

2 **SB 5638** - S AMD - 000087

3 By Senators Snyder, Anderson, Hargrove, Owen, Amondson, Bluechel  
4 and Cantu

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

6 On page 3, after line 2, insert the following:

7 "NEW SECTION. **Sec. 2.** The value of property is directly affected  
8 by the regulations, policies, and actions of state and local  
9 government. If affected, the property assessment for tax purposes must  
10 be reduced because of the taking and the compensation required by the  
11 state Constitution must be paid. The criteria established in RCW  
12 84.40.030 (1) through (3) are clarified by sections 3 through 11 of  
13 this act.

14 NEW SECTION. **Sec. 3.** (1)(a) Whenever implementation by the state  
15 or any of its political subdivisions of a scheme directly or indirectly  
16 regulating the use of land operates to reduce the value of a parcel of  
17 real property immediately prior to such implementation, the parcel is  
18 deemed to be taken for public use.

19 (b) The following definitions apply throughout sections 2 through  
20 11 of this act:

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

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

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

32 (iv) "Scheme regulating the use of land" means one regulation or  
33 government action affecting the use of land; or more than one such  
34 regulation or action, though occurring at different times or by  
35 different governmental entities, with the same or similar policy  
36 objectives, such as development moratoria, zoning, health regulations,

1 safety regulations, aesthetic regulations, fish and wildlife  
2 regulations, sensitive-area regulations, and environmental regulations,  
3 whether such regulation or action is interim or permanent. A scheme  
4 regulating the use of land does not include any regulation or  
5 government action of the federal government or regulation or government  
6 action of the state or any local governmental entity taken to comply  
7 with the minimum requirements of federal law or regulation.

8 (2)(a) When a parcel of real property has been taken for public use  
9 as provided in sections 2 through 11 of this act, the governmental unit  
10 or units that implement the scheme regulating the use of land shall be  
11 liable to the owner for compensation, and the owner shall have an  
12 action at law to recover such compensation. When more than one  
13 governmental unit is involved, the court shall determine the proportion  
14 each unit is required to contribute to the compensation.

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

20 (3) Governmental units subject to sections 2 through 11 of this act  
21 shall not make waiver of the provisions of sections 2 through 11 of  
22 this act a condition for approval of the use of real property or the  
23 issuance of any permit or other entitlement. Plaintiffs may accept an  
24 approval of use, permit, or other entitlement granted by the  
25 governmental unit without compromising their rights under sections 2  
26 through 11 of this act if:

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

29 (b) An oral statement reserving their rights is made before the  
30 governmental unit granting the authorization, permit, or other  
31 entitlement at a public meeting at which the governmental unit renders  
32 its decision.

33 NEW SECTION. **Sec. 4.** Compensation is required by sections 2  
34 through 11 of this act unless the scheme regulating the use of land is  
35 an exercise of the police power solely to prevent or abate a public  
36 nuisance as defined at common law or an application of the public trust  
37 doctrine as it relates to navigable water only.

1        NEW SECTION.    **Sec. 5.**    (1) The statute of limitations for actions  
2 brought under sections 2 through 11 of this act is the statute of  
3 limitations for actions for recovery of real property. The statute of  
4 limitations begins to run upon the enactment of the scheme regulating  
5 the use of land; or the final administrative decision implementing the  
6 scheme regulating the use of land affecting plaintiffs' property or by  
7 a showing by the plaintiff that application for administrative decision  
8 is futile.

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

16        (3) Sections 2 through 11 of this act apply to schemes regulating  
17 the use of land, all or some part of which is implemented after the  
18 effective date of this act. No part of a scheme shall be considered  
19 for purposes of sections 2 through 11 of this act if the part was  
20 implemented more than ten years before the effective date of this act.

21        NEW SECTION.    **Sec. 6.**    If a natural event or condition threatens to  
22 deprive an owner of land of the land's use or to cause serious damage  
23 to the land, and immediate corrective action is required to prevent  
24 this deprivation or damage, but this action will violate a state or  
25 local law or regulation unless official waiver or permission is  
26 obtained, the owner may either:

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

35        (2) Without notifying the governmental unit under subsection (1) of  
36 this section, take such corrective action as is reasonably necessary to  
37 prevent the threatened deprivation or damage. However, the owner shall  
38 notify the governmental unit that he or she has undertaken the

1 corrective action within five days after commencing such action and  
2 shall give a general description of the action undertaken. Thereafter,  
3 in a legal action brought by the governmental unit, the owner shall be  
4 liable for violation of the regulation if a court determines that there  
5 was a violation and that an owner would not have qualified for any  
6 available waiver or exemption.

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

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

23 NEW SECTION. **Sec. 8.** Sections 2 through 11 of this act do not  
24 preclude any action at law or equity that an owner would have had if  
25 sections 2 through 11 of this act had not been enacted.

26 NEW SECTION. **Sec. 9.** If the state or any of its political  
27 subdivisions imposes, changes, or implements any scheme regulating the  
28 use of land in such a way as to reduce the previous assessed value of  
29 a taxpayer's property, the county assessor shall, on or before the  
30 ensuing April 1, adjust the property's assessed value downward by an  
31 amount equal to the difference between the assessed value of the  
32 property under the new scheme, and the previous assessed value.

33 NEW SECTION. **Sec. 10.** Whenever any compensation is paid to a  
34 property owner by the state or by any local governmental entity  
35 pursuant to a judgment or agreement to compensate for a regulatory

1 taking under sections 2 through 11 of this act, the payor shall cause  
2 to be recorded with the county auditor for the county in which the real  
3 property is located a notice of compensation for regulatory taking.  
4 This notice shall contain a legal description of the affected parcel of  
5 real estate, a statement of the reason for compensation, the name of  
6 the payor, the name of the owner, and the amount paid.

7 NEW SECTION. **Sec. 11.** If a county, city, or health district is  
8 found by a court to have committed a regulatory taking under section 3  
9 of this act, the court shall require that the compensation owed be paid  
10 by the state if the scheme regulating the use of land was adopted or  
11 implemented by the county or city in order to effectuate a policy or  
12 requirement of state or federal law.

13 NEW SECTION. **Sec. 12.** Sections 2 through 11 of this act are each  
14 added to chapter 84.40 RCW."

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19 On page 1, line 2 of the title, after "regulations;" strike "and  
20 amending RCW 84.40.030" and insert "amending RCW 84.40.030; and adding  
21 new sections to chapter 84.40 RCW"

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