
SENATE BILL 6497

State of Washington

55th Legislature

1998 Regular Session

By Senators McCaslin, T. Sheldon, Anderson and Oke

Read first time 01/20/98. Referred to Committee on Government Operations.

1 AN ACT Relating to the taking of private property; and amending RCW
2 36.70A.370.

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

4 **Sec. 1.** RCW 36.70A.370 and 1991 sp.s. c 32 s 18 are each amended
5 to read as follows:

6 (1) It is the public policy of the state of Washington that state
7 agencies and local governments, in planning and carrying out
8 governmental actions, anticipate, be sensitive to, and account for the
9 obligations imposed by the fifth and the fourteenth amendments of the
10 United States Constitution and Article I, section 16 of the state
11 Constitution. It is the purpose of this section to reduce the risk of
12 undue or inadvertent burdens on private property rights resulting from
13 certain lawful governmental actions.

14 (2) The state attorney general shall establish by October 1, 1991,
15 an orderly, consistent process(~~(, including a checklist if~~
16 ~~appropriate,)) that better enables state agencies and local governments
17 to evaluate proposed regulatory or administrative actions to assure
18 that such actions do not result in an unconstitutional taking of
19 private property. It is not the purpose of this section to expand or~~

1 reduce the scope of private property protections provided in the state
2 and federal Constitutions. The attorney general shall review and
3 update the process at least on an annual basis to maintain consistency
4 with changes in case law.

5 ~~((2))~~ (3) Before any governmental action is initiated that may
6 result in an unconstitutional taking of private property, the state
7 agency or local government shall follow the guidelines of the state
8 attorney general and shall address the following issues at a public
9 hearing on the proposed action:

10 (a) Does the regulation or action result in a permanent physical
11 occupation of private property?

12 (b) Does the regulation or action require a property owner to
13 dedicate a portion of property or to grant an easement?

14 (c) Does the regulation or action deprive the owner of all
15 economically viable uses of the property?

16 (d) Does the regulatory action have a severe impact on the
17 landowner's economic interest?

18 (e) Does the regulation or action deny a fundamental attribute of
19 ownership?

20 (4) Local governments that are required or choose to plan under RCW
21 36.70A.040 and state agencies shall utilize the process established by
22 ~~((subsection (1)))~~ subsections (2) and (3) of this section to assure
23 that proposed regulatory or administrative actions do not result in an
24 unconstitutional taking of private property.

25 ~~((3) The attorney general, in consultation with the Washington~~
26 ~~state bar association, shall develop a continuing education course to~~
27 ~~implement this section.~~

28 ~~(4) The process used by government agencies shall be protected by~~
29 ~~attorney client privilege. Nothing in this section grants a private~~
30 ~~party the right to seek judicial relief requiring compliance with the~~
31 ~~provisions of this section.)~~

32 (5) If, after following the analysis required in subsection (3) of
33 this section, it is determined that the agency or local governmental
34 action may result in an unconstitutional taking of private property,
35 the state attorney general shall prepare a written opinion addressing
36 the taking.

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