

# HOUSE BILL REPORT

## ESSB 6497

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### As Reported By House Committee On:

Government Reform & Land Use

**Title:** An act relating to the taking of private property.

**Brief Description:** Taking private property.

**Sponsors:** Senate Committee on Government Operations (originally sponsored by Senators McCaslin, T. Sheldon, Anderson and Oke).

### Brief History:

#### Committee Activity:

Government Reform & Land Use: 2/23/98, 2/27/98 [DPA].

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## HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

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

**Minority Report:** Do not pass. Signed by 3 members: Representatives Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; and Fisher.

**Staff:** Caroleen Dineen (786-7156).

**Background:** The federal and Washington State constitutions provide that private property may not be taken for public use without just compensation. The Washington Supreme Court has concluded that a land use regulation is not a taking if it substantially advances a legitimate state interest and does not deprive the owner of economically viable use of the owner's land.

The Growth Management Act (GMA) requires certain counties, and the cities located in those counties, to plan according to the statutory requirements. Counties and cities subject to all the GMA requirements are typically referred to counties and cities that plan under the GMA. The county legislative authority of any county not required to plan under the GMA may adopt a resolution making the county and the cities located in that county plan under all of the GMA requirements.

All counties and cities must identify and protect critical areas and designate natural resource lands. Counties and cities that plan under the GMA must also conserve natural resource lands, adopt county-wide planning policies, designate urban growth areas, adopt a comprehensive plan with certain required elements, and adopt development regulations implementing the comprehensive plan.

The attorney general was required in 1991 to adopt guidelines for state agencies and local governments planning under the GMA to evaluate whether proposed actions constitute an unconstitutional taking of private property. The attorney general was also required to develop, in coordination with the Washington State Bar Association, a continuing legal education program regarding such takings evaluations.

Under Initiative Measure 601, the Legislature is prohibited from imposing upon local governments responsibility for new programs or increased levels of service under existing programs unless the Legislature fully reimburses local governments for the costs associated with the new programs or increased levels of service.

Procedures for filing actions and seeking payment of claims against the state of Washington are provided in chapter 4.92 RCW.

**Summary of Amended Bill:** The Legislature's purpose in requiring takings evaluations with respect to government actions is specified to include a public policy of making state agencies and local governments recognize and account for regulations which may impact property owners' constitutional rights and to reduce the risk that government action may create undue burdens on private property rights.

For any government action requiring a public hearing that concerns the regulation of private real property, state agencies and local governments are required to:

- address the attorney general's guidelines in the public hearing process; and
- make written findings and conclusions regarding whether the government action may result in an unconstitutional taking of private property.

The requirement for developing a continuing legal education program is deleted.

**Amended Bill Compared to Engrossed Substitute Bill:** The requirement for state agencies and local governments to make written findings and conclusions is limited to government actions concerning the regulation of private real property. The provision authorizing local governments to submit claims for reimbursements to the Legislature for any increased levels of service is deleted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Nineteen other states already require the procedure specified in this bill. Costs will be reduced in the long run, since addressing takings issues up front will reduce expensive litigation. Local governments are already required to perform the takings evaluation according to the attorney general's guidelines; this bill only requires that evaluation to be made public. The agency's attorney-client privilege is retained.

An amendment may be needed to limit the new requirement only to either governmental land use actions or actions concerning the regulation of private property.

**Testimony Against:** The term "governmental action" is not defined and may be too broad. This new requirement may improperly be applied to the court system. This bill may create unnecessary expense by requiring takings evaluations for an agency's proprietary decisions, such as purchase, sales and exchanges of lands. The attorney-client privilege provisions are contradictory, since the evaluation process is supposed to be protected but the analysis must be made public. The continuing legal education program is needed to keep local governments, especially small jurisdictions, informed on takings law.

The fiscal impacts of this bill need to be addressed. The claims reimbursement provision may create problems with respect to Initiative 601 requirements.

**Testified:** Glenn Hudson and John Woodring, Washington Association of Realtors (pro); Jodi Walker, Building Industry Association of Washington (pro); Carolyn Logue, National Federation of Independent Business (pro); Kaleen Cottingham, Department of Natural Resources (con); John Reynolds, Department of Social and Health Services (con); Mike Ryherd, 1000 Friends of Washington (con); Josh Baldi, Washington Environmental Council (con); Bob Mack, Association of Washington Counties (con); and Evan Jacoby, Department of Fish and Wildlife (question).