

HOUSE BILL No. 4070

January 24, 2017, Introduced by Reps. Kesto, Graves, Iden, Webber, Hughes and Sheppard
and referred to the Committee on Agriculture.

A bill to amend 1996 PA 101, entitled
"Property rights preservation act,"
by amending the title and sections 2 and 4 (MCL 24.422 and 24.424)
and by adding section 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to provide for a process of evaluating certain
governmental actions that may result in constitutional takings of
private property; ~~and~~ to prescribe the powers and duties of certain
state agencies and officials; **AND TO PROVIDE FOR REMEDIES.**

Sec. 2. As used in this act:

(a) "Constitutional taking" or "taking" means the taking of
private property by government action such that compensation to the
owner of that property is required by ~~either~~ **ANY** of the following:

1 (i) Amendment V or XIV of the ~~constitution~~ **CONSTITUTION** of the
2 United States.

3 (ii) Section 23 of article I and section 2 of article X of the
4 state constitution of 1963.

5 (b) "Departments" means the ~~departments~~ **DEPARTMENT** of natural
6 resources, **THE DEPARTMENT OF** environmental quality, **THE DEPARTMENT**
7 **OF AGRICULTURE AND RURAL DEVELOPMENT**, and **THE STATE** transportation
8 **DEPARTMENT**. **"DEPARTMENT" MEANS 1 OF THE DEPARTMENTS.**

9 (c) "Government action" means any of the following:

10 (i) A decision on an application for a permit or license.

11 (ii) Proposed rules that if promulgated or enforced may limit
12 the use of private property.

13 (iii) Required dedications or exactions of private property.

14 (iv) The enforcement of a statute or rule, including the
15 issuance of an order.

16 (d) "Government action" does not include any of the following:

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

18 (ii) The forfeiture or seizure of private property by law
19 enforcement agencies as evidence of a crime or for violations of
20 law.

21 (iii) The discontinuance of government programs.

22 (e) "Rule" means a rule promulgated ~~pursuant to~~ **UNDER** the
23 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
24 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
25 ~~Compiled Laws.~~ **1969 PA 306, MCL 24.201 TO 24.328.**

26 Sec. 4. ~~Prior to~~ **BEFORE** taking a governmental action, ~~the~~
27 ~~department of natural resources, the department of environmental~~

1 ~~quality, or the state transportation department, as appropriate, A~~
2 **DEPARTMENT** shall review the takings assessment guidelines prepared
3 under section 3 and shall consider the likelihood that the
4 governmental action may result in a constitutional taking.

5 **SEC. 6. IF A COURT DETERMINES THAT GOVERNMENT ACTION BY A**
6 **DEPARTMENT RESULTED IN A CONSTITUTIONAL TAKING OF PRIVATE REAL**
7 **PROPERTY AND THAT THE APPROPRIATE DEPARTMENT DID NOT COMPLY WITH**
8 **SECTION 4 IN REGARD TO THE REAL PROPERTY, THE COURT SHALL ORDER THE**
9 **DEPARTMENT THAT DID NOT COMPLY WITH SECTION 4 TO PAY THE PRIVATE**
10 **REAL PROPERTY OWNER FOR HIS OR HER REASONABLE ATTORNEY FEES AND**
11 **COSTS. THIS SECTION DOES NOT APPLY IF THE GOVERNMENT ACTION WAS AN**
12 **IMMEDIATE RESPONSE TO AN IMMEDIATE THREAT TO PUBLIC HEALTH AND**
13 **SAFETY AS DESCRIBED IN SECTION 5.**

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.