

SUBSTITUTE FOR
HOUSE BILL NO. 4070

A bill to amend 1996 PA 101, entitled
"Property rights preservation act,"
by amending the title and sections 2, 3, and 4 (MCL 24.422, 24.423,
and 24.424) and by adding section 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to provide for a process of evaluating certain
3 governmental actions that may result in constitutional takings of
4 private property; ~~and~~ to prescribe the powers and duties of certain
5 state agencies and officials; **AND TO PROVIDE FOR REMEDIES.**

6 Sec. 2. As used in this act:

7 **(A) "AGENCY" MEANS A COMMISSION, BOARD, COUNCIL, OR OTHER**
8 **AGENCY OF THIS STATE, OTHER THAN A DEPARTMENT.**

9 **(B)** ~~(a)~~ "Constitutional taking" or "taking" means the taking
10 of private property by government action such that compensation to

1 the owner of that property is required by ~~either~~ **ANY** of the
 2 following:

3 (i) Amendment V or XIV of the ~~constitution~~ **CONSTITUTION** of the
 4 United States.

5 (ii) Section 23 of article I and section 2 of article X of the
 6 state constitution of 1963.

7 **(C)** ~~(b) "Departments" means the departments of natural~~
 8 ~~resources, environmental quality, and transportation. "DEPARTMENT"~~
 9 **MEANS A PRINCIPAL DEPARTMENT OF THIS STATE.**

10 **(D)** ~~(c)~~ "Government action" means any of the following:

11 (i) A decision on an application for a permit or license.

12 (ii) Proposed rules that if promulgated or enforced may limit
 13 the use of private property.

14 (iii) Required dedications or exactions of private property.

15 (iv) The enforcement of a statute or rule, including the
 16 issuance of an order.

17 **(E)** ~~(d)~~ "Government action" does not include any of the
 18 following:

19 (i) The formal exercise of the power of eminent domain.

20 (ii) The forfeiture or seizure of private property by law
 21 enforcement agencies as evidence of a crime or for violations of
 22 law.

23 (iii) The discontinuance of government programs.

24 **(F)** ~~(e)~~ "Rule" means a rule promulgated ~~pursuant to~~ **UNDER** the
 25 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
 26 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
 27 ~~Compiled Laws. 1969 PA 306, MCL 24.201 TO 24.328.~~

1 Sec. 3. The attorney general, in conjunction with the
 2 departments **AND AGENCIES THAT WISH TO PARTICIPATE**, shall develop
 3 takings assessment guidelines ~~pursuant to~~ **UNDER** the administrative
 4 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
 5 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws, 1969~~
 6 **PA 306, MCL 24.201 TO 24.328**, that will assist ~~the~~ departments **AND**
 7 **AGENCIES** in the identification and evaluation of government actions
 8 that may result in a constitutional taking. The attorney general
 9 and the **PARTICIPATING** departments **AND AGENCIES** shall base the
 10 guidelines on current law as articulated by the United States
 11 ~~supreme court~~ **SUPREME COURT** and the supreme court of this state and
 12 shall ~~update the guidelines at least on an annual basis to reflect~~
 13 **REVIEW THE GUIDELINES EVERY 5 YEARS AND, IF NECESSARY BECAUSE OF**
 14 changes in the law **OR OTHERWISE, UPDATE THE GUIDELINES.**

15 Sec. 4. ~~Prior to~~ **BEFORE** taking a governmental action, ~~the~~
 16 ~~department of natural resources, the department of environmental~~
 17 ~~quality, or the state transportation department, as appropriate, A~~
 18 **DEPARTMENT OR AGENCY** shall review the takings assessment guidelines
 19 prepared under section 3 and shall consider the likelihood that the
 20 governmental action may result in a constitutional taking.

21 **SEC. 6. IF A COURT DETERMINES THAT GOVERNMENT ACTION BY A**
 22 **DEPARTMENT OR AGENCY RESULTED IN A CONSTITUTIONAL TAKING OF PRIVATE**
 23 **REAL PROPERTY AND THAT THE DEPARTMENT OR AGENCY DID NOT COMPLY WITH**
 24 **SECTION 4 IN REGARD TO THE REAL PROPERTY, THE COURT SHALL ORDER THE**
 25 **DEPARTMENT OR AGENCY TO PAY THE PRIVATE REAL PROPERTY OWNER FOR HIS**
 26 **OR HER REASONABLE ATTORNEY FEES AND COSTS. THIS SECTION DOES NOT**
 27 **APPLY IF THE GOVERNMENT ACTION WAS AN IMMEDIATE RESPONSE TO AN**

1 IMMEDIATE THREAT TO PUBLIC HEALTH AND SAFETY AS DESCRIBED IN
2 SECTION 5.

3 Enacting section 1. This amendatory act takes effect 90 days
4 after the date it is enacted into law.