
SENATE BILL 5419

State of Washington 52nd Legislature 1991 Regular Session

By Senators Barr, Patterson, Hansen, McCaslin and Bauer.

Read first time January 31, 1991. Referred to Committee on
Governmental Operations.

1 AN ACT Relating to the regulatory taking of private property by
2 state government; adding a new chapter to Title 8 RCW; and creating a
3 new section.

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

5 NEW SECTION. **Sec. 1.** The purpose of this chapter is to
6 establish an orderly process that better enables state decision makers
7 to evaluate whether proposed state regulatory or administrative actions
8 may result in a taking of property that may require compensation. It
9 is not the purpose of this chapter to expand or reduce the protection
10 of private property owners from regulatory takings as provided by the
11 state and federal Constitutions.

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

1 (1) "Policies that have taking implications" means state
2 regulations, proposed state regulations, or proposed state legislation,
3 that, if implemented or enacted, could effect a taking. "Policies that
4 have taking implications" does not include:

5 (a) Actions in which the power of eminent domain is formally
6 exercised.

7 (b) Actions abolishing regulations, discontinuing governmental
8 programs, or modifying regulations in a manner that lessens
9 interference with the use of private property.

10 (c) Law enforcement actions involving seizure, for violations of
11 law, of property for forfeiture, or as evidence in criminal
12 proceedings.

13 (2) "Private property" means all property protected by Amendments
14 V and XIV of the Constitution of the United States or Article I,
15 section 16 of the state Constitution.

16 (3) "Taking" means an uncompensated damaging or deprivation of
17 private property in violation of Amendment V or XIV of the Constitution
18 of the United States or Article I, section 16 of the state
19 Constitution.

20 (4) "State agency" means any state board, commission, department,
21 or officer except legislative and judicial branches.

22 NEW SECTION. **Sec. 3.** The attorney general shall develop a
23 checklist and guidelines for the evaluation of risk and avoidance of
24 unanticipated takings pursuant to this chapter to assist departments
25 and agencies in the identification and evaluation of governmental
26 policies that have taking implications.

27 The guidelines and checklist are to be completed by July 1, 1991.
28 The attorney general shall review and update the checklist and

1 guidelines at least on an annual basis to maintain consistency with
2 court rulings.

3 NEW SECTION. **Sec. 4.** (1) Commencing October 1, 1991, each
4 state agency or department proposing policies that have taking
5 implications shall designate a person or persons in the agency who will
6 be responsible for ensuring compliance with the provisions of this
7 chapter. Each agency policy that has a taking implication shall submit
8 the proposed agency action to the designated person for review.

9 (2) Using the checklist and guidelines for the evaluation of risk
10 and avoidance of unanticipated takings prepared pursuant to section 3
11 of this act, the designee shall determine the need for preparing a
12 "taking implications assessment." The "taking implications assessment"
13 shall include an analysis of at least the following elements:

14 (a) The likelihood that the proposed action could result in a
15 taking, including a description of how the taking affects private
16 property rights.

17 (b) Alternatives to the proposed action that would fulfill the
18 government's legal obligation but that would reduce the impact on the
19 private property owner and thus the taking risk.

20 (c) An estimate of a financial cost to the government for
21 compensation and source of payment within the agency's budget.

22 (3) Prior to implementing the policies that have taking
23 implications, a copy of the "taking implications assessment" shall be
24 submitted to the agency director and to the office of financial
25 management.

26 (4) Nothing in this act grants a private party the right to seek
27 judicial relief requiring compliance with the provisions of this act.

1 NEW SECTION. **Sec. 5.** Sections 2 through 4 of this act shall
2 constitute a new chapter in Title 8 RCW.