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HOUSE BILL 1488

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State of Washington

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By Representatives Sheahan, Sheldon, Brumsickle, Basich, Morton, Fuhrman, Schmidt, Schoesler, Padden, Edmondson, Stevens, Dyer, Vance, Chappell, Casada, Hansen, Ballasiotes, Foreman, Chandler, Wood, Van Luven, Morris and Lisk

Read first time 01/29/93. Referred to Committee on Judiciary.

1 AN ACT Relating to regulatory takings of private property; adding  
2 a new chapter to Title 8 RCW; adding a new section to chapter 35.21  
3 RCW; adding a new section to chapter 35A.21 RCW; and adding a new  
4 section to chapter 36.01 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) Whenever implementation by the state or  
7 any of its political subdivisions of any regulatory program operates to  
8 reduce the fair market value of real property to less than fifty  
9 percent of its fair market value for the uses permitted at the time the  
10 owner acquired the title, the property is deemed to have been taken for  
11 the use of the public. These regulatory programs include, but are not  
12 limited to, land use planning or zoning programs.

13 (2)(a) The owner or user has the right to require condemnation by  
14 and just compensation from the governmental unit, or units, when more  
15 than one governmental unit is involved, imposing the regulation  
16 resulting in decreased value, or to receive compensation for the  
17 reduction in value caused by government action, and in either case to  
18 have this compensation determined by a jury. When more than one

1 governmental unit is involved, the court shall determine the proportion  
2 each unit is required to contribute to the compensation.

3 (b) The compensation shall be for the full value of the interest  
4 taken or for the full amount of the decrease in fair market value and  
5 shall not be limited to the amount by which the decrease in fair market  
6 value exceeds fifty percent.

7 (3) Governmental units subject to this chapter shall not make  
8 waiver of the provisions of this chapter a condition for approval of  
9 the use of real property or the issuance of any permit or other  
10 entitlement. Plaintiffs may accept an approval of use, permit, or  
11 other entitlement granted by the governmental unit without compromising  
12 their rights under this chapter if:

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

15 (b) An oral statement is made before the governmental unit granting  
16 the authorization, permit, or other entitlement at a public meeting at  
17 which the governmental unit renders its decision.

18 NEW SECTION. **Sec. 2.** Compensation is not required by this chapter  
19 if the regulatory program is an exercise of the police power to prevent  
20 uses noxious in fact or demonstrable harm to the health and safety of  
21 the public. "Noxious use" means that the use amounts to a public  
22 nuisance in fact. Determination by the governmental unit or units  
23 involved that a use is a noxious use or poses a demonstrable harm to  
24 public health and safety is not binding upon the court. Review of the  
25 governmental unit or units' determination shall be de novo.

26 NEW SECTION. **Sec. 3.** (1) The statute of limitations for actions  
27 brought under this chapter is the statute of limitations for ordinary  
28 actions brought for injuries to real property. The statute of  
29 limitations begins to run upon the final administrative decision  
30 implementing the regulatory program affecting plaintiffs' property.

31 (2) A program is implemented with respect to an owner's or user's  
32 property when actually applied to that property unless the enactment of  
33 the program by itself operates to reduce the fair market value of real  
34 property, or any legally recognized interest therein, to less than  
35 fifty percent of its fair market value for the uses permitted at the  
36 time the owner acquired title, without further governmental action and

1 the program contains no provision allowing for relief from the  
2 program's operation.

3 (3) This chapter applies to new regulatory programs and to the  
4 application of regulatory programs in effect on the effective date of  
5 this act, including, but not limited to, land use law or zoning laws  
6 and regulations to the owner's property.

7 NEW SECTION. **Sec. 4.** If a property owner is deprived of the use  
8 of his or her property by an exigent natural condition and mitigating  
9 action is regulated by state or local code, the owner may:

10 (1) Wait for the regulating agency to permit abatement of the  
11 condition or mitigating action. If the agency response is too slow to  
12 prevent substantial property damage that a reasonably timely response  
13 would have avoided, the owner may be compensated to the extent of the  
14 harm; or

15 (2) Contact the regulating agency and if it appears administrative  
16 action will not allow the owner to abate or mitigate the condition  
17 action in time to avoid substantial property damage, the owner may take  
18 reasonable action to mitigate immediate property damage. The owner  
19 must consult the regulating agency within five days of the mitigating  
20 action that is taken and give the reason for such action. The agency  
21 may assess penalties against the owner for violation of the code or  
22 ordinance if the owner's actions are determined by the agency to be  
23 substantially without merit.

24 NEW SECTION. **Sec. 5.** (1) If a governmental unit is found to have  
25 committed a regulatory taking under section 1 of this act, it may  
26 avoid paying compensation by recalling the regulation in question, or  
27 granting an exemption to the specific property to the level of  
28 regulation previously in place, except in the case of exigent  
29 circumstances. In such event, the governmental unit is liable to the  
30 plaintiff landowner or user for the reasonable and necessary costs of  
31 the regulatory taking action, plus any actual and demonstrable economic  
32 losses caused the plaintiff by the regulation during the period in  
33 which it was in effect. This section does not affect any remedy that  
34 is constitutionally required.

35 (2) Any permit, authorization, or other entitlement granted under  
36 a program rolled back under subsection (1) of this section shall  
37 continue to be valid.

1        NEW SECTION.    **Sec. 6.**    This chapter does not preclude property  
2 owners from bringing legal challenges to regulatory programs affected  
3 by this chapter in instances where the regulatorily caused diminution  
4 in value of the property or the use thereof does not exceed fifty  
5 percent of fair market value for the uses permitted at the time the  
6 owner acquired title. It also does not preclude property owners from  
7 bringing legal challenges to regulatory programs affected by this  
8 chapter based on other provisions of law.

9        NEW SECTION.    **Sec. 7.**    If the state or any of its political  
10 subdivisions imposes, changes, or implements any land use planning,  
11 zoning, or other regulatory program in such a way as to reduce the  
12 previous fair market value of a taxpayer's property, the county  
13 assessor shall, on or before the ensuing April 1, adjust the property's  
14 assessed value downward by an amount equal to the difference between  
15 the fair market value of the property under the new regulatory program,  
16 and the previous fair market value.

17        NEW SECTION.    **Sec. 8.**    This chapter shall be known and may be cited  
18 as the private property protection act.

19        NEW SECTION.    **Sec. 9.**    A new section is added to chapter 35.21 RCW  
20 to read as follows:

21        Any city or town subject to the provisions of this title is also  
22 subject to sections 1 through 8 of this act.

23        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 35A.21  
24 RCW to read as follows:

25        Any code city subject to the provisions of this title is also  
26 subject to sections 1 through 8 of this act.

27        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 36.01 RCW  
28 to read as follows:

29        Any county subject to the provisions of this title is also subject  
30 to sections 1 through 8 of this act.

31        NEW SECTION.    **Sec. 12.**    Sections 1 through 8 of this act shall  
32 constitute a new chapter in Title 8 RCW.

1        NEW SECTION.    **Sec. 13.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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