

**SENATE BILL REPORT**

**SB 5475**

**AS OF FEBRUARY 11, 1993**

**Brief Description:** Restricting regulatory takings of private property.

**SPONSORS:** Senators Amondson, Snyder, M. Rasmussen, Hargrove, Deccio, Moyer, Prince, L. Smith, Cantu, Anderson, Oke, Erwin, McCaslin, Bluechel, Roach, Barr, Sellar, Newhouse, Quigley and Hochstatter

**SENATE COMMITTEE ON NATURAL RESOURCES**

**Staff:** Vic Moon (786-7469)

**Hearing Dates:** February 12, 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:**

Compensation under this statute shall be paid for any diminution in fair market value and the fair market value of wetlands will be paid with wetlands being deemed that their present status is their highest and best use value.

If a regulation or action of the state or political subdivision diminishes the fair market 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 on the date of the regulation's effectiveness or on 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 qualified otherwise 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.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested