

**SENATE BILL REPORT**

**SB 5369**

**AS OF FEBRUARY 9, 1993**

**Brief Description:** Creating procedures for constitutional property claims.

**SPONSORS:** Senators Haugen, Oke, Owen, Winsley and McDonald

**SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

**Staff:** Rod McAulay (786-7754)

**Hearing Dates:** February 10, 1993

**BACKGROUND:**

The Fifth Amendment of the federal Constitution provides that no person may be deprived of property without due process of law and that no property may be taken for public use without just compensation. The state Constitution similarly provides that no private property shall be taken or damaged for public or private use without just compensation having first been made.

Legislation enacted in 1982 specifically authorized an action for damages to property owners who have filed an application for a permit where a government agency in response, acts in an arbitrary, capricious, or unlawful manner and the agency knows or should know that such acts are unlawful.

Regulatory activities by government agencies at all levels have been increasingly the subject of lawsuits claiming that property has been "taken" without compensation or that the owner has been deprived of a property right without due process of law.

When a citizen believes that their constitutional rights against improper "takings" have been violated, they must first exhaust their administrative remedies prior seeking relief in the courts. These remedies may include seeking repeal, mitigation, or exception from the regulation which is causing the loss. If the claim is one against the state or federal government, various civil claim procedures have been established to deal with claims against the government. At the state level, the Office of Risk Management in the Department of General Administration is authorized to review claims against the state and settle such claims where it appears justified. The failure of a claimant to exhaust their administrative remedies may be the basis for a court refusing to consider a case unless the claimant can show that pursuing the administrative remedy would be futile.

**SUMMARY:**

An administrative procedure for resolving claims against an agency or its officials regulating the use of lands in which the claimant has a property interest is established. The process is initiated by the claimant giving the agency a notice of intent to sue at least 45 days before filing suit. In any subsequent suit, the claimant is limited to facts and theories disclosed in the notice or any supplement delivered at least 30 days before the suit is filed. In response to the notice, the agency may reverse or modify its action as requested or notify the claimant that it will consider reversing or modifying its action within 15 days after the complainant provides specified information or an explanation of why the specified information cannot be provided at a reasonable cost. An agency may offer an alternative solution and the claimant may file a supplemental notice or proceed to file suit.

If a notice of intent to sue names an individual agency official, the agency may respond by affirming the individual's action or refusing to ratify the act in question.

After receiving a notice of intent to sue, the agency may notify the claimant of the additional administrative remedies the agency believes are available. In a subsequent suit, a claim may not be barred or impaired by failure to exhaust an administrative remedy described in the agency's notice.

During any subsequent suit, the defendant agency may elect to acquire the property through condemnation or record a declaration of partial taking. Where a declaration of partial taking is filed, the case shall proceed as if the agency had acquired the rights described in the declaration by power of eminent domain. If the case proceeds to judgment, the court may grant whatever relief, including injunctive relief, interim damages of up to 1 percent of the assessed value of the property in question for each month that the complainant was unlawfully deprived of its use, and attorneys' fees and other expenses incurred.

Procedures are established of the sharing of damages between levels of government where actions are joint or in response to a mandate.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested February 3, 1993