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## BILL ANALYSIS



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House Bill 4070 (Substitute H-1 as reported without amendment)

Sponsor: Representative Klint Kesto

House Committee: Agriculture

Senate Committee: Oversight

**CONTENT**

The bill would amend the Property Rights Preservation Act, which establishes a process for evaluating certain governmental actions that may result in constitutional takings of private property, to do the following:

- Require the Attorney General, in conjunction with State departments and agencies, to develop, review, and update, if necessary, takings assessment guidelines every five years.
- Require any department or State agency to review the guidelines before taking a government action.
- Apply the Act to all principal departments of the State, instead of only the Departments of Environmental Quality, Natural Resources, and Transportation.

The bill also would require a department or agency to pay a private real property owner for his or her reasonable attorney fees and costs, if the department or agency did not review the guidelines before taking a governmental action that resulted in a constitutional taking of private real property. This would not apply if the government action were an immediate response to an immediate threat to public health and safety. (In that case, the review of the takings assessment guidelines could be made when the response was completed.)

MCL 24.422 et al.

Legislative Analyst: Stephen Jackson

**FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the State and no fiscal impact on local government. The scope of State actions that could be determined to be constitutional takings and the instances in which the State could be found to be not in compliance with the taking assessment guidelines in the future are speculative. Although guidelines were developed, implementation by the Departments of Environmental Quality and Natural Resources is not documented. The Department of Transportation reports that it has incurred no costs regarding implementation of the guidelines and has not been a party to any litigation under the Act.

Requiring all State departments and agencies to review the guidelines and consider whether the governmental action could result in a constitutional taking could reduce the number of constitutional takings cases filed against the State, and thereby result in savings. Additional costs to the State could result from requiring a private real property owner to be paid his or her attorney fees and costs, to the extent that a department or agency would not have been required to pay those costs otherwise. Requiring the guidelines to be updated every five years instead of on an annual basis, and then updated if necessary, should result in administrative savings (although it is not clear whether the guidelines have been updated annually).

Date Completed: 1-26-18

Fiscal Analyst: Bill Bowerman

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