

SENATE BILL REPORT

SB 5431

AS REPORTED BY COMMITTEE ON NATURAL RESOURCES, MARCH 2, 1993

Brief Description: Restricting regulatory takings of private property.

SPONSORS: Senators Snyder, Amondson, Vognild, M. Rasmussen, Bauer, Jesernig, Hargrove, Williams, Sheldon, Newhouse, McCaslin, Erwin, Hochstatter, Moyer, Oke, McDonald, Nelson, Anderson, Roach, Bluechel, Sellar, L. Smith, Barr, von Reichbauer, Deccio, Loveland and Quigley

SENATE COMMITTEE ON NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5431 be substituted therefor, and the substitute bill do pass.

Signed by Senators Owen, Chairman; Hargrove, Vice Chairman; Amondson, Erwin, Franklin, Oke, Sellar, L. Smith, and Snyder.

Minority Report: Do not pass substitute.

Signed by Senators Haugen and Spanel.

Staff: Vic Moon (786-7469)

Hearing Dates: February 12, 1993; March 2, 1993

SENATE COMMITTEE ON WAYS & MEANS

Staff: Steve Jones (786-7440)

Hearing Dates: March 5, 1993

BACKGROUND:

The United States Constitution and the Washington State Constitution contain provisions which prohibit the "taking" of private property for public use without just compensation to the property owner. A "taking of property" may be deemed to have occurred as a result of the implementation of a government regulation. In determining whether such a regulatory "taking" has occurred, the state and federal courts have looked to a variety of criteria, including whether the regulation advances a legitimate state interest, whether a fundamental attribute of ownership has been denied the owner, and whether the economic impact of the regulation denies all economically viable use of the property.

Under criteria articulated by the state and federal courts, a reduction in fair market value of a parcel of real estate by 50 percent or more as a direct result of the implementation of a regulatory program would not necessarily result in a finding that a "taking" has occurred, absent other factors. Under

current case law it is possible that a near total reduction of the value could occur without triggering a "taking" if other criteria were not met.

The remedies available to compensate for a "taking" of property include the actual transfer of the property to the public and the payment of fair market value to the owner, a payment of damages to the owner, modification or repeal of the regulation, or a transfer of some type of development rights or bonus measures to the owner.

Current judicial standards for determining when a taking has occurred are unclear and may not adequately protect property owners from government regulations according to some authorities. Property owners are required to absorb the cost of tighter growth restrictions and policies which benefit all citizens of the state but which reduce the value of their property.

SUMMARY:

If a regulation or action of the state or political subdivision diminishes the assessed value of property, then the state or political subdivision will compensate the property owner for the amount of diminution, either in cash or "in-kind."

There are two exceptions created to the compensation requirement. There will be no compensation if the regulation or action prevents a public nuisance or is an exercise of the public trust doctrine as it relates to the protection of navigable waters. Federal regulations and local or state regulations implementing them are exempt from the act.

The statute of limitations for recovery under the statute runs either from the date of the regulation's effectiveness or from the date of the implementation of the regulation. Compensation is provided for property owners if they are denied permission to take action to avoid damage caused by a natural event. An owner may take action without immediately notifying the permitting agency but the owner will be liable if the action would not have otherwise qualified for the necessary permission.

Government entities may repeal a regulation or action which diminishes property value and then may compensate for a temporary loss of use. Other actions against government are available to property owners. The county assessor is required to adjust the property's assessed value downward by the amount of diminution of the property's value. Government entities paying compensation to owners must record notice of such compensation with the county auditor. The compensation means cash payment, in-kind payment, or payment where the property owner has agreed to changes in development rights, land trades, environmental mitigation credits, density bonuses, or adjustments in the restriction of lot size, number of units and building dimensions may also be allowed for compensation with agreement by the property owner.

The act will not apply to laws or regulations enacted ten years prior to the act.

EFFECT OF PROPOSED SUBSTITUTE:

Language is included to clarify that courts must be "of competent jurisdiction." Language is added to require that the state pay compensation if local government was implementing a state or federal law.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Natural Resources):

State and local government is going too far with its regulation concerning the uses that people may put their private property to and the things that people must do to comply with state and local ordinances to obtain such things as building permits and the right to develop property.

TESTIMONY AGAINST (Natural Resources):

The bill goes too far and will cost local and state government too much money if all takings must be compensated for in either money or in kind.

TESTIFIED (Natural Resources): PRO: David Wood, Ted Cowan, Property Rights Alliance; Judy Moody, Puget Sound Property Rights Alliance; Rick Nelson, Cattleman's Assn.; Gerald Richert, J.R. Company; Dr. Darrell Turner, WA State Farm Bureau; Harvey La Born; Eric Gronberg, WA Farm Forestry Assn.; John Gintz, Inland County Cattlemen's Assn.; Nels Hanson, WA Farm Forestry Assn.; CON: Karen Van Dusen, WA State Dept. of Health; June Hanson, Lewis County; Tim Bjorgen, WA Assn. of Prosecuting Attorneys; Bob Max, City of Tacoma; John Magnatto, Commissioner, Clark County; Steve Lancaster, Auburn Planning Director