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HOUSE BILL 1998

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Thomas, Cairnes, Koster, Sump, Dunn, Carrell,  
Campbell and Benson

Read first time 02/12/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to private property takings; and adding a new  
2 chapter to Title 64 RCW.

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

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
5 otherwise, the definitions in this section apply throughout this  
6 chapter.

7 (1) "Compensation" means the reduction in the present fair market  
8 value of property measured in dollars that is attributable to a  
9 restriction on the use of private property.

10 (2) "Governmental entity" means Washington state, state agencies,  
11 agencies and commissions funded fully or partially by the state,  
12 counties, cities, and other political subdivisions.

13 (3) "Imposes" means for a governmental entity to apply any  
14 restriction on land use to a particular piece of property in response  
15 to the property owner's use or request to use the property in any  
16 particular manner.

17 (4) "Private property" means a monetary interest in real property  
18 recognized under Washington law, including:

19 (a) Land;

- 1 (b) An interest in land or improvements on the land;  
2 (c) A proprietary water right; and  
3 (d) Any crops, forest products, or resources capable of being  
4 harvested or extracted.

5 (5) "Regulatory taking" occurs when a governmental entity imposes  
6 a restriction which interferes with the owner's use of real property or  
7 a portion of real property, with the owner's right to exclude others,  
8 or with the right to transfer ownership or possession and that  
9 decreases by twenty percent or more the fair market value of the  
10 owner's entire monetary interest in the separate and legally created  
11 parcel of property subject to the restriction in question.

12 (6) "Restriction" means a limitation, requirement, or restriction  
13 by a governmental entity that limits the use of private property,  
14 including ordinances, resolutions, rules, statutes, and conditions of  
15 development approval.

16 (7) "Unreasonable use of property" means use of property that a  
17 reasonable person would consider unreasonable in light of the  
18 historically permitted uses of similar property within the same general  
19 area as the subject property. This definition is intended to include  
20 at a minimum all actions that constitute nuisances under common law.

21 NEW SECTION. **Sec. 2.** (1) A governmental entity shall pay  
22 compensation to the owner of real property when it causes a regulatory  
23 taking of any part of the property. Compensation need not be paid in  
24 the form of cash as long as the value given by the governmental entity  
25 at least equals the compensation required under this chapter.

26 (2) The compensation requirement in subsection (1) of this section  
27 does not apply when the restriction:

28 (a) Is imposed under an ordinance, resolution, or rule adopted by  
29 local government prior to January 1, 1999, or adopted by local  
30 government because the restriction is required under a state law that  
31 was adopted by the legislature prior to January 1, 1999. Restrictions  
32 imposed under these ordinances, resolutions, or rules that are amended  
33 after the effective date of this act create a duty to pay compensation  
34 only to the extent the amendment increases the restriction;

35 (b) Only prevents, mitigates, or abates the injuries to another  
36 person or property that are likely to be caused by an unreasonable use  
37 of property;

1 (c) Only mitigates the adverse effects to another person or  
2 property caused by the use of the property subject to the restriction;

3 (d) Is part of a zoning ordinance common to the area surrounding  
4 the property that regulates the type or intensity of use permitted on  
5 the property.

6 (3) Restrictions imposed by more than one governmental entity that  
7 cumulatively decrease the property value by twenty percent or more  
8 require each responsible governmental entity to pay its share of the  
9 decrease.

10 (4) The compensation required under this section shall not exceed  
11 four hundred thousand dollars to any landowner for any restriction on  
12 land use of a separate and legally created parcel of real property.

13 (5) A governmental entity may not require waiving the compensation  
14 under this section as a condition of approval of a use or another  
15 permit or as a condition for subdivision of land.

16 (6) The state is responsible for the compensation liability of  
17 other governmental entities for a restriction on the use of property  
18 which is mandated by state law or a state agency.

19 (7) Claims for compensation as a result of a regulatory taking of  
20 private property under this chapter must be brought within the time  
21 period specified in RCW 4.16.080.

22 (8) When compensation under this chapter is ordered by a court or  
23 accepted by a landowner, the property owner shall deliver to the  
24 governmental entity paying compensation title to whatever accurately  
25 represents the property interest that has been taken, such as a  
26 conservation easement, view easement, or fee title.

27 NEW SECTION. **Sec. 3.** (1) A property owner seeking to enforce  
28 this chapter must request compensation from the department of the  
29 governmental entity that is imposing the restriction. A property owner  
30 is not required to pursue any other administrative remedies relating to  
31 a pending request for a permit to use the property in any particular  
32 manner.

33 (2) The governmental entity has forty-five days to reject a  
34 property owner's request for compensation under subsection (1) of this  
35 section. If the request is rejected in whole or in part, this chapter  
36 may be enforced in superior court against a governmental entity that  
37 fails to comply with this chapter by the owner of the property subject  
38 to the jurisdiction of that governmental entity. The property owner

1 may also raise any state or federal statutory or constitutional claims  
2 arising from the government's decision to reject in whole or in part  
3 the property owner's request for compensation. The property owner may  
4 also request compensation from the executive, or designee, of the  
5 governmental entity imposing the restriction. Such a request shall not  
6 be a prerequisite to enforcing this chapter in superior court.

7 (3) The superior court shall rule on all issues de novo and give no  
8 deference to findings issued by the government, if any, relating to the  
9 government's compliance with this chapter. The property owner  
10 enforcing this chapter has the burden to prove that the private  
11 property was devalued by twenty percent or more and that the  
12 devaluation was caused by the governmental entity's restriction on land  
13 use. The government has the burden of proving that any exception to  
14 the compensation requirement in section 2(2) of this act applies. Mere  
15 assertion that the restriction is to prevent or alleviate public harm  
16 is insufficient to insulate the government from responsibility for  
17 paying compensation. A local government also has the burden of joining  
18 the state in any litigation if the local government claims the state is  
19 responsible for paying compensation under section 2(6) of this act.

20 (4) A prevailing property owner is entitled to recover the costs of  
21 litigation, including reasonable attorneys' fees.

22 NEW SECTION. **Sec. 4.** This chapter is intended to provide  
23 protection to private property owners in addition to any constitutional  
24 rights under either or both the state and federal Constitutions, such  
25 as the due process and takings clauses. This chapter is not intended  
26 to affect any constitutional rights. The provisions of this chapter  
27 are to be liberally construed to effectuate the policies and purposes  
28 of this chapter. In the event of conflict between this chapter and any  
29 other statute, the provisions of this chapter shall govern.

30 NEW SECTION. **Sec. 5.** This chapter may be known and cited as the  
31 regulatory takings fairness act.

32 NEW SECTION. **Sec. 6.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.   **Sec. 7.**   Sections 1 through 6 of this act constitute  
2   a new chapter in Title 64 RCW.

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