

**House Bills 4433 and 4434**

**Sponsor: Rep. Ken Sikkema**

**Committee: Conservation, Environment,  
and Great Lakes**

**Complete to 9-25-95**

**A SUMMARY OF HOUSE BILLS 4433 AND 4434 AS INTRODUCED 2-16-95**

House Bill 4433 would create a new act, the Property Rights Preservation Act, to provide a process for evaluating whether government actions constitute a constitutional "taking" of private property under the Fifth or Fourteenth Amendments to the U.S. Constitution, or under Article I, Section 23 and Article X, Section 2 of the State Constitution of 1963. The bill states that it would be the policy of this state that "private property shall not be taken for public use by governmental action without payment of just compensation, in accordance with the meaning ascribed to these concepts by the United States supreme court and the supreme court of this state".

(The Fifth Amendment to the U.S. Constitution states, in part, ". . . nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the U.S. Constitution states, in part, ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law;".

Article I, Section 23 of the State Constitution of 1963 states: "The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Article X, Section 2 of the State Constitution of 1963 states: "Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.")

Purpose of act. The bill would state that its purpose was to require state agencies, guided and overseen by the attorney general, to evaluate proposed government actions that could result in a constitutional taking of private property in order to avoid unnecessary burdens on the public treasury and unwarranted interference with private property rights. The bill would further state that its purpose was not to affect the scope of private property protections afforded by the U.S. or state constitutions.

Scope of act. The following would be categorized as "government actions", and thus subject to the proposed evaluation process:

\*\* Existing and proposed administrative rules that could limit the use of private property.

**\*\* Required dedications or exactions of private property.**

A government action would not include:

**\*\* The formal exercise of the power of eminent domain.**

**\*\* The forfeiture or seizure of property by law enforcement agencies as evidence of a crime or for violations of law.**

**\*\* Orders by a state agency or a court resulting from a violation of law and authorized by statute.**

**\*\* The discontinuance of government programs.**

Role of the attorney general. The attorney general would be required to develop guidelines under the Administrative Procedures Act to assist state agencies in identifying and evaluating government actions that could result in a constitutional taking. The guidelines would have to be based on current law as articulated by the U.S. and Michigan Supreme Courts, and would have to update the guidelines at least annually to take account of changes in the law.

In developing guidelines, the attorney general would be required to consider the following principles:

**\*\* Government actions that result in a "physical invasion" or occupancy of private property or that decrease the value or limit the use of property may constitute a taking.**

**\*\* A government action may amount to a taking even though it constitutes less than a complete deprivation of all use or value of all separate and distinct interests in the same private property or the action is only temporary in nature.**

**\*\* The mere assertion of a public purpose is insufficient to avoid a taking. Government actions to protect the public health and safety or otherwise to further the public interest should be taken only in response to real and substantial public needs and shall be designed significantly to address those needs.**

**\*\* Although normal government processes do not ordinarily constitute takings, undue delays in decision making that interfere with private property use may be a taking. In addition, a delay in processing may increase significantly the size of compensation due if a constitutional taking is later found to have occurred.**

**\*\* The constitutional protections against taking private property are self-executing and require compensation regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation.**

Requirements for state agencies. State agencies would be required to prepare a written assessment of the constitutional takings implications of any government action, using

the attorney general's guidelines, before taking the action. Copies of the assessment would have to be delivered to the governor, the Department of Management and Budget, and the attorney general. The assessment document would have to:

**\*\* Assess the likelihood of whether the action would result in a constitutional taking.**

**\*\* "Clearly and specifically" identify the purpose of the action.**

**\*\* Explain why the action was necessary to substantially advance that purpose, and why an alternative action was not available to achieve the agency's goals while reducing the impact on the private property owner.**

**\*\* Estimate the potential cost to the government if a court determined the action to be a taking.**

**\*\* Identify the source of payment within the agency's existing budget for any compensation that might be ordered.**

**\*\* Certify that the benefits of the action exceeded the estimated compensation costs.**

**Emergencies.** In the case of an immediate threat to public health and safety that constituted an emergency and required an immediate response, the takings assessment could be made after responding to the emergency.

**Compensation to property owners.** In addition to just compensation for the taking of private property, a property owner would be entitled to reasonable attorneys' fees and costs incurred in establishing his or her claim, as well as other remedies provided by law. Any award made to a property owner would have to be paid from an agency's existing budget, unless the agency had previously disclosed an estimate to the Department of Management and Budget and funds were included in the budget for that purpose.

**Violation; enforcement.** The bill states that an aggrieved property owner would have a legal cause of action against a state agency that violated the bill's provisions for compensatory damages, writs of mandamus or prohibition, or other appropriate legal or equitable relief. In addition, the attorney general could bring an action to enforce the bill.

**House Bill 4434** would amend the General Property Tax Act (MCL 211.27c) to require that any property affected by a governmental action that was a constitutional taking of private property be reassessed so as to reflect the limitation in the use of the property. The bill is tie-barred to House Bill 4433. (Note: House Bill 4434 uses the term "governmental action", while House Bill 4433 uses the term "government action.")