
SENATE BILL 5571

State of Washington 52nd Legislature 1991 Regular Session

By Senators Thorsness, Rasmussen, Matson and Nelson.

Read first time February 7, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to damages from governmental actions affecting real
2 property rights; amending RCW 64.40.010 and 64.40.020; and repealing
3 RCW 64.40.030.

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

5 **Sec. 1.** RCW 64.40.010 and 1982 c 232 s 1 are each amended to read
6 as follows:

7 As used in this chapter, the terms in this section shall have the
8 meanings indicated unless the context clearly requires otherwise.

9 (1) "Agency" means the state of Washington, any of its political
10 subdivisions, including any city, town, or county, and any other public
11 body exercising regulatory authority or control over the use of real
12 property in the state.

13 (2) "Permit" means any governmental approval required by law before
14 an owner of a property interest may improve, sell, transfer, or
15 otherwise put real property to use.

1 (3) "Property interest" means any interest or right in real
2 property in the state.

3 (4) "Damages" means reasonable expenses and losses, other than
4 speculative losses or profits, incurred between the time a cause of
5 action arises and the time a holder of an interest in real property is
6 granted relief as provided in RCW 64.40.020. Damages must be caused by
7 an act, necessarily incurred, and actually suffered, realized, or
8 expended, but are not based upon diminution in value of or damage to
9 real property(~~(, or litigation expenses)~~).

10 (5) "Regulation" means any ordinance, resolution, or other rule or
11 regulation adopted pursuant to the authority provided by state law,
12 which imposes or alters restrictions, limitations, or conditions on the
13 use of real property.

14 (6) "Act" means a final decision by an agency which places
15 requirements, limitations, or conditions upon the use of real property
16 in excess of those allowed by applicable regulations in effect on the
17 date an application for a permit is filed. "Act" also means the
18 failure of an agency to act within time limits established by law in
19 response to a property owner's application for a permit(~~(: PROVIDED,~~
20 ~~That there is no "act" within the meaning of this section when the~~
21 ~~owner of a property interest agrees in writing to extensions of time,~~
22 ~~or to the conditions or limitations imposed upon an application for a~~
23 ~~permit. "Act" shall not include lawful decisions of an agency which~~
24 ~~are designed to prevent a condition which would constitute a threat to~~
25 ~~the health, safety, welfare, or morals of residents in the area.~~

26 ~~In any action brought pursuant to this chapter, a defense is~~
27 ~~available to a political subdivision of this state that its act was~~
28 ~~mandated by a change in statute or state rule or regulation and that~~
29 ~~such a change became effective subsequent to the filing of an~~
30 ~~application for a permit)~~).

1 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to read
2 as follows:

3 (1) Owners of a property interest who have filed an application for
4 a permit have an action for damages to obtain relief from acts of an
5 agency which are arbitrary, capricious, unlawful, or exceed lawful
6 authority, or relief from a failure to act within time limits
7 established by law(~~(:—PROVIDED, That the action is unlawful or in~~
8 ~~excess of lawful authority only if the final decision of the agency was~~
9 ~~made with knowledge of its unlawfulness or that it was in excess of~~
10 ~~lawful authority, or it should reasonably have been known to have been~~
11 ~~unlawful or in excess of lawful authority))).~~

12 (2) The prevailing party in an action brought pursuant to this
13 chapter may be entitled to reasonable costs and attorney's fees.

14 (3) No cause of action is created for relief from unintentional
15 procedural or ministerial errors of an agency.

16 (4) Invalidation of any regulation in effect prior to the date an
17 application for a permit is filed with the agency shall not constitute
18 a cause of action under this chapter.

19 NEW SECTION. **Sec. 3.** RCW 64.40.030 and 1982 c 232 s 3 are
20 each repealed.