

1 **SHB 1890 - H AMD 298 ADOPTED 3/13/95**

2 By Representative Padden

3 Strike everything after the enacting clause and insert the  
4 following:

5  
6 "Sec. 1. RCW 64.40.010 and 1982 c 232 s 1 are each amended to  
7 read as follows:

8 As used in this chapter, the terms in this section shall have  
9 the meanings indicated unless the context clearly requires  
10 otherwise.

11 (1) "Agency" means the state of Washington including any state  
12 agency, any of its political subdivisions, including any city,  
13 town, or county, and any other public body exercising regulatory  
14 authority or control over the use of real property in the state.

15 (2) "Permit" means any governmental approval required by law  
16 before an owner of a property interest may improve, sell, transfer,  
17 or otherwise put real property to use.

18 (3) "Property interest" means any interest or right in real  
19 property in the state.

20 (4) "Damages" means reasonable expenses and losses, other than  
21 speculative losses or profits, incurred between the time a cause of  
22 action arises and the time a holder of an interest in real property  
23 is granted relief as provided in RCW 64.40.020. Damages must be  
24 caused by an act, necessarily incurred, and actually suffered,  
25 realized, or expended, but are not based upon diminution in value  
26 of or damage to real property, or litigation expenses.

27 (5) "Regulation" means any ordinance, resolution, ~~((or other))~~  
28 rule ((or)), regulation, or any other law adopted pursuant to the  
29 authority provided by state law, which imposes or alters  
30 restrictions, limitations, ~~((or))~~ conditions ((or)), or in any  
31 other manner relates to the use of real property.

1 (6) "Act" means a final decision by an agency which places  
2 requirements, limitations, or conditions upon the use of real  
3 property in excess of those allowed by applicable regulations in  
4 effect on the date an application for a permit is filed. "Act"  
5 also means the failure of an agency to act within time limits  
6 established by law in response to a property owner's application  
7 for a permit: PROVIDED, That there is no "act" within the meaning  
8 of this section when the owner of a property interest agrees in  
9 writing to extensions of time, or to the conditions or limitations  
10 imposed upon an application for a permit. "Act" shall not include  
11 lawful decisions of an agency which are designed to prevent a  
12 condition which would constitute a threat to the health, safety,  
13 welfare, or morals of residents in the area.

14 In any action brought pursuant to this chapter, a defense is  
15 available to a political subdivision of this state that its act was  
16 mandated by a change in statute or state rule or regulation and  
17 that such a change became effective subsequent to the filing of an  
18 application for a permit.

19 (7) "Legal action" means any action filed with a court  
20 enforcing this chapter and includes seeking relief in the form of  
21 damages.

22  
23 **Sec. 2.** RCW 64.40.020 and 1982 c 232 s 2 are each amended to  
24 read as follows:

25 (1) Owners of a property interest who have filed an  
26 application for a permit have an action for damages or may bring  
27 any other legal action to obtain relief from acts of an agency  
28 which are arbitrary, capricious, unlawful, or exceed lawful  
29 authority, or relief from a failure to act within time limits  
30 established by law(~~(:~~—PROVIDED, That the action is unlawful or in  
31 excess of lawful authority only if the final decision of the agency  
32 was made with knowledge of its unlawfulness or that it was in

1 ~~excess of lawful authority, or it should reasonably have been known~~  
2 ~~to have been unlawful or in excess of lawful authority)).~~

3 (2) The prevailing party ((~~in~~)) who has commenced an action  
4 brought pursuant to this chapter may be entitled to reasonable  
5 costs, expenses of litigation, and attorney's fees.

6 (3) No cause of action is created for relief from  
7 unintentional procedural or ministerial errors of an agency.

8 (4) Invalidation of any regulation in effect prior to the date  
9 an application for a permit is filed with the agency shall not  
10 constitute a cause of action under this chapter.

11  
12 NEW SECTION. **Sec. 3.** RCW 64.40.030 and 1982 c 232 s 3 are  
13 each repealed."

**EFFECT:** The bill is rewritten to provide further amendments to the statutory provisions relating to causes of action for arbitrary, capricious, or unlawful agency actions. The definition of agency is amended to specifically include state agencies, the definition of regulation is amended to include any type of law which in any manner relates to the use of real property, and a definition of legal action is added. Adds that any legal action may be brought to obtain relief from unlawful agency acts. Deletes the requirement that agency actions are unlawful or exceed lawful authority only if the agency knew or should have known the action was unlawful or exceeded lawful authority. Adds that expenses of litigation may be recovered and limits the recovery of expenses, costs and attorneys' fees to a prevailing party who commenced the action. Repeals the provision which requires the action to be commenced within 30 days after all administrative remedies are exhausted.