

2 **SSB 5372** - S AMD

3 By Senators Snyder, Anderson, West, Hargrove, Bluechel, Owen,  
4 McCaslin, Sellar, McDonald and Newhouse

5 SCOPED - RULED OUT OF ORDER 3/15/93

6 On page 34, line 12, after "16" strike "and 17" and insert ", 17,  
7 and 45 through 59"

8 SCOPED - RULED OUT OF ORDER 3/15/93

9 On page 34, after line 15, insert the following:

10 "NEW SECTION. **Sec. 45.** (1)(a) Whenever implementation by the  
11 state or any of its political subdivisions of a scheme directly or  
12 indirectly regulating the use of land operates to reduce the assessed  
13 value of a parcel of real property immediately prior to such  
14 implementation, the parcel is deemed to be taken for public use.

15 (b) The following definitions apply throughout this chapter:

16 (i) "Compensation" means cash or in-kind payment, if the affected  
17 property owner agrees to in-kind payment and then agrees to the in-kind  
18 payment actually offered, including but not limited to clustering;  
19 transfer of development rights; staging of concurrency; land trades;  
20 environmental mitigation credits for prior activity of owners; density  
21 bonuses; or adjustments to restrictions on lot size, number of units,  
22 or building dimensions.

23 (ii) "Parcel" means one or more contiguous tax lots of an owner.

24 (iii) "Owner" includes one or more natural or legal persons who own  
25 the parcel, whether as sole owner, marital community, cotenants, or  
26 tenants in partnership or as a corporation.

27 (iv) "Scheme regulating the use of land" means one regulation or  
28 government action affecting the use of land; or more than one such  
29 regulation or action, though occurring at different times or by  
30 different governmental entities, with the same or similar policy  
31 objectives, such as development moratoria, zoning, health regulations,  
32 safety regulations, aesthetic regulations, fish and wildlife  
33 regulations, sensitive-area regulations, and environmental regulations,  
34 whether such regulation or action is interim or permanent. A scheme  
35 regulating the use of land does not include any regulation or  
36 government action of the federal government or regulation or government

1 action of the state or any local governmental entity taken to comply  
2 with the minimum requirements of federal law or regulation.

3 (2)(a) When a parcel of real property has been taken for public use  
4 as provided in this chapter, the governmental unit or units that  
5 implement the scheme regulating the use of land shall be liable to the  
6 owner for compensation under this chapter, and the owner shall have an  
7 action at law to recover such compensation. When more than one  
8 governmental unit is involved, the court shall determine the proportion  
9 each unit is required to contribute to the compensation.

10 (b) The compensation shall be for the full amount of the decrease  
11 in assessed value. In addition, an owner who prevails either through  
12 settlement or verdict in an action for the recovery of such  
13 compensation shall be entitled to reasonable costs, expenses of  
14 litigation, and sums for attorneys' fees.

15 (3) Governmental units subject to this chapter shall not make  
16 waiver of the provisions of this chapter a condition for approval of  
17 the use of real property or the issuance of any permit or other  
18 entitlement. Plaintiffs may accept an approval of use, permit, or  
19 other entitlement granted by the governmental unit without compromising  
20 their rights under this chapter if:

21 (a) A written reservation of their rights is made at the time of  
22 acceptance of the authorization, permit, or other entitlement; or

23 (b) An oral statement reserving their rights is made before the  
24 governmental unit granting the authorization, permit, or other  
25 entitlement at a public meeting at which the governmental unit renders  
26 its decision.

27 NEW SECTION. **Sec. 46.** Compensation is required by this chapter  
28 unless the scheme regulating the use of land is an exercise of the  
29 police power solely to prevent or abate a public nuisance as defined at  
30 common law or an application of the public trust doctrine as it relates  
31 to navigable water only.

32 NEW SECTION. **Sec. 47.** (1) The statute of limitations for actions  
33 brought under this chapter is the statute of limitations for actions  
34 for recovery of real property. The statute of limitations begins to  
35 run upon the enactment of the scheme regulating the use of land; or the  
36 final administrative decision implementing the scheme regulating the

1 use of land affecting plaintiffs' property or by a showing by the  
2 plaintiff that application for administrative decision is futile.

3 (2) A scheme regulating the use of land is implemented with respect  
4 to an owner's or user's property when actually applied to that property  
5 unless the enactment of the scheme by itself operates to reduce the  
6 fair market value of real property for the uses permitted at the time  
7 the owner acquired title, without further governmental action and the  
8 scheme contains no provision allowing for just relief from the scheme's  
9 operation.

10 (3) This chapter applies to schemes regulating the use of land, all  
11 or some part of which is implemented after the effective date of this  
12 section. No part of a scheme shall be considered for purposes of this  
13 chapter if the part was implemented more than ten years before the  
14 effective date of this section.

15 NEW SECTION. **Sec. 48.** If a natural event or condition threatens  
16 to deprive an owner of land of the land's use or to cause serious  
17 damage to the land, and immediate corrective action is required to  
18 prevent this deprivation or damage, but this action will violate a  
19 state or local law or regulation unless official waiver or permission  
20 is obtained, the owner may either:

21 (1) Apply to the governmental unit charged with enforcing such  
22 regulation to take, or to permit the owner to take, the required  
23 corrective action. If the governmental unit wrongfully denies waiver  
24 or permission or fails to take reasonably timely action upon the  
25 application, so that such deprivation or damage occurs, the  
26 governmental unit shall be liable to the owner for the diminution in  
27 value of the land which occurs unless the natural event or condition  
28 was the fault of the owner; or

29 (2) Without notifying the governmental unit under subsection (1) of  
30 this section, take such corrective action as is reasonably necessary to  
31 prevent the threatened deprivation or damage. However, the owner shall  
32 notify the governmental unit that he or she has undertaken the  
33 corrective action within five days after commencing such action and  
34 shall give a general description of the action undertaken. Thereafter,  
35 in a legal action brought by the governmental unit, the owner shall be  
36 liable for violation of the regulation if a court determines that there  
37 was a violation and that an owner would not have qualified for any  
38 available waiver or exemption.

1        NEW SECTION.    **Sec. 49.**    (1) If a governmental unit is found by a  
2 court of competent jurisdiction to have committed a regulatory taking  
3 under section 45 of this act, such unit shall be liable for  
4 compensation, measured by the owner's diminution in assessed value  
5 caused by such taking from the time the scheme that regulated the use  
6 of the owner's land became effective until the unit may grant an  
7 exemption or choose to repeal such scheme.    However, if the  
8 governmental unit does not grant an exemption or choose to repeal the  
9 regulatory scheme within a reasonable period of time, to be fixed by  
10 the court, then the unit shall be liable for compensation for a  
11 permanent taking, measured by the diminution of fair market sale value  
12 caused by the taking, valued as of the date of trial.    This section  
13 shall not affect any further remedy that is constitutionally required.

14        (2) Any permit, authorization, or other entitlement granted under  
15 a scheme repealed under subsection (1) of this section shall continue  
16 to be valid.

17        NEW SECTION.    **Sec. 50.**    This chapter does not preclude any action  
18 at law or equity that an owner would have had if this chapter had not  
19 been enacted.

20        NEW SECTION.    **Sec. 51.**    If the state or any of its political  
21 subdivisions imposes, changes, or implements any scheme regulating the  
22 use of land in such a way as to reduce the previous assessed value of  
23 a taxpayer's property, the county assessor shall, on or before the  
24 ensuing April 1, adjust the property's assessed value downward by an  
25 amount equal to the difference between the assessed value of the  
26 property under the new scheme, and the previous assessed value.

27        NEW SECTION.    **Sec. 52.**    Whenever any compensation is paid to a  
28 property owner by the state or by any local governmental entity  
29 pursuant to a judgment or agreement to compensate for a regulatory  
30 taking under this chapter, the payor shall cause to be recorded with  
31 the county auditor for the county in which the real property is located  
32 a notice of compensation for regulatory taking.    This notice shall  
33 contain a legal description of the affected parcel of real estate, a  
34 statement of the reason for compensation, the name of the payor, the  
35 name of the owner, and the amount paid.

1        NEW SECTION.    **Sec. 53.**    If a county, city, or health district is  
2 found by a court to have committed a regulatory taking under section 45  
3 of this act, the court shall require that the compensation owed be paid  
4 by the state if the scheme regulating the use of land was adopted or  
5 implemented by the county or city in order to effectuate a policy or  
6 requirement of state or federal law.

7        NEW SECTION.    **Sec. 54.**    This chapter shall be known and may be  
8 cited as the private property protection act.

9        NEW SECTION.    **Sec. 55.**    A new section is added to chapter 35.21 RCW  
10 to read as follows:

11        Any city or town subject to the provisions of this title is also  
12 subject to sections 45 through 54 of this act.

13        NEW SECTION.    **Sec. 56.**    A new section is added to chapter 35A.21  
14 RCW to read as follows:

15        Any code city subject to the provisions of this title is also  
16 subject to sections 45 through 54 of this act.

17        NEW SECTION.    **Sec. 57.**    A new section is added to chapter 36.01 RCW  
18 to read as follows:

19        Any county subject to the provisions of this title is also subject  
20 to sections 45 through 54 of this act.

21        NEW SECTION.    **Sec. 58.**    Sections 45 through 54 of this act shall  
22 constitute a new chapter in Title 8 RCW.

23        NEW SECTION.    **Sec. 59.**    If any provision of sections 45 through 54  
24 of this act or its application to any person or circumstance is held  
25 invalid, the remainder of the act or the application of the provision  
26 to other persons or circumstances is not affected."

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31        On page 1, line 9 of the title, after "84.52 RCW;" insert "adding  
32 a new section to chapter 35.21 RCW; adding a new section to chapter

1 35A.21 RCW; adding a new section to chapter 36.01 RCW; adding a new  
2 chapter to Title 8 RCW;"

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