

HOUSE BILL REPORT

HB 1837

As Reported By House Committee On:

Government Reform & Land Use

Title: An act relating to the regulation of private property.

Brief Description: Regulating private property.

Sponsors: Representative B. Thomas.

Brief History:

Committee Activity:

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

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

Staff: Joan Elgee (786-7135).

Background: Article 1, Section 16 of the Washington State 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 preexisting 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: The regulatory takings fairness act is adopted.

A governmental entity must pay compensation to an owner of real property when it causes a regulatory taking of any part of the property. A regulatory taking occurs when

- the governmental entity applies any restriction to a particular piece of property in response to the owner's use or request to use the property in a particular manner;
- the restriction interferes with the owner's use of real property or a portion of real property, interferes with the owner's right to exclude others, or interferes with the right to transfer ownership or possession; and
- the restriction decreases by 20 percent or more the fair market value of the owner's interest.

Compensation may be in cash or other value and may not exceed \$400,000 for any restriction on land use of a separate and legally created parcel of property. When compensation is ordered, the owner must deliver title to the governmental entity of whatever accurately represents the property interest that has been taken. The state is responsible for the compensation liability of other governmental entities for a restriction which is mandated by state law or a state agency.

The requirement to pay compensation does not apply when the restriction

- is imposed under an ordinance, resolution, or rule adopted before January 1, 1997;
- only prevents, mitigates, or abates the injuries to another person or property that are likely to be caused by an unreasonable use of property; or
- only mitigates the adverse effects to another person or property caused by the use of the property; or
- is part of a zoning ordinance common to the area.

A property owner must request compensation from the governmental entity imposing the restriction. The governmental entity has 45 days to reject a request. If a request is rejected, the owner may bring an action in superior court. The superior court shall rule on all issues de novo. The property owner has the burden of proving that the restriction caused the devaluation of the property by 20 percent or more, and the government has the burden of proving that any exception to the compensation requirement applies. A prevailing property owner is entitled to recover reasonable attorneys' fees.

Appropriation: None.

Fiscal Note: Requested on February 26, 1997.

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

Testimony For: We need this bill to restore the balance. The Washington courts are behind the times in analyzing regulatory takings. The bill is not retroactive and there are safeguards against frivolous claims. Comprehensive plans already in place will not be affected.

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 Brian Thomas (pro); Michael Davolio, American Planning Association (con); Steve Clagett, No on 48 (con); Ron Shultz, National Audubon Society (con); Judith Frolich, Washington State Association of Counties (comments); Amy Bell, Department of Natural Resources (con); and Bob Mack and John Vanek, Association of Washington Cities (con).