HOUSE BILL 1166

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State of Washington   **63rd Legislature**   **2013 Regular Session**

By Representatives Overstreet, Shea, Taylor, Short, Haler, Hargrove, and Magendanz

Read first time 01/17/13. Referred to Committee on Judiciary.

1   AN ACT Relating to compensation for government required actions on
2 private property; amending RCW 36.70B.030; adding a new section to
3 chapter 36.70A RCW; and creating a new section.

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

5   NEW SECTION. **Sec. 1.** The legislature finds that property owners
6 are finding increasing restrictions placed on their property in the
7 name of the public good without just compensation. Many government
8 agencies expect the property owner to pay for and accept the burdens
9 placed on them by government statutes, ordinances, regulations,
10 policies, and permitting requirements that provide a benefit to someone
11 other than the property owner at the property owner's expense.

12   NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
13 to read as follows:
14   (1) Government authorities must provide just compensation to
15 property owners whenever land use ordinances, regulations, or policies
16 adopted pursuant to requirements in this chapter or as part of a land
17 use permitting decision require the property owner to:

1   (a) Place any form of signage on their property related to
2 provisions in this chapter or ordinances adopted to comply with this
3 chapter or associated regulations;

4   (b) Pay for and place fencing around critical areas, open space,
5 habitat areas, riparian areas, or other property features;

6   (c) Record restrictive covenants, land use designations, or change
7 any legal lot description on the property;

8   (d) Restore vegetation in a location where no vegetation existed
9 during the time the property owner owned the property or vegetation
10 degraded through natural causes;

11   (e) Make expenditures in furtherance of protecting the function and
12 values of wetlands;

13   (f) Make any expenditure in furtherance of protecting the function
14 and values of riparian areas; or

15   (g) Grant or set aside easements for public access on the property.

16   (2) Unless under the authority of a specific statutory requirement,
17 a state agency may not adopt a rule or policy that results in any
18 governmental authority being required to provide just compensation
19 under this section.

20   **Sec. 3.** RCW 36.70B.030 and 1995 c 347 s 404 are each amended to
21 read as follows:

22   (1) Fundamental land use planning choices made in adopted
23 comprehensive plans and development regulations shall serve as the
24 foundation for project review. The review of a proposed project's
25 consistency with applicable development regulations, or in the absence
26 of applicable regulations the adopted comprehensive plan, under RCW
27 36.70B.040 shall incorporate the determinations under this section.

28   (2) During project review, a local government or any subsequent
29 reviewing body shall determine whether the items listed in this
30 subsection are defined in the development regulations applicable to the
31 proposed project or, in the absence of applicable regulations the
32 adopted comprehensive plan. At a minimum, such applicable regulations
33 or plans shall be determinative of the:

34   (a) Type of land use permitted at the site, including uses that may
35 be allowed under certain circumstances, such as planned unit
36 developments and conditional and special uses, if the criteria for
37 their approval have been satisfied;

1   (b) Density of residential development in urban growth areas; and

2   (c) Availability and adequacy of public facilities identified in

3   the comprehensive plan, if the plan or development regulations provide

4   for funding of these facilities as required by chapter 36.70A RCW.

5   (3) During project review, the local government or any subsequent

6   reviewing body shall not reexamine alternatives to or hear appeals on

7   the items identified in subsection (2) of this section, except for

8   issues of code interpretation. As part of its project review process,

9   a local government shall provide a procedure for obtaining a code

10   interpretation as provided in RCW 36.70B.110.

11   (4)(a) Pursuant to RCW 43.21C.240, a local government may determine

12   that the requirements for environmental analysis and mitigation

13   measures in development regulations and other applicable laws provide

14   adequate mitigation for some or all of the project's specific adverse

15   environmental impacts to which the requirements apply.

16   (b) Local governments may not require without just compensation

17   that property owners: (i) Place any form of signage on their property;

18   (ii) pay for and place fencing around critical areas, open space,

19   habitat areas, or other government designated property attributes;

20   (iii) record restrictive covenants, land use designations, or change

21   any legal lot description on the property; (iv) restore vegetation in

22   locations where no vegetation existed during the time the property

23   owner owned the land or the vegetation degraded due to natural causes;

24   (v) make any expenditure in furtherance of protective measures for the

25   function and values of wetlands or riparian areas; or (vi) grant or set

26   aside easements for public access on the property.

27   (5) Except under subsection (4)(b) of this section, nothing in this

28   section limits the authority of a permitting agency to approve,

29   condition, or deny a project as provided in its development regulations

30   adopted under chapter 36.70A RCW and in its policies adopted under RCW

31   43.21C.060. Project review shall be used to identify specific project

32   design and conditions relating to the character of development, such as

33   the details of site plans, curb cuts, drainage swales, transportation

34   demand management, the payment of impact fees, or other measures to

35   mitigate a proposal's probable adverse environmental impacts, if

36   applicable.

1   (6) Subsections (1) through (4) of this section apply only to local
2 governments planning under RCW 36.70A.040.

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