred to Committee on Governmental Operations.

1 AN ACT Relating to regulatory takings and other unconstitutional
2 interferences with the use of private property by governmental bodies;
3 and adding a new chapter to Title 64 RCW.

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

5 NEW SECTION. **Sec. 1.** Article I, sections 3 and 16 of the
6 Constitution of the state of Washington and Amendments V and XIV of the
7 Constitution of the United States provide that no person shall be
8 deprived of property without due process of law and no private property
9 shall be taken or damaged for public use without just compensation
10 having first been made. Recent decisions by the United States supreme
11 court and the supreme court of the state of Washington have established
12 the criteria and tests to be used for determining when a taking of
13 private property or violation of due process has occurred.

14 These criteria should be carefully evaluated by governmental bodies
15 whose actions affect private property so as to assure proper protection

1 of constitutionally guaranteed property rights and reduce the burdens
2 and uncertainty forced upon citizens, local governments, and the state
3 by lengthy and costly litigation to settle private property issues
4 through the judicial process.

5 The purpose of this chapter is to establish an orderly, consistent
6 process that better enables governmental bodies to evaluate whether
7 proposed regulatory or administrative actions may result in a taking of
8 private property or violation of due process. It is not the purpose of
9 this chapter to expand or reduce the scope of private property
10 protections provided in the state and federal Constitutions.

11 NEW SECTION. **Sec. 2.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

14 (1) "Private property" means all property protected by Amendments
15 V and XIV of the Constitution of the United States or Article I,
16 sections 3 and 16 of the Constitution of the state of Washington.

17 (2) "Government agency" means the state of Washington and any
18 officer, agency, board, commission, department, or similar body of the
19 executive branch of state government; and any of the political
20 subdivisions of the state including any cities, towns, counties, or
21 other public bodies exercising regulatory authority or control over the
22 use of private property in the state.

23 (3) "Taking" means an uncompensated damaging or deprivation of
24 private property in violation of the state or federal Constitution.

25 (4) "Policies that have constitutional implications" means current
26 or proposed regulations, ordinances, or resolutions; proposed state
27 legislation; or other government agency policy statements that, if
28 implemented or enacted, could effect a taking or deprive a person of
29 property without due process of law, such as policies, regulations,

1 orders, or agreements that propose or implement licensing, permitting,
2 or condition requirements or limitations on private property use, or
3 that require dedications or exactions from owners of private property.
4 "Policies that have constitutional implications" does not include
5 actions in which the power of eminent domain is formally exercised; or
6 law enforcement actions involving seizure of property for forfeiture or
7 as evidence in criminal proceedings.

8 NEW SECTION. **Sec. 3.** The attorney general shall develop a
9 checklist and guidelines by October 1, 1991, to assist government
10 agencies in the identification and evaluation of policies that have
11 constitutional implications including policies that may result in a
12 taking. The attorney general shall review and update the checklist and
13 guidelines at least on an annual basis to maintain consistency with
14 changes in the law.

15 NEW SECTION. **Sec. 4.** Commencing January 1, 1992, each
16 government agency proposing or implementing policies that have
17 constitutional implications shall designate a person or persons in the
18 agency who will be responsible for ensuring compliance with the
19 provisions of this chapter. Each agency policy that has constitutional
20 implications shall be submitted to the designated person for review.

21 Using the checklist and guidelines prepared pursuant to section 3
22 of this act, the designated person shall prepare a constitutional
23 impact assessment which includes an analysis of at least the following
24 elements:

25 (1) A description of how the policy affects private property
26 including the likelihood that the policy could result in a taking or
27 deprive a person of property without due process of law.

1 (2) Alternatives to the policy that would fulfill the government
2 agency's legal obligation but that would reduce the impact on the
3 private property owner and the risk of a taking.

4 (3) An estimate of the financial cost to the government agency for
5 compensation and a source of payment within the agency's budget.

6 Prior to implementing policies that have constitutional
7 implications, a copy of the constitutional impact assessment shall be
8 submitted to the agency director and appropriate financial management
9 authority.

10 Any award made to an owner of private property from a government
11 agency for a taking or other unconstitutional interference with the use
12 of private property, including any award of reasonable costs and
13 attorneys' fees, shall come from the agency's existing budget unless
14 the agency had previously disclosed an estimate of such costs to the
15 appropriate financial management authority and funds were included in
16 the budget for that purpose.

17 NEW SECTION. **Sec. 5.** Owners of a property interest, who
18 successfully establish that a policy that has constitutional
19 implications is an unconstitutional taking or violation of due process,
20 shall be awarded reasonable costs and attorneys' fees incurred in
21 establishing their claim. The remedies provided by this chapter are in
22 addition to any other remedies provided by law.

23 NEW SECTION. **Sec. 6.** The effect of policies that have
24 constitutional implications on the fair market value of affected
25 property shall be reflected in the assessed valuation of that property
26 for taxes, levies, and similar purposes.

1 NEW SECTION. **Sec. 7.** This chapter may be referred to as the
2 property rights protection act.

3 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
4 constitute a new chapter in Title 64 RCW.