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STATE GOVERNMENT

HOUSE FILE 582  
BY DINKLA

WITHDRAWN

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Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act providing a private property protection Act, by awarding  
2 compensation to owners of real property subject to regulatory  
3 actions which affect the value of the property.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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WITHDRAWN

HF 582

1 Section 1. NEW SECTION. 6C.1 PRIVATE PROPERTY PROTECTION  
2 ACT.

3 This chapter shall be known and may be cited as the  
4 "Private Property Protection Act".

5 Sec. 2. NEW SECTION. 6C.2 DEFINITIONS.

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

8 1. "Constitutional taking" means a governmental action  
9 that takes real property of an owner to a degree that  
10 compensation is required to be paid to the owner under either  
11 the fifth or fourteenth amendment to the Constitution of the  
12 United States, or Article I, section 18, of the Constitution  
13 of the State of Iowa.

14 2. "Eminent domain" means the authority of the state or  
15 local governmental entity under Article I, section 18, of the  
16 Constitution of the State of Iowa, and pursuant to chapter 6A  
17 or 6B to take private property for the use and benefit of the  
18 public, and for the condemnation of such private property as  
19 may be necessary for any public improvement which the state or  
20 a local governmental entity has authorized to be undertaken.

21 3. "Governmental entity" means the following:

22 a. The state of Iowa, other than the general assembly or a  
23 state court, but including any state authority under the  
24 direction of a principal central department as enumerated in  
25 section 7E.5.

26 b. A local governmental entity, including a political  
27 subdivision as defined in section 24.48; a city as defined in  
28 section 362.2; a county as provided in chapter 331; a township  
29 as provided in chapter 359; a school corporation organized  
30 under chapter 274; an area education community college; or any  
31 special purpose district, including a district that provides  
32 or has authority to provide fire fighting, law enforcement,  
33 ambulance, medical, or other emergency services.

34 4. "Owner" means the person or entity whose name appears  
35 on the documents of title filed in the official county records

1 as the owner of the real property affected by regulatory  
2 action. However, an "owner" does not include the United  
3 States government, the state, or a local governmental entity.

4 5. "Real property" means land, improvements and fixtures  
5 attached to the land, and any other property appurtenant to  
6 the land, if the property is protected under the fifth or  
7 fourteenth amendment to the Constitution of the United States  
8 or Article I, section 18, of the Constitution of the State of  
9 Iowa.

10 6. a. "Regulatory action" means any of the following:

11 (1) State action which shall be either rules adopted by a  
12 state agency or orders issued by the state agency pursuant to  
13 chapter 17A.

14 (2) Local action, which shall be an ordinance, motion,  
15 resolution, amendment, regulation, or rule adopted by a local  
16 governmental entity including, but not limited to, land use  
17 planning or zoning requirements as provided in chapters 335,  
18 352, and 414.

19 (3) A required dedication or exaction of rights to or an  
20 interest in private property from the owner of the private  
21 property by a governmental entity.

22 (4) An improvement to real property for the use and  
23 benefit of the public which affects the fair market value of  
24 private property including, but not limited to, the  
25 construction or erection of infrastructure such as a highway  
26 or public facility such as a sanitary landfill, infectious  
27 waste disposal facility, sewage treatment plant, correctional  
28 institution, or hospital.

29 b. "Regulatory action" does not include any of the  
30 following:

31 (1) The exercise of eminent domain, including as provided  
32 in section 6A.1.

33 (2) The repeal or rescision of a governmental action,  
34 including the discontinuance of a program or reduction in  
35 benefits provided under a program.

1 (3) An activity of a law enforcement official which  
2 involves the seizure or forfeiture of private property for a  
3 violation of law, including, but not limited to, as provided  
4 in chapter 809.

5 (4) The sale of property subject to a lien held by a  
6 governmental entity.

7 (5) A tax sale conducted pursuant to chapter 446.

8 (6) An action involving private parties which is conducted  
9 under state law, or enforced by an officer of a governmental  
10 entity, including, but not limited to, a proceeding to enforce  
11 a debt against real property under chapter 654, to forfeit a  
12 contract to purchase real property under chapter 656, or to  
13 otherwise levy on, execute on, seize, or attach real property.

14 (7) A requirement, standard, condition, or limitation  
15 required to be adopted by a governmental entity pursuant to  
16 federal law.

17 (8) An easement granted for a public purpose including,  
18 but not limited to, a utility or public highway or scenic  
19 easement as provided in section 308.4, regardless of whether  
20 compensation was paid for the easement.

21 (9) The reduction or elimination of a benefit directly or  
22 indirectly conferred upon an owner which is not related to the  
23 use of the property and resulting from a governmental action,  
24 including, but not limited to, the removal of a facility or  
25 infrastructure.

26 Sec. 3. NEW SECTION. 6C.3 INVERSE CONDEMNATION.

27 1. If a governmental entity implements a regulatory action  
28 which reduces the fair market value of real property to less  
29 than fifty percent of its fair market value for the uses  
30 permitted at the time the owner acquired title to the real  
31 property, or on the effective date of this Act, whichever is  
32 later, the real property shall be deemed to have been taken  
33 for the use of the public as an inverse condemnation.

34 2. An owner of real property subject to the regulatory  
35 action may do either of the following:

1 a. Require condemnation by and just compensation from the  
2 governmental entity implementing the action which results in  
3 reducing the real property's fair market value, by requiring  
4 the governmental entity to institute eminent domain  
5 proceedings.

6 b. Receive compensation for the reduction in fair market  
7 value caused by the regulatory action.

8 3. The amount in compensation required to be paid to an  
9 owner under this section shall be the following:

10 a. The full fair market value of the interest taken if  
11 condemnation is required under eminent domain proceedings.

12 b. The full amount of the reduction in fair market value  
13 if compensation for the reduction in fair market value is  
14 required. The amount paid in compensation shall not be  
15 limited to the amount by which the reduction in fair market  
16 value exceeds fifty percent.

17 4. The governmental entity shall not require a person to  
18 waive a provision of this chapter as a condition for approval  
19 of the use of real property or the issuance of any permit or  
20 other entitlement. A plaintiff in an action brought under  
21 this chapter may accept the approval of an authorization, use,  
22 permit, or other entitlement granted by the governmental  
23 entity without compromising a right granted under this  
24 chapter, if either of the following applies:

25 a. The governmental entity executes a written reservation  
26 of rights at the time of acceptance of the authorization, use,  
27 permit, or other entitlement.

28 b. A representative of the governmental entity makes a  
29 statement at a public meeting at which the governmental entity  
30 renders its decision to grant an authorization, permit, or  
31 other entitlement.

32 Sec. 4. NEW SECTION. 6C.4 INVERSE CONDEMNATION  
33 PROCEEDINGS.

34 1. Any inverse condemnation action which constitutes the  
35 exercise of a governmental entity's eminent domain authority

1 shall proceed as provided in chapter 6B, unless the owner  
2 elects to proceed under this section. An inverse condemnation  
3 action in which the owner is compensated for the reduction in  
4 fair market value caused by the regulatory action shall  
5 proceed as provided in this section.

6 2. A petition for inverse condemnation under this chapter  
7 may be filed by the owner in the district court of the county  
8 in which the property is located. Service on the governmental  
9 entity shall be by personal service or by certified mail to an  
10 official which the governmental entity shall designate for  
11 service.

12 3. The court shall make an initial determination whether  
13 the chapter is applicable to the case. The action shall be  
14 tried by ordinary proceedings. The determination by a  
15 governmental entity that a regulatory action is not applicable  
16 shall not be binding upon the court. The review of a  
17 governmental entity's determination shall be de novo. The  
18 court shall enter a verdict which shall indicate whether this  
19 chapter is applicable to the owner's claim and whether the  
20 owner is entitled to recover compensation for an inverse  
21 condemnation as provided in this chapter. If the court  
22 determines that the chapter is applicable and the owner is  
23 entitled to recover for an inverse condemnation, the court  
24 shall conduct a hearing within six months after the notice of  
25 findings is served in order to determine the amount of  
26 compensation to award the owner.

27 4. The amount of compensation to be paid to an owner as  
28 provided in this chapter shall, upon the owner's request, be  
29 determined by a jury. Either party may request that the court  
30 appoint compensation commissioners selected pursuant to  
31 section 6B.4 to view the real property subject to the hearing  
32 for purposes of determining the fair market valuation of the  
33 property and the amount of compensation required to be paid to  
34 the owner. The commissioners shall file a written report with  
35 the court which shall be used as evidence in the proceeding.

1 If more than one governmental entity is a party, the jury  
2 shall determine what percentage of compensation each  
3 governmental entity must pay to the owner. The court shall  
4 also award all court costs and reasonable attorney fees to the  
5 owner establishing an inverse condemnation pursuant to this  
6 chapter. An owner shall not be dispossessed of the owner's  
7 real property, including the owner's residence, until the  
8 court determines that compensation has been paid.

9 5. Compensation is not required to be paid to an owner  
10 under this section if the governmental entity rescinds the  
11 regulatory action pursuant to section 6C.6. However, the  
12 governmental entity shall pay the owner the reasonable and  
13 necessary costs of the inverse condemnation action, including  
14 reasonable attorney fees, plus any actual and demonstrable  
15 economic losses caused the owner by the regulatory action  
16 during the period when the regulatory action was in effect.

17 6. This section does not limit the owner from seeking to  
18 recover just compensation for a constitutional taking by any  
19 other method allowed by law.

20 7. The clerk of the district court shall file with the  
21 county recorder a copy of the final judgment entry of the  
22 court showing the amount of damages. The final judgment shall  
23 be filed with the description of the property subject to  
24 inverse condemnation. The clerk shall also file a copy of the  
25 judgment with the county assessor in the county where the land  
26 is located. If the property is located in a city, the clerk  
27 shall also file a copy of the judgment with the city assessor.  
28 An assessor shall reassess the property not later than the  
29 year following receipt of the copy of the judgment.

30 Sec. 5. NEW SECTION. 6C.5 CHAPTER'S APPLICATION --  
31 STATUTE OF LIMITATIONS -- EXCEPTIONS.

32 1. a. This chapter shall apply to regulatory actions  
33 implemented on or after the effective date of this Act. This  
34 chapter shall also apply to regulatory actions in effect on  
35 the effective date of this Act which are applied on the

1 effective date of this Act to an owner's property.

2 b. The statute of limitations for actions brought pursuant  
3 to this chapter shall be as provided in section 614.1.

4 2. This chapter does not preclude an owner from bringing a  
5 legal challenge to a regulatory action where the regulatory  
6 action has caused a reduction in the fair market value of the  
7 property or the use of the property which does not exceed  
8 fifty percent of the fair market value for uses permitted at  
9 the time the owner acquired title, or on the effective date of  
10 this Act, whichever is later. This chapter does not preclude  
11 a property owner from bringing a legal challenge to a  
12 regulatory action affected by this chapter based on other  
13 provisions of law.

14 3. This chapter shall not apply if the regulatory action  
15 is an exercise of the police power to prevent any of the  
16 following:

17 a. A use which is a public or private nuisance, including,  
18 but not limited to, a violation of chapter 99, or a nuisance  
19 as provided in chapter 657.

20 b. A demonstrable harm to the public health and safety,  
21 including any use of real property that is a menace to the  
22 public health, welfare, or safety; that is structurally  
23 unsafe; that is unsanitary; that constitutes a fire hazard;  
24 that constitutes a hazard to the public health, welfare, or  
25 safety because of inadequate maintenance, dilapidation, or  
26 abandonment; or that is otherwise dangerous to human life.

27 Sec. 6. NEW SECTION. 6C.6 REGULATORY RECISION.

28 1. If a governmental entity is or may be required to pay  
29 compensation for inverse condemnation as provided in this  
30 chapter, the governmental entity may rescind the regulatory  
31 action, by revoking or repealing the regulatory action which  
32 affects the owner's real property. The recision must apply to  
33 all other real property affected by the regulatory action, if  
34 the owners affected by the regulatory action would have a  
35 colorable claim for compensation as provided in this chapter.

1 The governmental entity may adopt a new regulatory action or  
2 readopt a previously effective regulatory action in lieu of  
3 the regulatory action, but subject to the provisions of this  
4 chapter. A governmental entity may provide as part of a  
5 regulatory action, that if the regulatory action is rescinded,  
6 the regulatory action effective immediately prior to the  
7 adoption of the rescinded regulatory action shall again be  
8 effective.

9 2. A permit, authorization, or other benefit or  
10 entitlement granted under a regulatory action rescinded  
11 pursuant to this chapter shall continue to be valid,  
12 notwithstanding any provision of regulatory action  
13 subsequently adopted by the governmental entity.

14 Sec. 7. NEW SECTION. 6C.7 STATE MANDATE -- INAPPLICABLE.

15 The application of this chapter shall not be deemed to be a  
16 state mandate, as provided in chapter 25B.

17 Sec. 8. Section 614.1, Code 1995, is amended by adding the  
18 following new subsection:

19 NEW SUBSECTION. 14. REGULATORY ACTION. Those founded,  
20 either at law or in equity, on the implementation of a  
21 regulatory action as provided in chapter 6C, within fifteen  
22 years. The period of limitation shall begin to run upon the  
23 final administrative decision implementing the regulatory  
24 action affecting the plaintiff's real property.

25 EXPLANATION

26 This bill establishes a new chapter referred to as the  
27 "Private Property Protection Act".

28 The chapter applies to an action taken by a state entity,  
29 including any state authority under the direction of a  
30 principal central department as enumerated in section 7E.5, or  
31 a local governmental entity, including a city or county. The  
32 bill provides that if a governmental entity implements a  
33 regulatory action which reduces the fair market value of real  
34 property to less than fifty percent of its fair market value  
35 for the uses permitted at the time the owner acquired title to

1 the real estate, or the effective date of this bill, whichever  
2 is later, the real property is deemed to have been taken for  
3 the use of the public as an inverse condemnation.

4 The bill provides that the owner may require condemnation  
5 by and just compensation from the governmental entity  
6 implementing the regulatory action which results in such a  
7 reduction in the real property's fair market value, by  
8 requiring the governmental entity to institute eminent domain  
9 proceedings, or receive compensation for the reduction in fair  
10 market value caused by the regulatory action. The amount  
11 required to be paid to an owner is either the full fair market  
12 value of the interest taken if condemnation is required under  
13 eminent domain proceedings, or the full amount of the  
14 reduction in fair market value if compensation for the  
15 reduction in fair market value is required.

16 The bill provides that an inverse condemnation action which  
17 constitutes the exercise of a governmental entity's eminent  
18 domain authority must proceed as provided in chapter 6B,  
19 unless the owner elects to proceed under the bill's  
20 provisions. The bill establishes procedures for an inverse  
21 condemnation proceeding. A petition for inverse condemnation  
22 under this chapter may be filed by the owner in the district  
23 court of the county in which the property is located. The  
24 court must make an initial determination whether the bill's  
25 provisions are applicable to the case. If the court  
26 determines that the bill's provisions are applicable, the  
27 court must conduct a hearing in order to determine the amount  
28 of compensation to award the owner. The amount must be  
29 determined, if requested, by a jury. A copy of the judgment  
30 must be submitted to the county clerk and the county assessor  
31 in the county where the property is located. If the property  
32 is located in a city, a copy must also be sent to the city  
33 assessor. An assessment of the property must be performed not  
34 later than the next year.

35 The bill provides that compensation is not required to be

1 paid to an owner, if the governmental entity rescinds the  
2 regulatory action. However, the governmental entity must pay  
3 the owner reasonable and necessary costs of the inverse  
4 condemnation action. The governmental entity may revoke or  
5 repeal the regulatory action which affects the owner's real  
6 property. The rescission must apply to all other real  
7 property affected by the regulatory action. The governmental  
8 entity may adopt a new regulatory action or readopt a  
9 previously effective regulatory action.

10 The bill provides that the application of the chapter is  
11 not deemed to be a state mandate.

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