

HOUSE No. 1665

The Commonwealth of Massachusetts

In the Year Two Thousand 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:—(7) “Policies that have constitution implications” means current or proposed
4 regulations as defined above, law, agency policy statement, directive, or other restriction that, if
5 implemented or enacted could affect a taking of private property without due process of law,
6 such as policies, regulations, orders or agreements that propose or condition requirements or
7 limitations on private property use, or that require dedications or exactions from owners of
8 private property. This term does not include actions in which the power of eminent domain is
9 formally exercised, or actions of law enforcement involving seizure of property for forfeiture or
10 as evidence in criminal proceedings.(8) “Private property” means all real property protected by
11 amendments V and XIV of the constitution of the United States, or article X of the constitution
12 of the Commonwealth of Massachusetts.(9) “Taking” means an uncompensated damaging or
13 deprivation of property in violation of the United States constitution or the constitution of the
14 commonwealth.

15 SECTION 2. Chapter 30A of the General Laws, as so appearing, is hereby amended by
16 inserting after Section 1C the following new section:—Section 1D. The attorney general shall
17 develop a checklist and guidelines by December 31, 2009, to assist agencies in the identification
18 and evaluation of policies that have constitutional implications, including policies that may result
19 in a taking. The attorney general shall review and update the checklist and guidelines at least on
20 an annual basis to maintain consistency with amendments to the laws.

21 SECTION 3. Section 5 of Chapter 30A of the General Laws, as so appearing, is hereby
22 amended in by inserting after the second paragraph, the following paragraph:—Any agency
23 proposing or implementing policies that have constitutional implications shall designate an
24 official or officials in the agency to be responsible for ensuring compliance with the provisions
25 of this chapter. Each agency policy that has constitutional implications shall be submitted to the
26 designated official or officials for review. Using the checklist and guidelines prepared pursuant
27 to Section 1D, the designated official or officials shall prepare a constitutional impact assessment
28 which includes analysis of at least the following elements: (A) A description of how the policy
29 affects private property including the likelihood that the policy could result in a taking of private
30 property without due process of law; (B) Alternatives to the policy that would fulfill the agency’s
31 legal obligations but that would reduce the impact on the private property owner and the risk of a
32 taking; and (C) An estimate of the financial cost to the commonwealth for compensation, and a
33 source of funding. Prior to the implementation of any policies that have constitutional
34 implications a copy of the constitutional impact assessment shall be provided for review by the
35 Secretary of Administration and Finance and by the Committees on Ways and Means of the
36 Senate and House of Representatives. Any award made to an owner of private from the

37 commonwealth for a taking under this act shall include an award of reasonable costs and
38 attorney's fees.

39 SECTION 4. Chapter 30A of the General Laws, as so appearing, is hereby amended by
40 inserting after Section 5, the following new section:—Section 5A. Owners of private property
41 who successfully establish that any such policy having constitutional implications results in an
42 unconstitutional taking shall be awarded reasonable costs and attorney's fees incurred in
43 establishing their claim. The remedies provided in this chapter shall be in addition to any other
44 remedies provided by law. The effect of policies that have constitutional implications on the fair
45 market value of affected property shall be reflected in the assessed valuation of that real property
46 for taxes, levies and similar purposes.