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FILED FEB 15 1994

SENATE FILE 2148
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2069.1)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to procedures and criteria for recovery by
2 private property owners due to inverse condemnation of
3 property by government action, providing an applicability
4 date, and an effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2148

1 Section 1. NEW SECTION. 651A.1 WHO MAY BRING ACTION.

2 An action to recover just compensation for an inverse
3 condemnation of private property may be brought by any person
4 having or claiming an interest in the property affected.

5 Sec. 2. NEW SECTION. 651A.2 DEFINITIONS.

6 As used in this chapter, unless the context otherwise
7 requires:

8 1. "Constitutional taking" or "taking" means that due to a
9 governmental action, private property is taken in such a
10 manner that compensation to the owner is required by either
11 the fifth or fourteenth amendments to the Constitution of the
12 United States, or article I, section 18, of the Constitution
13 of the state of Iowa.

14 2. a. "Governmental action" means any of the following:

15 (1) Rules of a state agency adopted pursuant to chapter
16 17A that, if enforced, limit the use of private property.

17 (2) Rules, regulations, and requirements adopted by a
18 municipality, as defined by section 670.1, that, if enforced,
19 limit the use of private property.

20 (3) Proposed or implemented conditions, requirements, or
21 limitations for licenses or permits which affect the use of
22 private property.

23 (4) Required dedications or exactions from owners of
24 private property by a state agency.

25 b. "Governmental action" does not include any of the
26 following:

27 (1) Activities as to which the power of eminent domain is
28 formally exercised.

29 (2) The repeal or amendment of rules which results in the
30 discontinuation of government programs or changes to rules
31 which lessen the interference with the use of private
32 property.

33 (3) Law enforcement activities involving seizure or
34 forfeiture of private property for violations of law or for
35 use as evidence in criminal proceedings.

1 (4) Orders that are authorized by statute, are issued by a
2 state agency or court, and result from the violation of a
3 state law.

4 (5) Rules or regulations required to be adopted by the
5 state or a municipality pursuant to federal law.

6 3. "Inverse condemnation" means an action to recover just
7 compensation for a constitutional or regulatory taking of
8 private property.

9 4. "Private property" means any real property in this
10 state that is owned by a person other than a governmental
11 entity, and is protected pursuant to either the fifth and
12 fourteenth amendments to the Constitution of the United
13 States, or article I, section 18, of the Constitution of the
14 State of Iowa.

15 5. "Regulatory taking" means government action that
16 reduces the fair market value of the property affected by the
17 government action by more than fifty percent.

18 Sec. 3. NEW SECTION. 651A.3 JURISDICTION.

19 An action for inverse condemnation shall be brought in the
20 county where the private property alleged to be affected by
21 government action is located. The action shall be tried by
22 ordinary proceedings.

23 Sec. 4. NEW SECTION. 651A.4 VERDICT -- SPECIAL.

24 The verdict shall initially indicate whether the plaintiff
25 is entitled to recover for an inverse condemnation of the
26 plaintiff's property. If the plaintiff is entitled to
27 recover, the verdict shall then indicate the amount of the
28 reduction in the fair market value of the plaintiff's property
29 due to the inverse condemnation and any economic losses
30 sustained by the plaintiff due to the inverse condemnation
31 from the time the government action is taken until suit was
32 brought.

33 Sec. 5. NEW SECTION. 651A.5 JUDGMENT.

34 1. If the special verdict indicates the plaintiff is not
35 entitled to recover, the district court shall enter judgment

1 for the defendant.

2 2. If the special verdict indicates the plaintiff is
3 entitled to recover, the district court shall enter an order
4 acknowledging the special verdict. Within five days following
5 the entering of the order, the defendant shall file a notice
6 of election with the district court indicating whether or not
7 the defendant will agree to rescind the government action
8 constituting the constitutional or regulatory taking. If the
9 defendant elects to agree to rescind the government action,
10 the district court shall enter judgment accordingly and award
11 the plaintiff damages equal to the economic loss indicated in
12 the special verdict. If the defendant does not elect to
13 rescind the government action, the district court shall enter
14 a judgment for damages equal to the reduction in the fair
15 market value of the property.

16 The district court shall order the payment of all costs and
17 reasonable attorney fees to any party successfully
18 establishing an inverse condemnation pursuant to this chapter.

19 Sec. 6. NEW SECTION. 651A.6 REMEDY NOT EXCLUSIVE.

20 This chapter does not prevent a party from seeking to
21 recover just compensation for a constitutional taking in any
22 other manner allowed by law.

23 Sec. 7. NEW SECTION. 651A.7 WAIVER OF RIGHTS VOID.

24 An agreement by an individual to waive or otherwise release
25 the individual's rights to benefits or any other rights under
26 this chapter is void.

27 Sec. 8. NEW SECTION. 651A.8 APPLICABILITY.

28 This chapter applies only to government action adopted or
29 enforced on or after the effective date of this Act.

30 Sec. 9. EFFECTIVE DATE. This Act, being deemed of
31 immediate importance, takes effect upon enactment.

32 EXPLANATION

33 This bill establishes a statutory procedure for a person to
34 obtain just compensation for an inverse condemnation of real
35 property. The bill defines inverse condemnation as government

1 action that constitutes a taking under the United States or
2 Iowa Constitutions or a taking that results in a reduction in
3 the fair market value of the property affected by more than 50
4 percent. Government action is also defined to include most
5 regulatory actions by the state and municipalities.

6 The bill provides that an action for inverse condemnation
7 under this chapter is by ordinary proceedings and shall be
8 brought in the district court of the county where the affected
9 real property is located. The bill also provides that
10 following trial, a special verdict will be entered indicating
11 whether inverse condemnation occurred, the loss in value of
12 the plaintiff's property, and the economic loss suffered by
13 the plaintiff due to the action. The state or municipality,
14 if the verdict is adverse, then has five days to elect whether
15 or not to agree to rescind the offending government action.
16 If the defendant agrees to rescind, judgment is entered
17 accordingly and plaintiff is awarded only the economic loss.
18 If the defendant does not agree to rescind the government
19 action, judgment is entered for the loss in the fair market
20 value of the property.

21 The bill further provides that the remedies under this
22 chapter are not exclusive or waivable for a person aggrieved
23 by an alleged taking and that the bill only applies to
24 government action adopted or enforced on or after the
25 effective date of the bill. The bill takes effect upon
26 enactment.

27 The bill may include a state mandate as defined in section
28 25B.3.

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**SENATE FILE 2148
FISCAL NOTE**

A fiscal note for Senate File 2148 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2148 establishes procedures and criteria for recovery by private property owners due to inverse condemnation of property by government action.

ASSUMPTIONS:

1. That this legislation would impact inverse condemnation of property beginning July 1, 1994.
2. Government action includes adoption of rules and regulations by State agencies and local governments, changes in licenses or permits that impact the use of land, and required dedications or exactions of land by a State agency.
3. That the amount of property that would be impacted by this legislation is not determinable.

FISCAL IMPACT:

Senate File 2148 has the potential to impact certain property in the State and result in increased claims against State agencies and local governments. The fiscal impact of this bill is not determinable. (LSB 367lsv, BDH)

FILED FEBRUARY 28, 1994

BY DENNIS PROUTY, FISCAL DIRECTOR

Priebe
Husak
McLaren

SSB-2069.1
Agriculture

SENATE FILE 2148
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON PRIEBE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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