

HOUSE No. 1665

By Mr. Peterson of Grafton, a petition (accompanied by bill, House, No. 1665) of George N. Peterson, Jr., and others protecting the rights of private property owners from certain land takings. The Judiciary.

The Commonwealth of Massachusetts

PRESENTED BY:

George N. Peterson, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act protecting the rights of private property owners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
George N. Peterson, Jr.	9th Worcester
Viriato Manuel deMacedo	1st Plymouth
Paul K. Frost	7th Worcester
Jeffrey Davis Perry	5th Barnstable

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 appearing in the 2006
2 Official Edition, is hereby amended in, by inserting at the end thereof the following
3 definitions:—

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

12 (8) “Private property” means all real property protected by amendments V and XIV of the
13 constitution of the United States, or article X of the constitution of the Commonwealth of

14 Massachusetts.

15 (9) "Taking" means an uncompensated damaging or deprivation of property in violation of the
16 United States constitution or the constitution of the commonwealth.

17 SECTION 2. Chapter 30A of the General Laws, as so appearing, is hereby amended by inserting
18 after Section 1C the following new section:—

19 Section 1D. The attorney general shall develop a checklist and guidelines by December 31, 2009,
20 to assist agencies in the identification and evaluation of policies that have constitutional
21 implications, including policies that may result in a taking. The attorney general shall review and
22 update the checklist and guidelines at least on an annual basis to maintain consistency with
23 amendments to the laws.

24 SECTION 3. Section 5 of Chapter 30A of the General Laws, as so appearing, is hereby amended
25 in by inserting after the second paragraph, the following paragraph:—

26 Any agency proposing or implementing policies that have constitutional implications shall
27 designate an official or officials in the agency to be responsible for ensuring compliance with the
28 provisions of this chapter. Each agency policy that has constitutional implications shall be
29 submitted to the designated official or officials for review. Using the checklist and guidelines
30 prepared pursuant to Section 1D, the designated official or officials shall prepare a constitutional
31 impact assessment which includes analysis of at least the following elements: (A) A description
32 of how the policy affects private property including the likelihood that the policy could result in
33 a taking of private property without due process of law; (B) Alternatives to the policy that would
34 fulfill the agency's legal obligations but that would reduce the impact on the private property
35 owner and the risk of a taking; and (C) An estimate of the financial cost to the commonwealth

36 for compensation, and a source of funding.

37 Prior to the implementation of any policies that have constitutional implications a copy of the
38 constitutional impact assessment shall be provided for review by the Secretary of Administration
39 and Finance and by the Committees on Ways and Means of the Senate and House of
40 Representatives.

41 Any award made to an owner of private from the commonwealth for a taking under this act shall
42 include an award of reasonable costs and attorney's fees.

43 SECTION 4. Chapter 30A of the General Laws, as so appearing, is hereby amended by inserting
44 after Section 5, the following new section:—

45 Section 5A. Owners of private property who successfully establish that any such policy having
46 constitutional implications results in an unconstitutional taking shall be awarded reasonable costs
47 and attorney's fees incurred in establishing their claim. The remedies provided in this chapter
48 shall be in addition to any other remedies provided by law. The effect of policies that have
49 constitutional implications on the fair market value of affected property shall be reflected in the
50 assessed valuation of that real property for taxes, levies and similar purposes.