

By Mr. Constantino of Clinton, petition of William Constantino, Jr., for legislation to protect the rights of private property owners. State Administration.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety-Four.

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**AN ACT TO ENSURE DUE PROCESS OF LAW REGARDING 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. Chapter 30A of the General Laws is hereby  
2 amended in Section 1, by inserting at the end thereof the following  
3 definitions: —

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

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

19 (9) "Taking" means an uncompensated damaging or depriva-  
20 tion of private property in violation of the United States  
21 constitution or the constitution of the commonwealth.

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

4 Section 1D. The attorney general shall develop a checklist and  
5 guidelines by December 31, 1993, to assist agencies in the  
6 identification and evaluation of policies that have constitutional  
7 implications, including policies that may result in a taking. The  
8 attorney general shall review and update the checklist and  
9 guidelines at least on an annual basis to maintain consistency with  
10 amendments to the laws.

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

4 Any agency proposing or implementing policies that have  
5 constitutional implications shall designate an official or officials  
6 in the agency to be responsible for ensuring compliance with the  
7 provisions of this chapter. Each agency policy that has  
8 constitutional implications shall be submitted to the designated  
9 official or officials for review. Using the checklist and guidelines  
10 prepared pursuant to Section 1D, the designated official or  
11 officials shall prepare a constitutional impact assessment which  
12 includes analysis of at least the following elements: (A) A  
13 description of how the policy affects private property including  
14 the likelihood that the policy could result in a taking of private  
15 property without due process of law; (B) Alternatives to the  
16 policy that would fulfill the agency's legal obligations but that  
17 would reduce the impact on the private property owner and the  
18 risk of a taking; and (C) An estimate of the financial cost to the  
19 commonwealth for compensation, and a source of funding.

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

25 Any award made to an owner of private property from the  
26 commonwealth for a taking under this act shall include an award  
27 of reasonable costs 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  
3 section: —

4 Section 5A. Owners of private property who successfully  
5 establish that any such policy having constitutional implications  
6 results in an unconstitutional taking shall be awarded reasonable  
7 costs and attorney's fees incurred in establishing their claim. The  
8 remedies provided in this chapter shall be in addition to any other  
9 remedies provided by law.

10 The effect of policies that have constitutional implications on  
11 the fair market value of affected property shall be reflected in the  
12 assessed valuation of that real property for taxes, levies and  
13 similar purposes.

