
HOUSE BILL 3223

State of Washington

59th Legislature

2006 Regular Session

By Representatives Kretz, Condotta, Dunn, Clements, Buri, Chandler, Newhouse, Orcutt, B. Sullivan, Kristiansen, Skinner, Sump, Schindler, McCune, Grant, Hinkle, Haler, Roberts and Ahern

Read first time 01/26/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to providing fairness in government control of
2 property; amending RCW 36.70A.060 and 36.70A.172; adding a new section
3 to chapter 8.26 RCW; adding new sections to chapter 64.40 RCW; and
4 creating new sections.

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

6 INTENT TO REQUIRE FAIRNESS IN GOVERNMENT--CONTROL OF PROPERTY

7 NEW SECTION. Sec. 1. The legislature intends by this act to
8 protect the use and value of private property while providing for a
9 healthy environment and ensuring that government agencies do not damage
10 the use or value of private property, except if necessary to protect
11 the public health and safety. The legislature also intends to
12 recognize and promote the unique interests, knowledge, and abilities
13 that private property owners have to protect the environment and land.
14 To this end, government agencies must be required to identify and
15 encourage participation in voluntary cooperative environmental
16 enhancement programs with willing property owners.

1 **FAIRNESS IN GOVERNMENT CONTROL OF PROPERTY IN**
2 **ACQUISITION OF PRIVATE LAND**

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 8.26 RCW
4 to read as follows:

5 (1) Eminent domain may not be used by a state agency or local
6 public agency to acquire property for private use. Eminent domain is
7 limited to the purpose of acquiring property for physical use by the
8 public, such as for the physical siting of public facilities.

9 (2) Prior to transferring any property acquired by a state or local
10 public agency through eminent domain to private persons or entities
11 under subsection (1) of this section, the agency shall offer to sell
12 the property to the person, persons, or entities from whom the property
13 was acquired for an amount equal to what the person, persons, or
14 entities received from the agency.

15 **FAIRNESS IN GOVERNMENT CONTROL OF PROPERTY IN REGULATION BY**
16 **REQUIRING CONSIDERATION OF IMPACTS BEFORE TAKING ACTION**

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.40 RCW
18 to read as follows:

19 (1) Prior to taking any action which may unnecessarily damage the
20 use or value of private property, an agency must consider: The purpose
21 of the regulation; any actual harm or public nuisance that is to be
22 prevented by the regulation; the parcels of property that will be
23 affected by the regulation; estimated damage to the use and value of
24 the affected parcels; and steps the agency has taken or will take to
25 accomplish the intended purpose by encouraging participation in
26 voluntary cooperative environmental enhancement programs with willing
27 property owners.

28 (2) For purposes of this section and sections 4 and 5 of this act,
29 the following definitions apply:

30 (a) "Private property" means an interest in land or improvements
31 thereon, vested water rights, and crops, forest products, minerals, or
32 other natural resources that are owned by a nongovernmental entity.

33 (b) "Damage" means to:

34 (i) Divert water either above or below the surface onto private
35 property from a source constructed or maintained by an agency, without
36 explicit written permission of the property owner;

1 (ii) Prohibit or restrict any use, or size, scope, and intensity of
2 any use, legally existing or allowed by local ordinance as of January
3 1, 1996, unless such use is otherwise exempted from the definition of
4 "damage" in this section;

5 (iii) Prohibit actions by a private property owner reasonably
6 required to prevent or mitigate harm from fire, flooding, erosion, or
7 other natural disasters or conditions that would impair the use or
8 value of private property;

9 (iv) Implement buffer restrictions on private property where there
10 is no substantial documented evidence of either: Actual environmental
11 harm on the site at issue; a public nuisance as defined in RCW
12 9.66.010; or an actionable nuisance as defined in RCW 7.48.010;

13 (v) Prohibit maintenance or removal of trees that threaten to cause
14 harm to people, animals, or buildings, or to obstruct views;

15 (vi) Prohibit the continued operation, maintenance, or repair of
16 existing tide gates or other infrastructure reasonably required for the
17 protection of the use or value of private property; or

18 (vii) Prohibit or restrict operations and maintenance of structures
19 necessary for the operation of irrigation facilities including, but not
20 limited to, diversions, operation structures, canals, drainage ditches,
21 delivery systems, or the full beneficial use of water rights associated
22 with these structures.

23 "Damage" does not include adoption or enforcement of public health
24 and safety laws or regulations to preserve or protect human life
25 including: Fire and building code restrictions; structural
26 requirements to prevent harm from earthquakes, flooding, or other
27 natural disasters; limitations on the operation of sex offender housing
28 or adult entertainment; requiring adherence to chemical use
29 restrictions adopted by the United States environmental protection
30 agency; worker health and safety laws or regulations; wage and hour
31 laws; dairy nutrient management restrictions under chapter 90.64 RCW;
32 or regulations or abatement orders necessary to prevent public
33 nuisances as defined in RCW 9.66.010 or actionable nuisances as defined
34 in RCW 7.48.010.

35 (c) "Damages" means compensation equal to the amount of the fair
36 market value of the affected property that has been decreased by the
37 action, plus any costs and attorneys' fees incurred by the property
38 owner in seeking to enforce this act.

1 (d) "Action" means to: Enact or adopt ordinances, regulations, or
2 rules; enforce or apply ordinances, regulations, or rules to private
3 property; or make decisions to undertake physical actions, such as in
4 (b)(i) of this subsection.

5 **FAIRNESS IN GOVERNMENT CONTROL OF PROPERTY IN THE**
6 **APPLICATION OF REGULATIONS**

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.40 RCW
8 to read as follows:

9 If, after completing the considerations in section 3(1) of this
10 act, the agency decides to take action, other than enacting or adopting
11 ordinances, regulations, or rules that will damage the use or value of
12 private property, the agency shall first pay the property owner damages
13 as defined in section 3 of this act. This section shall not be
14 construed to limit an agency's ability to waive, or issue variances
15 from, other legal requirements. An agency that chooses not to take
16 action that will damage the use or value of private property is not
17 liable under this section.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.40 RCW
19 to read as follows:

20 In considering whether to waive or grant a variance from an
21 ordinance, regulation, or rule in order to avoid responsibility of
22 paying damages as provided in section 4 of this act, an agency may not
23 charge a fee to the property owner in excess of fifty dollars.

24 **Sec. 6.** RCW 36.70A.060 and 2005 c 423 s 3 are each amended to read
25 as follows:

26 (1)(a) Except as provided in RCW 36.70A.1701, each county that is
27 required or chooses to plan under RCW 36.70A.040, and each city within
28 such county, shall adopt development regulations on or before September
29 1, 1991, to assure the conservation of agricultural, forest, and
30 mineral resource lands designated under RCW 36.70A.170. Regulations
31 adopted under this (~~subsection may~~) chapter shall not prohibit uses
32 legally existing on any parcel prior to their adoption and shall
33 (~~remain in effect until the county or city adopts development~~
34 ~~regulations pursuant to RCW 36.70A.040~~) not interfere with duties

1 required under chapter 64.40 RCW. Such regulations shall assure that
2 the use of lands adjacent to agricultural, forest, or mineral resource
3 lands shall not interfere with the continued use, in the accustomed
4 manner and in accordance with best management practices, of these
5 designated lands for the production of food, agricultural products, or
6 timber, or for the extraction of minerals.

7 (b) Counties and cities shall require that all plats, short plats,
8 development permits, and building permits issued for development
9 activities on, or within five hundred feet of, lands designated as
10 agricultural lands, forest lands, or mineral resource lands, contain a
11 notice that the subject property is within or near designated
12 agricultural lands, forest lands, or mineral resource lands on which a
13 variety of commercial activities may occur that are not compatible with
14 residential development for certain periods of limited duration. The
15 notice for mineral resource lands shall also inform that an application
16 might be made for mining-related activities, including mining,
17 extraction, washing, crushing, stockpiling, blasting, transporting, and
18 recycling of minerals.

19 (2) Each county and city shall adopt development regulations that
20 protect critical areas that are required to be designated under RCW
21 36.70A.170. For counties and cities that are required or choose to
22 plan under RCW 36.70A.040, such development regulations shall be
23 adopted on or before September 1, 1991. For the remainder of the
24 counties and cities, such development regulations shall be adopted on
25 or before March 1, 1992.

26 (3) Such counties and cities shall review these designations and
27 development regulations when adopting their comprehensive plans under
28 RCW 36.70A.040 and implementing development regulations under RCW
29 36.70A.120 and may alter such designations and development regulations
30 to insure consistency.

31 (4) Forest land and agricultural land located within urban growth
32 areas shall not be designated by a county or city as forest land or
33 agricultural land of long-term commercial significance under RCW
34 36.70A.170 unless the city or county has enacted a program authorizing
35 transfer or purchase of development rights.

36 **Sec. 7.** RCW 36.70A.172 and 1995 c 347 s 105 are each amended to
37 read as follows:

1 (1) In designating and protecting critical areas under this
2 chapter, counties and cities shall include the best available science
3 in developing policies and development regulations to protect the
4 functions and values of critical areas. (~~In addition,~~) Counties and
5 cities shall give special consideration to voluntary conservation or
6 protection measures necessary to preserve or enhance anadromous
7 fisheries, except that a city, county, or state agency shall not compel
8 a private property owner to participate in a voluntary conservation or
9 protection program as a condition of receiving any other permit or
10 approval under this chapter. Nothing in this chapter shall be
11 construed to authorize an interference with the duties required in
12 chapter 64.40 RCW.

13 (2) If it determines that advice from scientific or other experts
14 is necessary or will be of substantial assistance in reaching its
15 decision, a growth management hearings board may retain scientific or
16 other expert advice to assist in reviewing a petition under RCW
17 36.70A.290 that involves critical areas.

18 MISCELLANEOUS

19 NEW SECTION. Sec. 8. The provisions of this act are to be
20 liberally construed to effectuate the intent, policies, and purpose of
21 this act.

22 NEW SECTION. Sec. 9. Nothing in this act shall diminish any other
23 remedy provided under the United States or Washington state
24 Constitution or federal or state law, and this act is not intended to
25 modify or replace any such remedy.

26 NEW SECTION. Sec. 10. Subheadings used in this act are not any
27 part of the law.

28 NEW SECTION. Sec. 11. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---