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SENATE BILL 6574

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Mulliken, Sheldon, Schoesler, Morton and Honeyford

Read first time 01/16/2006.      Referred to Committee on Government Operations & Elections.

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

16            NEW SECTION.    **Sec. 2.**    A new section is added to chapter 8.04 RCW  
17 to read as follows:

18            (1) Eminent domain may not be used by state or local agencies to

1 provide property for private use, but eminent domain is limited to the  
2 purpose of obtaining property for physical use by the public, such as  
3 for the physical siting of public facilities.

4 (2) Prior to transferring any property acquired by government  
5 agencies through eminent domain to private persons or entities, the  
6 government agency shall offer to sell the property to the person,  
7 persons, or entities from whom the property was acquired at the amount  
8 he or she received from the agency.

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

11 (1) To avoid unnecessarily damaging the use and value of private  
12 property, prior to taking any action which may damage the use or value  
13 of private property, an agency must consider the purpose of the  
14 regulation; any actual harm or public nuisance that is to be prevented  
15 by the regulation; the parcels of property that will be affected by the  
16 regulation; estimated damage to the use and value of the affected  
17 parcels; and steps the agency has taken or will take to accomplish the  
18 intended purpose by encouraging participation in voluntary cooperative  
19 environmental enhancement programs with willing property owners.

20 (2) For purposes of this section and section 4 of this act, the  
21 following definitions apply unless the context clearly requires  
22 otherwise:

23 (a) "Private property" means an interest in: Land or improvements  
24 thereon; vested water rights; and crops, forest products, minerals, or  
25 other natural resources that are owned by a nongovernmental entity.

26 (b) "Damage" means to:

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

30 (ii) Prohibit or restrict any use or size, scope, and intensity of  
31 any use legally existing or allowed by local ordinance as of January 1,  
32 1996, unless such use is otherwise exempted from the definition of  
33 "damage" in this section;

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

1 (iv) Implement buffer restrictions on private property where there  
2 is no substantial documented evidence of: Actual environmental harm on  
3 the site at issue; a nuisance as defined in RCW 7.48.010; or a public  
4 nuisance as defined in RCW 9.66.010;

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

7 (vi) Prohibit the continued operation, maintenance, or repair of  
8 existing tidegates or other infrastructure reasonably required for the  
9 protection of the use or value of private property;

10 (vii) Prohibit or restrict operations and maintenance of structures  
11 necessary for the operation of irrigation facilities including, but not  
12 limited to, diversions, operation structures, canals, drainage ditches,  
13 delivery systems, or the full beneficial use of water rights associated  
14 with these structures.

15 "Damage" does not include adoption or enforcement of public health  
16 and safety laws or regulations to preserve or protect human life,  
17 including fire and building code restrictions; structural requirements  
18 to prevent harm from earthquakes, flooding, or other natural disasters;  
19 limitations on the operation of sex offender housing or adult  
20 entertainment; requiring adherence to chemical use restrictions adopted  
21 by the United States environmental protection agency; worker health and  
22 safety laws or regulations; wage and hour laws; dairy nutrient  
23 management restrictions in chapter 90.64 RCW; or regulations or  
24 abatement orders necessary to prevent nuisances as defined in RCW  
25 7.48.010 or public nuisances as defined in RCW 9.66.010.

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

30 (d) "Action" means to enact or adopt ordinances, regulations, or  
31 rules, enforce or apply ordinances, regulations, or rules to private  
32 property, or to make decisions to undertake physical actions.

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

35 If, after completing the considerations in section 3(1) of this  
36 act, the agency decides to take action, other than enacting or adopting  
37 ordinances, regulations, or rules, which will damage the use or value

1 of private property, the agency shall first pay the property owner  
2 damages as defined in section 3 of this act. This section shall not be  
3 construed to limit agencies' ability to waive, or issue variances from,  
4 other legal requirements. An agency which chooses not to take action  
5 which will damage the use or value of private property is not liable  
6 under this section.

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

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

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

15 (1)(a) Except as provided in RCW 36.70A.1701, each county that is  
16 required or chooses to plan under RCW 36.70A.040, and each city within  
17 such county, shall adopt development regulations on or before September  
18 1, 1991, to assure the conservation of agricultural, forest, and  
19 mineral resource lands designated under RCW 36.70A.170. Regulations  
20 adopted under this (~~subsection may~~) chapter shall not prohibit uses  
21 legally existing on any parcel prior to their adoption and shall  
22 (~~remain in effect until the county or city adopts development~~  
23 ~~regulations pursuant to RCW 36.70A.040~~) not interfere with duties  
24 under chapter 64.40 RCW. Such regulations shall assure that the use of  
25 lands adjacent to agricultural, forest, or mineral resource lands shall  
26 not interfere with the continued use, in the accustomed manner and in  
27 accordance with best management practices, of these designated lands  
28 for the production of food, agricultural products, or timber, or for  
29 the extraction of minerals.

30 (b) Counties and cities shall require that all plats, short plats,  
31 development permits, and building permits issued for development  
32 activities on, or within five hundred feet of, lands designated as  
33 agricultural lands, forest lands, or mineral resource lands, contain a  
34 notice that the subject property is within or near designated  
35 agricultural lands, forest lands, or mineral resource lands on which a  
36 variety of commercial activities may occur that are not compatible with

1 residential development for certain periods of limited duration. The  
2 notice for mineral resource lands shall also inform that an application  
3 might be made for mining-related activities, including mining,  
4 extraction, washing, crushing, stockpiling, blasting, transporting, and  
5 recycling of minerals.

6 (2) Each county and city shall adopt development regulations that  
7 protect critical areas that are required to be designated under RCW  
8 36.70A.170. For counties and cities that are required or choose to  
9 plan under RCW 36.70A.040, such development regulations shall be  
10 adopted on or before September 1, 1991. For the remainder of the  
11 counties and cities, such development regulations shall be adopted on  
12 or before March 1, 1992.

13 (3) Such counties and cities shall review these designations and  
14 development regulations when adopting their comprehensive plans under  
15 RCW 36.70A.040 and implementing development regulations under RCW  
16 36.70A.120 and may alter such designations and development regulations  
17 to insure consistency.

18 (4) Forest land and agricultural land located within urban growth  
19 areas shall not be designated by a county or city as forest land or  
20 agricultural land of long-term commercial significance under RCW  
21 36.70A.170 unless the city or county has enacted a program authorizing  
22 transfer or purchase of development rights.

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

25 (1) In designating and protecting critical areas under this  
26 chapter, counties and cities shall include the best available science  
27 in developing policies and development regulations to protect the  
28 functions and values of critical areas. (~~In addition,~~) Counties and  
29 cities shall give special consideration to voluntary conservation or  
30 protection measures necessary to preserve or enhance anadromous  
31 fisheries, provided that no city, county, or state agency shall compel  
32 participation by a private property owner in a voluntary conservation  
33 or protection program as a condition of receiving any other permit or  
34 approval under this chapter. Nothing in this chapter shall be  
35 construed to authorize an interference with the duties in chapter 64.40  
36 RCW.

1           (2) If it determines that advice from scientific or other experts  
2 is necessary or will be of substantial assistance in reaching its  
3 decision, a growth management hearings board may retain scientific or  
4 other expert advice to assist in reviewing a petition under RCW  
5 36.70A.290 that involves critical areas.

6           NEW SECTION. **Sec. 8.** The provisions of this act are to be  
7 liberally construed to effectuate the intent, policies, and purpose of  
8 this act.

9           NEW SECTION. **Sec. 9.** Nothing in this act shall diminish any other  
10 remedy provided under the United States or Washington state  
11 Constitutions, or federal or state law, and this act is not intended to  
12 modify or replace any such remedy.

13           NEW SECTION. **Sec. 10.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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