

HOUSE BILL REPORT

HB 2014

As Reported By House Committee On:
Government Reform & Land Use

Title: An act relating to regulation of private property.

Brief Description: Regulating property rights.

Sponsors: Representatives Mastin, B. Thomas, Grant, Clements, Reams, Cairnes, Sheldon, Kessler, Sump, Chandler, McMorris, Schoesler and Honeyford.

Brief History:

Committee Activity:

Government Reform & Land Use: 2/27/97, 3/5/97 [DP].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: Do pass. Signed by 7 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Bush; Mielke; Mulliken and Thompson.

Staff: Joan Elgee (786-7135).

Background: Article 1, Section 16 of the Washington Constitution provides that no private property shall be taken or damaged for public or private use without just compensation.

Courts have provided some guidance as to whether a particular government action constitutes a "taking" entitling the property owner to compensation. Initially, courts only considered an actual physical occupation of land to constitute a taking. However, in the last century, courts have held that a regulation could constitute a taking. This newer type of taking is called a "regulatory taking" or an "inverse condemnation."

Among other factors, a court considers the following when determining if a regulation is an unconstitutional taking of private property:

- Whether the regulation destroys a fundamental property right, such as the right to possess the property, exclude others from the property, or dispose of the property;

- Whether the regulation imposes substantial limitations on the use of property and, if so, the balance between the purpose of the regulation and the extent of the reduction in use of and the economic impact on the property;
- The balance between the extent to which the regulation interferes with the property owner's reasonable, investment-backed development expectations and the government's interest in promulgating the regulation; and
- If the regulation prohibits all economically viable or beneficial uses of the property, whether the regulation enforces nuisance law or other pre-existing limitations on the use of the property.

Generally, the entire parcel as a whole is considered in the analysis and not individual portions of the parcel.

Summary of Bill:

Intent.

The Legislature finds that:

- A person's right to own, possess, use, and dispose of private property is fundamental to a free society and is an integral part of the American tradition of liberty and limited government;
- Private property may be owned, used, or divided in a myriad of ways that maximizes its value to both the owner and society;
- Government regulation that has the effect of transferring some or all of an owner's private property interest into the public domain is a de facto tax that falls disproportionately on individual landowners and the owners are entitled to compensation; and
- Not all governmental regulation, however, takes private property. Traditional zoning ordinances that are common to the area around the affected property and burden all real property within the same zone to the same degree generally do not give rise to a compensatory taking.

Entitlement to Compensation.

A private property owner is entitled to compensation for a regulatory taking of private property. Private property means all interests in real property, including the right to use water; and rents, issues, and profits of land, including minerals, timber, and crops. A taking is a government action whereby a de facto loss of some or all of the

owner's interest occurs. Compensation is payment of a property tax credit or other in-kind payment for the fair market value of the property taken. If a property tax voucher is issued, the owner is entitled to a credit against property taxes levied for 10 years, with 10 percent of the amount as a credit for each year.

In lieu of a property tax credit, a government entity and the property owner may negotiate a written agreement to provide all or part of the compensation by variances or other devices.

No compensation is due when the taking: 1) is imposed to prevent, mitigate, or abate a nuisance; 2) is part of a zoning regulation common to the area surrounding the property; 3) creates limitations that burden every parcel of property with the same zoning designation equally; or 4) has the effect of compensating all property owners subject to the restrictions due to the reciprocal nature of the restrictions.

Procedures.

A property owner must request, in writing, compensation from the government entity causing the taking. The government entity has 45 days to reject the request. If the taking is required by state regulation, the local government must submit a request to the responsible state agency and the state agency must respond within 30 days.

If the request is rejected, the property owner may seek compensation in superior court. Trial is de novo, and the property owner is entitled to a jury trial. The property owner has the burden of proving a taking by a preponderance of the evidence. The government entity has the burden of proving an exception to compensation by clear and convincing evidence. A prevailing plaintiff is entitled to recover reasonable attorneys' fees if he or she receives more compensation than offered as settlement. If the request for compensation is granted, the government entity may rescind any regulation and pay interim compensation for the temporary taking, or enforce any such regulation and pay full compensation. If compensation is paid, the property owner must deliver title to whatever interest accurately represents the property taken.

Appropriation: None.

Fiscal Note: Requested on February 26, 1997.

Effective Date: This bill contains an emergency clause and takes effect immediately.

Testimony For: The supreme court hasn't given the damage- provision of the takings provision in the constitution any meaning. Regulatory takings should be examined like physical invasions. This bill answers the question: When a property

owner does something to benefit the community, who should shoulder the burden?–

Testimony Against: This bill will be a cost to the taxpayers. It rewards people for investing; people should assume some risk. We support other efforts to address property rights concerns. The bill may make it difficult for the Department of Natural Resources to protect tidelands and may reduce revenues. The definition of nuisance is inconsistent with current law, and the right to go directly to superior court is inconsistent with provisions for local project review in current law. This bill raises an Initiative 601 issue.

Testified: Representative Dave Mastin, prime sponsor (pro); Al Gidari, Perkins Coie for Simpson Timber Company (pro); Steve Clagett, No on 48 (con); Ron Shultz, National Audubon Society (con); Michael Davolio, American Planning Association (con); Judith Frolich, Washington Association of Counties (comments); Amy Bell, Department of Natural Resources (con); Scott Merriman, Washington Environmental Council (con); and Bob Mack and John Vanek, Association of Washington Cities (con).