

HOUSE No. 1681

By Mr. Peterson of Grafton, petition of George N. Peterson, Jr. protecting the rights of private property owners from certain land takings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT PROTECTING THE RIGHTS OF PRIVATE PROPERTY OWNERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 30A of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended in, by
3 inserting at the end thereof the following definitions:—

4 (7) “Policies that have constitution implications” means current or
5 proposed regulations as defined above, law, agency policy statement,
6 directive, or other restriction that, if implemented or enacted could
7 affect a taking of private property without due process of law, such
8 as policies, regulations, orders or agreements that propose or condi-
9 tion requirements or limitations on private property use, or that
10 require dedications or exactions from owners of private property.
11 This term does not include actions in which the power of eminent
12 domain is formally exercised, or actions of law enforcement
13 involving seizure of property for forfeiture or as evidence in crim-
14 inal proceedings.

15 (8) “Private property” means all real property protected by
16 amendments V and XIV of the constitution of the United States, or
17 article X of the constitution of the Commonwealth of Massachusetts.

18 (9) “Taking” means an uncompensated damaging or deprivation
19 of property in violation of the United States constitution or the con-
20 stitution of the Commonwealth.

1 SECTION 2. Chapter 30A of the General Laws is hereby
2 amended by inserting after Section 1C the following new section:—
3 Section 1D. The attorney general shall develop a checklist and
4 guidelines by December 31, 2004, to assist agencies in the identifi-

5 cation and evaluation of policies that have constitutional implica-
6 tions, including policies that may result in a taking. The attorney
7 general shall review and update the checklist and guidelines at least
8 on an annual basis to maintain consistency with amendments to the
9 laws.

1 SECTION 3. Section 5 of Chapter 30A of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended in by
3 inserting after the second paragraph, the following paragraphs:—

4 Any agency proposing or implementing policies that have consti-
5 tutional implications shall designate an official or officials in the
6 agency to be responsible for ensuring compliance with the provi-
7 sions of this chapter. Each agency policy that has constitutional
8 implications shall be submitted to the designated official or officials
9 for review. Using the checklist and guidelines prepared pursuant to
10 Section 1D, the designated official or officials shall prepare a consti-
11 tutional impact assessment which includes analysis of at least the
12 following elements:—

13 (A) A description of how the policy affects private property
14 including the likelihood that the policy could result in a taking of
15 private property without due process of law;

16 (B) Alternatives to the policy that would fulfill the agency's legal
17 obligations but that would reduce the impact on the private property
18 owner and the risk of a taking; and

19 (C) An estimate of the financial cost to the Commonwealth for
20 compensation, and a source of funding.

21 Prior to the implementation of any policies that have constitu-
22 tional implications a copy of the constitutional impact assessment
23 shall be provided for review by the Secretary of Administration and
24 Finance and by the Committees on Ways and Means of the Senate
25 and House of Representatives.

26 Any award made to an owner of private from the Commonwealth
27 for a taking under this act shall include an award of reasonable costs
28 and attorney's fees.

1 SECTION 4. Chapter 30A of the General Laws is hereby
2 amended by inserting after Section 5, the following new section:—

3 Section 5A. Owners of private property who successfully estab-
4 lish that any such policy having constitutional implications results in

5 an unconstitutional taking shall be awarded reasonable costs and
6 attorney's fees incurred in establishing their claim. The remedies
7 provided in this chapter shall be in addition to any other remedies
8 provided by law. The effect of policies that have constitutional
9 implications on the fair market value of affected property shall be
10 reflected in the assessed valuation of that real property for taxes,
11 levies and similar purposes.