



HOUSE BILL No. 4433

February 16, 1995, Introduced by Reps. Sikkema, Anthony, Gnodtke, Johnson, Whyman, Jellema, Hill, Jamian, Alley, Voorhees, Oxender, Kukuk, Tesanovich, Profit and Perricone and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to provide for a process of evaluating governmental actions that may result in constitutional takings of private property; to create a cause of action; to prescribe the powers and duties of certain state agencies and officials; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "property rights preservation act".

3 Sec. 2. (1) It is the policy of this state that private
4 property shall not be taken for public use by governmental action
5 without payment of just compensation, in accordance with the
6 meaning ascribed to these concepts by the United States supreme
7 court and the supreme court of this state.

8 (2) The purpose of this act is to require state agencies,
9 guided and overseen by the attorney general, to evaluate proposed

1 government actions that may result in a constitutional taking of
2 private property in order to avoid unnecessary burdens on the
3 public treasury and unwarranted interference with private prop-
4 erty rights. It is not the purpose of this act to affect the
5 scope of private property protections afforded by the United
6 States constitution or the state constitution of 1963.

7 Sec. 3. As used in this act:

8 (a) "Constitutional taking" or "taking" means the taking of
9 private property by government action such that compensation to
10 the owner of that property is required by either of the
11 following:

12 (i) The fifth or fourteenth amendment to the United States
13 constitution.

14 (ii) Article I, section 23 and article X, section 2 of the
15 state constitution of 1963.

16 (b) "Government action" means either of the following:

17 (i) Existing and proposed rules that if promulgated or
18 enforced may limit the use of private property.

19 (ii) Required dedications or exactions of private property.

20 (c) "Government action" does not include any of the
21 following:

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

23 (ii) The forfeiture or seizure of private property by law
24 enforcement agencies as evidence of a crime or for violations of
25 law.

1 (iii) Orders issued by a state agency or court of law that
2 result from a violation of law and that are authorized by
3 statute.

4 (iv) The discontinuance of government programs.

5 (d) "Rule" means a rule promulgated pursuant to the adminis-
6 trative procedures act of 1969, Act No. 306 of the Public Acts of
7 1969, being sections 24.201 to 24.328 of the Michigan Compiled
8 Laws.

9 (e) "State agency" means this state and any officer, agency,
10 board, commission, department, or other agency or similar body of
11 the executive branch of state government.

12 Sec. 4. (1) The attorney general shall develop guidelines
13 pursuant to the administrative procedures act of 1969, Act
14 No. 306 of the Public Acts of 1969, being sections 24.201 to
15 24.328 of the Michigan Compiled Laws, that will assist state
16 agencies in the identification and evaluation of government
17 actions that may result in a constitutional taking. The attorney
18 general shall base the guidelines on current law as articulated
19 by the United States supreme court and the supreme court of this
20 state and shall update the guidelines at least on an annual basis
21 to take account of changes in the law. The attorney general
22 shall annually provide these guidelines to state agencies.

23 (2) In developing the initial guidelines under subsection
24 (1), the attorney general shall consider the following
25 principles:

1 (a) Government actions that result in a physical invasion or
2 occupancy of private property or that decrease the value or limit
3 the use of property may constitute a taking.

4 (b) Government action may amount to a taking even though it
5 constitutes less than a complete deprivation of all use or value
6 of all separate and distinct interests in the same private prop-
7 erty or the action is only temporary in nature.

8 (c) The mere assertion of a public purpose is insufficient
9 to avoid a taking. Government actions to protect the public
10 health and safety or otherwise to further the public interest
11 should be taken only in response to real and substantial public
12 needs and shall be designed significantly to address those
13 needs.

14 (d) Although normal government processes do not ordinarily
15 constitute takings, undue delays in decision making that inter-
16 fere with private property use may be a taking. In addition, a
17 delay in processing may increase significantly the size of com-
18 pensation due if a constitutional taking is later found to have
19 occurred.

20 (e) The constitutional protections against taking private
21 property are self-executing and require compensation regardless
22 of whether the underlying authority for the action contemplated a
23 taking or authorized the payment of compensation.

24 Sec. 5. The attorney general shall designate an official
25 within the office of the attorney general who shall be responsi-
26 ble for ensuring compliance with this act.

1 Sec. 6. Before a state agency takes any government action,
2 the agency shall prepare a written assessment of the
3 constitutional takings implications of the action, in compliance
4 with the guidelines developed pursuant to section 4. The state
5 agency shall deliver copies of this assessment to the governor,
6 the department of management and budget, and the attorney
7 general. The state agency's assessment shall do all of the
8 following:

9 (a) Assess the likelihood that the government action may
10 result in a constitutional taking.

11 (b) Clearly and specifically identify the purpose of the
12 government action.

13 (c) Explain why the government action is necessary to sub-
14 stantially advance that purpose, and why an alternative action is
15 not available that would achieve the agency's goals while reduc-
16 ing the impact on the private property owner.

17 (d) Estimate the potential cost to the government if a court
18 determines that the action constitutes a constitutional taking.

19 (e) Identify the source of payment within the agency's
20 budget for any compensation that may be ordered.

21 (f) Certify that the benefits of the government action
22 exceed the estimated compensation costs.

23 Sec. 7. If there is an immediate threat to public health
24 and safety that constitutes an emergency and requires an immedi-
25 ate response, the takings assessment required by section 6 may be
26 made when the response is completed.

1 Sec. 8. Any award made to an owner of private property from
2 a state agency for a constitutional taking, including any award
3 of attorneys' fees and costs, shall come from the state agency's
4 existing budget unless the state agency has previously disclosed
5 an estimate of the costs to the department of management and
6 budget and funds were included in the budget for that purpose.

7 Sec. 9. An owner of private property who successfully
8 establishes that a government action is a constitutional taking
9 of the owner's property requiring payment of just compensation
10 shall be awarded reasonable attorneys' fees and costs incurred in
11 establishing that claim, in addition to other remedies provided
12 by law.

13 Sec. 10. (1) An aggrieved property owner has a legal cause
14 of action against a state agency that violates this act for com-
15 pensatory damages, writs of mandamus or prohibition, or other
16 appropriate legal or equitable relief.

17 (2) The attorney general may bring an action to enforce this
18 act.