HOUSE DOCKET, NO. 1744 FILED ON: 1/20/2011

HOUSE . . . . . No. 1359

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:

An Act to compensate the owners of private property for the effects of certain regulatory restrictions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
George N. Peterson, Jr.	*9th Worcester*

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HOUSE . . . . . No. 1359

By Mr. Peterson of Grafton, a petition (accompanied by bill, House, No. 1359) of George N. Peterson, Jr., relative to state agency compensation for owners of private property taken by eminent domain for regulatory purposes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1666* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to compensate the owners of private property for the effects of certain regulatory restrictions.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 21A of the General Laws, as most recently amended by Chapter 202 of the Acts of 2010, is hereby amended by adding at the end the following new section:—

Section 23. (1) A portion or parcel of private property shall be considered to have been taken for general public use when;

(a) the Commonwealth, its agencies, departments or any political subdivisions thereof regulates or imposes a restraint of land use on such portion or parcel of property for public benefit; and

(b) no public nuisance will be created absent regulation.

(2) When private property is taken for general use, the regulation agency, department or Commonwealth shall pay full compensation of reduction in value to the owner, or the use of the land by the owner may not be restricted because of the regulation or restraint. The Commonwealth may not require waiving this compensation as a condition of approval of use of another permit, nor as a condition for subdivision of land.

14 (3) Compensation must be paid to the owner of a private property within three months of
15 the adoption of a regulation or restraint which results in a taking for general public use.

16 (4) The Commonwealth, its agencies, departments or any political subdivisions thereof
17 may not deflate the value of property by suggesting or threatening a designation to avoid full
18 compensation to the owner.

19 (5) The Commonwealth, its agencies, departments or any political subdivisions thereof
20 that places restrictions on the use of public or privately property which deprives a landowner of
21 access to his or her property must also provide alternative access to the property at the
22 governmental entity's expense, or purchase the inaccessible property.

23 (6) The assessor shall adjust property valuation for tax purposes and notify the owner of
24 the new tax valuation, which must be reflected and identified in the next tax assessment notice.

25 (7) The Commonwealth is responsible for the compensation liability of the other
26 governmental entities for any action which restricts the use of property when such action is
27 mandated by state law or any state agency.

28 (8) Claims for compensation as a result of a taking of private property under this act must
29 be brought not later than 180 days after the adoption of a regulation or restraint which results in a
30 taking for general public use.

31 (9) The following words and phrases as used in this section, unless the context otherwise
32 requires, shall have the following meanings:

33 "Full compensation", means the reduction in the fair market value of the portion or parcel
34 of property taken for general public use which is attributable to the regulation or restraint. Such
35 reduction shall be measured as of the date of adoption of the regulation or imposition of restraint
36 on the use of private property.

37 "Private property", means:

38 (a) land;

39 (b) any interest in land or improvements thereon;

40 (c) any proprietary water right.

41 "Restraint of land use", means any action, requirement, or restriction by a governmental
42 entity, other than actions to prevent or abate public nuisances, that limits the use or development
43 of private property.

44 (10) This act may be enforced in Superior Court against any governmental entity which
45 fails to comply with the provisions of this section by an owner of property subject to the

46 jurisdiction of such entity. Any prevailing plaintiff is entitled to recover the costs of litigation,
47 including reasonable attorney's fees.

48 (11) This section shall apply to all state regulations that were promulgated and in effect
49 from January 1, 2010, and after.