

ENGROSSED HOUSE BILL NO. 97

State of Washington
43rd Legislature
First Extraordinary Session

by Representatives Hurley,
Zimmerman, Thompson and Hoggins
(by Legislative Council request)

Read first time January 11, 1973, and referred to Committee on
Judiciary.

1 AN ACT Relating to eminent domain for highway purposes, aviation
2 purposes and airport operations; and adding new sections to
3 chapter 8.28 RCW.

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

5 NEW SECTION. Section 1. There is added to chapter 8.28 RCW a
6 new section to read as follows:

7 (1) In any inverse condemnation action where compensation is
8 sought for the taking or damaging of private property for aviation
9 purposes or for highway or road or street purposes, there shall exist
10 the right to be compensated for any diminution in the value of
11 property caused by any one or more of the following:

12 (a) Noise; or

13 (b) Vibrations; or

14 (c) Air pollution; or

15 (d) Water pollution; or

16 (e) Loss of view or scenery; or

17 (f) The risk to life or limb presented by the nearness of
18 vehicular traffic.

19 (2) The following defenses shall not be available in any
20 action involving the "damaging" of property under this section and
21 the payment of just compensation to the owner:

22 (a) That the diminution in value does not involve any physical
23 invasion of or trespass upon the property which allegedly has
24 diminished or will diminish in value; or

25 (b) That any alleged diminution in property value is not
26 substantial; or

27 (c) That the action allegedly resulting in a diminution in

1 property value has not caused or will not cause substantial
2 interference with the right of the owner to use his property; or

3 (d) That any alleged diminution in property value is
4 attributable to a regulation for the welfare of the public or an
5 exercise of the police power; PROVIDED, That this item (d) shall not
6 apply to any action taken pursuant to chapter 47.42 RCW or pursuant
7 to any law or ordinance dealing with billboards or sign control.

8 (3) The governmental entity paying compensation as a result of
9 section (1) of this act may recover, from the owner of the property
10 upon the date of the request for said recovery, ten percent of any
11 increase in valuation of the property which results within five years
12 of receipt of the compensation and is established as being primarily
13 a result of the highway, road, or street project for which the
14 compensation was paid.

15 NEW SECTION. Sec. 2. Any recovery of compensation under
16 section 1 shall be limited to the diminution in the value of property
17 in any unincorporated area of a county which property is located
18 within one-quarter of a mile from the center line of the right of way
19 of such facility and shall be limited to the diminution in the value
20 of property in any incorporated city or town which property is
21 located within one hundred yards of the center line of the right of
22 way of such facility. Where only a portion of a building is located
23 within such one-quarter of a mile distance or such one hundred yard
24 distance, then for purposes of this section the entire building and
25 the land covered by the building shall be considered as being located
26 within such one-quarter of a mile distance or such one hundred yard
27 distance.

28 NEW SECTION. Sec. 3. There is added to chapter 8.28 RCW a
29 new section to read as follows:

30 Any action brought under the provisions of section 1 of this
31 act shall be commenced within three years after the alleged taking or
32 damaging occurs in the county where the property is located. The
33 provisions of chapter 4.92 RCW shall not apply to actions filed under

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1 this act.

2 NEW SECTION. Sec. 4. There is added to chapter 8.28 RCW a
3 new section to read as follows:

4 (1) In any inverse condemnation action where compensation is
5 sought for the taking or damaging of private property by airport
6 operation, there shall exist the right to be compensated for any
7 diminution in the value of property caused by any one or more of the
8 following:

- 9 (a) Noise; or
10 (b) Vibrations; or
11 (c) Air pollution; or
12 (d) Water pollution; or
13 (e) Loss of view or scenery; or
14 (f) The risk of life or limb presented by the nearness of air
15 traffic.

16 (2) The following defenses shall not be available in any
17 action involving the "damaging" of property under this section and
18 the payment of just compensation to the owner:

19 (a) That the diminution in value does not involve any physical
20 invasion of or trespass upon the property which allegedly has
21 diminished or will diminish in value; or

22 (b) That any alleged diminution in property value is not
23 substantial; or

24 (c) That the action allegedly resulting in a diminution in
25 property value has not caused or will not cause substantial
26 interference with the right of the owner to use his property.

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