



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**PROPERTY RIGHTS
SENSITIVITY TRAINING**

**House Bill 5483 with committee
amendment
First Analysis (1-31-96)**

**Sponsor: Rep. Greg Kaza
Committee: Conservation,
Environment and Great Lakes**

THE APPARENT PROBLEM:

Numerous federal and state laws, established to protect the environment or natural resources, restrict how private land may be used or developed when it is judged necessary to achieve a compelling public need. Under these "regulatory takings," property owners are not always compensated for restrictions on the use of their land, since the land itself is not actually "taken." Property rights advocates argue that many of these "takings" are unfair, since the majority of affected property owners cannot afford to challenge the government in court when there is a dispute. Supporters of property rights legislation across the country have pressured state legislatures to enact "look before you leap" laws that would require government agencies to assess the impact proposed regulations might have on property owners. This concept was included in House Bill 4433, which is now pending before the Senate.

House Bill 4433 would create a 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 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.") The bill would clarify which actions may be categorized as "takings," and would require that

the attorney general draw up guidelines to assist the Department of Natural Resources (DNR) and the Department of Environmental Quality (DEQ) in identifying and evaluating government actions that could result in a constitutional "taking" of property. (For detailed information see the House Legislative Analysis Section analysis of House Bill 4433 dated 11-1-95).

However, in addition to strengthening private property rights, property rights advocates argue that much of their dissatisfaction regarding regulators' abuses of private property rights can be ascribed to the manner in which government agencies carry out their duties. Property owners maintain that agency personnel often act in a high-handed manner and are not sensitive to property owners' concerns, and, in fact, during recent public hearings, the House Subcommittee on Private Property Rights found that Department of Environmental Quality employees receive no training on private property rights. It is felt that, while House Bill 4433 would provide guidelines for government agencies, those employees responsible for making decisions limiting the use of private property should, in addition, be given training that would make them more sensitive to property owners' constitutional rights.

THE CONTENT OF THE BILL:

House Bill 5483 would add a new section (MCL 324.503a) to the Natural Resources and Environmental Protection Act to require that the Department of Natural Resources and the Department of Environmental Quality provide sensitivity training for certain employees regarding the constitutional limitations of the regulation of private property, including an overview of the law related to "constitutional takings." That term would be defined under the bill to mean the taking of private property by government action, such that compensation to the property owner was required under Amendments V or XIV of the U.S. Constitution, or Section 23 of Article I and Section 2 of Article X of the state constitution.

House Bill 5483 (1-31-96)

Under the bill, the training would be provided to all employees with decision-making authority on permits, licenses, orders, or other actions that might limit the use of private property.

FISCAL IMPLICATIONS:

The Departments of Natural Resources and Environmental Quality estimate that the provisions of the bill would result in minimal administrative and training costs to the state. (1-20-96)

ARGUMENTS:

For:

Property owners have been under siege by restrictions on how they may use their property. Some have taken their cases to court, resulting in expensive settlements for the state, and many are now uniting in property rights' organizations to influence legislation. One reason for this development, according to property rights advocates, is that the concerns voiced by property owners involved in "takings" issues often center as much on the way they are treated by agency employees as the regulations. In testimony before the House Conservation, Environment, and Great Lakes Committee, property owners have complained long and often about the high-handed manner in which agency employees appear to trample owners' rights. The provisions of the bill are therefore imperative if the employees of the agencies primarily concerned in regulating natural resources -- the Departments of Natural Resources and Environmental Quality -- are to be "sensitized" to the constitutional rights of property owners.

Against:

Although the sanctity of private property is guaranteed by the U.S. and state constitutions, it is often necessary that the government act on behalf of the public and restrict the way property is used. Areas such as wetlands, for example, provide a valuable environmental public benefit, and in such situations the public good often outweighs a property owner's individual rights. In other situations, it is often necessary that certain endangered species that are present on a property be protected. In any case, it is difficult to find a situation where individual property rights are not limited in a society such as ours. It is generally accepted, for example, that individual property rights must necessarily be restricted by local zoning ordinances.

POSITIONS:

Representatives of the following submitted testimony or otherwise indicated support for the bill to the House Conservation, Environment, and Great Lakes Committee bill (1-30-96):

- * The Department of Natural Resources
- * The Department of Environmental Quality
- * The National Federation of Independent Businesses (NFIB)
- * The Michigan State Chamber of Commerce
- * The Michigan Farm Bureau

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.