

1 AN ACT concerning private property.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 ARTICLE 5.

5 Section 5-1. Short title. This Article may be cited as  
6 the Property Rights Preservation Law, and references in this  
7 Article to "this Law" mean this Article.

8 Section 5-5. State policy; purpose.

9 (a) It is the policy of this State that private property  
10 may not be taken for public use by governmental action  
11 without payment of just compensation, in accordance with the  
12 meaning ascribed to these concepts by the United States  
13 Supreme Court and the Supreme Court of this State.

14 (b) The purpose of this Law is to require State  
15 agencies, guided and overseen by the Attorney General, to  
16 evaluate proposed government actions that may result in a  
17 constitutional taking of private property in order to avoid  
18 unnecessary burdens on the public treasury and unwarranted  
19 interference with private property rights. It is not the  
20 purpose of this Law to affect the scope of private property  
21 protections afforded by the United States Constitution or the  
22 Illinois Constitution.

23 Section 5-10. Definitions. In this Law:

24 "Constitutional taking" or "taking" means the taking of  
25 private property by government action such that compensation  
26 to the owner of that property is required under either the  
27 Illinois Constitution or the Fifth or Fourteenth Amendment to  
28 the United States Constitution.

29 "Government action" means any of the following:

1           (1) Existing or proposed rules or regulations that,  
2 if adopted or enforced, may limit the use of private  
3 property.

4           (2) Existing or proposed conditions, requirements,  
5 or limitations on the use of private property contained  
6 in licenses or permits.

7           (3) Required dedications or exactions of private  
8 property.

9 "Government action" does not include any of the  
10 following:

11           (4) The formal exercise of the power of eminent  
12 domain.

13           (5) The forfeiture or seizure of private property  
14 by law enforcement agencies as evidence of a crime or for  
15 a violation of law.

16           (6) Orders issued by a State agency or court of law  
17 that result from a violation of law and that are  
18 authorized by statute.

19           (7) The discontinuance of government programs.

20 "State agency" means the State of Illinois and any  
21 officer, agency, board, commission, department, or similar  
22 body of the executive branch of State government and also  
23 means any unit of local government or school district or any  
24 agency of a unit of local government or school district.

25 Section 5-15. Attorney General; guidelines for  
26 determining takings.

27 (a) The Attorney General must develop and provide to  
28 State agencies guidelines to assist in identifying and  
29 evaluating government actions that may result in a  
30 constitutional taking. The Attorney General must base the  
31 guidelines on current law as articulated by the United States  
32 Supreme Court and the Supreme Court of Illinois and must  
33 update the guidelines at least once each year to take account

1 of changes in the law.

2 (b) In developing the guidelines, and subject to the  
3 provisions of subsection (a), the Attorney General must  
4 observe the following principles:

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

9 (2) Government action may amount to a taking even  
10 though it constitutes less than a complete deprivation of  
11 all use or value of all separate and distinct interests  
12 in the same private property or even though the action is  
13 only temporary in nature.

14 (3) The mere assertion of a public purpose is  
15 insufficient to avoid a taking. Government actions to  
16 protect the public health and safety or to otherwise  
17 further the public interest should be taken only in  
18 response to real and substantial public needs and must be  
19 designed to significantly address those needs.

20 (4) Although normal government processes do not  
21 ordinarily constitute takings, an undue delay in decision  
22 making that interferes with private property use may be a  
23 taking. In addition, a delay in processing may increase  
24 significantly the amount of compensation due if a  
25 constitutional taking is later found to have occurred.

26 (5) The constitutional protections against taking  
27 private property are self-executing and require  
28 compensation regardless of whether the underlying  
29 authority for the action contemplated a taking or  
30 authorized the payment of compensation for a taking.

31 Section 5-20. Designation of responsible official. The  
32 Attorney General must designate an official within the office  
33 of the Attorney General to be responsible for ensuring

1 compliance with this Law.

2 Section 5-25. "Taking" assessment by State agency.  
3 Before a State agency takes any government action, the agency  
4 must prepare a written assessment of the "constitutional  
5 taking" implications of that action, in compliance with the  
6 guidelines developed under Section 5-15. The agency shall  
7 deliver copies of this assessment to the Governor, the  
8 appropriate financial management authority, and the Attorney  
9 General. The agency's assessment must do all of the  
10 following:

11 (1) Assess the likelihood that the government  
12 action may result in a constitutional taking.

13 (2) Clearly and specifically identify the purpose  
14 of the government action.

15 (3) Explain why the government action is necessary  
16 substantially to advance that purpose and why no  
17 alternative action is available that would achieve the  
18 agency's goals while reducing the impact on the private  
19 property owner.

20 (4) Estimate the potential costs to the government  
21 if a court determines that the action constitutes a  
22 constitutional taking.

23 (5) Identify the source of payment within the  
24 agency's budget for any compensation that may be ordered.

25 (6) Certify that the benefits of the government  
26 action exceed the estimated compensation costs.

27 Section 5-30. Emergency action. If there is an  
28 immediate threat to public health and safety that constitutes  
29 an emergency and requires an immediate response, the "taking"  
30 assessment required by Section 5-25 may be made after the  
31 response is completed.

1 Section 5-35. Cause of action.

2 (a) An aggrieved property owner has a cause of action  
3 against a State agency that violates this Law for  
4 compensatory damages, a writ of mandamus or prohibition, or  
5 other appropriate legal or equitable relief.

6 (b) The Attorney General may bring an action to enforce  
7 compliance with this Law.

8 Section 5-40. Attorney's fees and costs. An owner of  
9 private property who successfully establishes that a  
10 government action is a constitutional taking of the owner's  
11 property requiring payment of just compensation must be  
12 awarded his or her reasonable attorney's fees and costs  
13 incurred in establishing that claim, in addition to other  
14 remedies provided by law.

15 Section 5-45. Source of compensation. Any award made to  
16 an owner of private property from a State agency for a  
17 constitutional taking, including any award of attorney's fees  
18 and costs, must come from the agency's existing budget unless  
19 the agency has previously disclosed an estimate of the costs  
20 to the appropriate financial management authority and moneys  
21 were included in the budget for that purpose.

22 Section 5-50. Valuation of property. If a government  
23 action is a constitutional taking, the effect of that  
24 government action on the fair market value of the private  
25 property taken must be reflected in the assessed valuation of  
26 the property for taxes, levies, and similar purposes.

27 ARTICLE 10.

28 Section 10-1. Short title. This Article may be cited as  
29 the Relief for Diminished Property Value Law, and references

1 in this Article to "this Law" mean this Article.

2 Section 10-5. Definitions. In this Law:

3 "Diminution in value of 50% or more" means a reduction of  
4 50% or more in the fair market value of property subject to a  
5 statute, ordinance, regulation, rule, guideline, or policy or  
6 subject to the denial of a permit, license, authorization, or  
7 other governmental permission.

8 "Owner" means (i) the owner of property at the time a  
9 statute, regulation, rule, guideline, or policy was enacted  
10 or adopted or (ii) the owner of property at the time a  
11 permit, license, authorization, or other governmental  
12 permission was denied.

13 Section 10-10. Diminution in property value; cause of  
14 action.

15 (a) The owner of any property may file a civil action  
16 against the State or a unit of local government whenever the  
17 application of a statute, ordinance, regulation, rule,  
18 permit, license, authorization, or other governmental  
19 permission of any kind by the State or a unit of local  
20 government causes a diminution in value of the property of  
21 50% or more.

22 (b) A property owner may file a civil action under  
23 subsection (a) in the circuit court in the county in which  
24 the property is located. That court has exclusive  
25 jurisdiction of the claim. The owner may either (i) recover a  
26 sum equal to the diminution in value of the property and  
27 retain title to the property or (ii) recover the entire fair  
28 market value of the property before the diminution in value  
29 of 50% or more and transfer title to the property to the  
30 State or unit of local government upon payment of the fair  
31 market value of the property. If the statute, ordinance,  
32 regulation, rule, guideline, or policy is rescinded, or if

1 the permit, license, authorization, or other governmental  
2 permission is granted, before final judgment, then the owner  
3 is entitled to recover in the pending action his or her other  
4 reasonable and necessary costs of the action incurred before  
5 that rescission or grant, together with any economic losses  
6 sustained by reason of the acts giving rise to the diminution  
7 in value.

8 (c) No compensation is required under this Law if the  
9 owner's use or proposed use of the property amounts to a  
10 public nuisance as commonly understood and defined by  
11 principles of nuisance and property law. The State or unit  
12 of local government bears the burden of proof with respect to  
13 this affirmative defense.

14 Section 10-15. Invalidation of statute, rule, or  
15 condition.

16 (a) For purposes of this Section, "person" means a  
17 person or persons having an interest that is or may be  
18 adversely affected by a statute, ordinance, regulation, rule,  
19 guideline, or policy or by a provision or condition of a  
20 permit, authorization, or other governmental permission.

21 (b) A person may commence a civil action on his or her  
22 own behalf against the State or a unit of local government to  
23 invalidate any statute, ordinance, regulation, rule,  
24 guideline, or policy, or to invalidate a provision or  
25 condition of a permit, authorization, or other governmental  
26 permission, that does not substantially advance its stated  
27 governmental purpose. The circuit court has exclusive  
28 jurisdiction over actions brought under this Section. A  
29 person may plead an action under this Section in the  
30 alternative in a complaint pleading a cause of action  
31 authorized under Section 10-10.

32 (c) An action under this Section is ripe for  
33 adjudication upon the enactment or adoption of the statute,

1 ordinance, regulation, rule, guideline, or policy or upon the  
2 imposition of the provision or condition of the permit,  
3 authorization, or other governmental permission against any  
4 parcel of property.

5 Section 10-20. Application of Law; statute of  
6 limitation.

7 (a) This Law applies to statutes, ordinances,  
8 regulations, rules, guidelines, policies, and the provisions  
9 or conditions of any permit, authorization, or other  
10 governmental permission in effect on or after the effective  
11 date of this Law.

12 (b) An action may not be brought under this Law more  
13 than 6 years after (i) the enactment or adoption of the  
14 statute, regulation, rule, guideline, or policy or (ii) the  
15 denial by the State or a unit of local government of the  
16 permit, license, authorization, or other governmental  
17 permission upon which the action is based.

18 Section 10-25. Award of costs. In issuing a final order  
19 in an action brought under this Law the court must award  
20 costs of litigation (including reasonable attorney's fees and  
21 expert witness's fees) to a plaintiff who prevails or  
22 substantially prevails.

23 Section 10-30. Constitutional or statutory rights not  
24 restricted. Nothing in this Law restricts any remedy or  
25 right that a person or class of persons may have under any  
26 provision of the Illinois Constitution or United States  
27 Constitution or under any law of Illinois or the United  
28 States.