

SENATE BILL REPORT

SB 6167

AS REPORTED BY COMMITTEE ON NATURAL RESOURCES, FEBRUARY 4, 1994

Brief Description: Limiting the regulation of private property.

SPONSORS: Senators Snyder, Anderson, Hargrove, Amondson, M. Rasmussen, Bauer, Oke, Erwin, L. Smith, Owen, Vognild, Prince, Bluechel, Loveland, Roach, Nelson, Morton, Ludwig, Hochstatter, Williams, Sheldon, Moyer, A. Smith, Newhouse, McAuliffe, Wojahn, West, McDonald, Moore, Sellar, Quigley and Schow

SENATE COMMITTEE ON NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 6167 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass substitute.

Signed by Senators Franklin and Haugen.

Staff: Vic Moon (786-7469)

Hearing Dates: January 28, 1994; February 4, 1994

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:

Regulations of private property are prohibited unless the properties are identified, the owners are notified of proposed legislation and an economic impact is done. Regulations that relate to private property must be the least restricted option to accomplish the legislative purpose.

The designation of property as wetland, open space, wildlife habitat, buffer zone or other public benefit property converts that property to a general public use. When property is so converted to general use, compensation is due within three months or the designation of the property into that category is void. The state of Washington is responsible for the liability created by local government action that is required by state law. Any public entity considering the designation of lands is responsible for studies, mapping, plans and reports connected with the designation.

EFFECT OF PROPOSED SUBSTITUTE:

Technical changes were made to clarify the original bill.

Appropriation: none

Revenue: none

Fiscal Note: requested January 17, 1994

TESTIMONY FOR:

The state needs more specific language than the Constitution to provide reimbursement for lands taken for public use.

TESTIMONY AGAINST:

The bill is too costly and would overturn much zoning and land use regulation.

TESTIFIED: Glen Hudson, WA Association of Realtors (pro); Sandy Short (pro); Garry Winberg, Jefferson County Property Rights Alliance (pro); Patricia Helm (pro); Janice Frichette (pro); Mike Ryherd, 1,000 Friends of Washington (con)