

ASSEMBLY, No. 1200

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DALTON

1 AN ACT to require the conducting of certain studies and evaluations
2 concerning potential regulatory takings, and amending and
3 supplementing P.L.1968, c.410 (C.52:14B-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares that in order
9 to protect the public health, safety, and welfare and to preserve the
10 environment, it is often necessary for the State to enact laws
11 regulating or otherwise affecting the use of private property; that
12 although some minor loss in property value is occasionally experienced
13 by certain property owners due to environmental and land use laws,
14 such losses do not rise to the level of an unconstitutional taking of
15 private property without just compensation; that nevertheless there are
16 other occasions when such losses are substantial yet not
17 constitutionally compensable according to rulings of the federal and
18 State courts; that even though the State may not be required by law to
19 provide compensation in those cases, it may be fair and right for the
20 State to do so; that there is a growing national trend for federal and
21 State governments to be more sensitive to the rights of private
22 property owners and to consider providing such compensation, but the
23 full economic impact of taking such a course of action is largely
24 unknown; and that, therefore, it is important for the State to conduct
25 the necessary studies to evaluate the economic costs, and the various
26 possible methods and procedures that could be utilized for
27 implementation, of a program to compensate any owner of real
28 property whose use of all or any portion of that property has been
29 limited by State action pursuant to certain environmental or land use
30 laws that diminishes the fair market value of the entire property by, for
31 example, an amount of 40% or more; and that it is important for the
32 State to establish procedures to help minimize the possibility of State

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 agencies adopting rules and regulations that may cause an
2 unconstitutional taking of private property without just compensation.

3

4 2. (New section) As used in sections 1 through 6 of this act:

5 "Department" means the Department of Environmental Protection;

6 "Environmental land use law" means R.S.12:5-1 et seq.; "The
7 Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the
8 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
9 et seq.), but only with respect to those standards and requirements
10 thereof that exceed standards and requirements imposed by any federal
11 law, or any rule or regulation adopted pursuant thereto, pertaining to
12 freshwater wetlands, including but not limited to the "Federal Water
13 Pollution Control Act" (33 U.S.C. §1251 et seq.) and any amendment
14 or supplement thereto; the "Coastal Area Facility Review Act,"
15 P.L.1973, c.185 (C.13:19-1 et seq.); and the "Flood Hazard Area
16 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.);

17 "Fair market value" means the most probable price at which real
18 property would be sold, in a competitive and open market under all
19 conditions requisite to a fair sale, between a willing buyer and a willing
20 seller, neither of whom is under any compulsion to buy or sell and both
21 having reasonable knowledge of relevant facts, at the time the State
22 action occurs;

23 "Property" or "real property" means privately owned land, or any
24 right, easement, or other interest therein, and all structures located
25 thereon;

26 "State action" means enactment of a law, adoption of a rule or
27 regulation pursuant to law, an administrative application or
28 interpretation by a State agency of such a rule or regulation, or an
29 action of a State agency to grant, deny, modify, suspend, or revoke a
30 license, permit, certificate, approval, registration, or other form of
31 permission required by law; and

32 "State agency" means the Department of Environmental Protection,
33 the Pinelands Commission, or the Hackensack Meadowlands
34 Development Commission.

35

36 3. (New section) a. The Department of Environmental Protection
37 shall conduct a study to evaluate the economic costs, and the various
38 possible methods and procedures that could be utilized for
39 implementation, of a program to compensate any owner of real
40 property whose use of all or any portion of that property has been
41 limited by State action pursuant to an environmental land use law that,
42 either singly or in combination with State action taken pursuant to
43 other environmental land use laws, diminishes the fair market value of
44 the entire property by 40% or more. The study shall also include: a
45 review of the impact of the department's rules and regulations adopted
46 pursuant to each environmental land use law upon the fair market

1 value of real property in the State; an estimate of the number of
2 properties subject to environmental land use laws and State action
3 taken pursuant thereto that may qualify for such a compensation
4 program; an assessment of the potential total loss in fair market value
5 of real property in the State because of State action taken pursuant to
6 each environmental land use law; and an evaluation of the effect of the
7 size of a parcel upon the relative loss in fair market value of real
8 property attributable to State action taken pursuant to an
9 environmental land use law.

10 The department may expand the study to include environmental
11 laws under its jurisdiction that affect land use other than those defined
12 in section 2 of this act.

13 b. The Pinelands Commission shall conduct a study to evaluate the
14 economic costs, and the various possible methods and procedures that
15 could be utilized for implementation, of a program to compensate any
16 owner of real property in the pinelands area whose use of all or any
17 portion of that property has been limited by State action pursuant to
18 the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.)
19 that diminishes the fair market value of the entire property by 40% or
20 more. The study shall also include: a review of the impact of the
21 Pinelands Comprehensive Management Plan and the commission's
22 rules and regulations adopted pursuant to the "Pinelands Protection
23 Act," and any land use decisions made by the commission pursuant
24 thereto, upon the fair market value of real property in the pinelands
25 area; an estimate of the number of properties subject to the "Pinelands
26 Protection Act" and State action taken pursuant thereto that may
27 qualify for such a compensation program; an assessment of the
28 potential total loss in fair market value of real property in the
29 pinelands area because of State action taken pursuant to the "Pinelands
30 Protection Act"; and an evaluation of the effect of the size of a parcel
31 upon the relative loss in fair market value of real property in the
32 pinelands area attributable to State action taken pursuant to the
33 "Pinelands Protection Act."

34 c. The Hackensack Meadowlands Development Commission shall
35 conduct a study to evaluate the economic costs, and the various
36 possible methods and procedures that could be utilized for
37 implementation, of a program to compensate any owner of real
38 property in the Hackensack Meadowlands District whose use of all or
39 any portion of that property has been limited by State action pursuant
40 to the "Hackensack Meadowlands Reclamation and Development
41 Act," P.L.1968, c.404 (C.13:17-1 et seq.) that diminishes the fair
42 market value of the entire property by 40% or more. The study shall
43 also include: a review of the impact of the commission's master plan
44 and rules and regulations adopted pursuant to the "Hackensack
45 Meadowlands Reclamation and Development Act," and any land use
46 decisions made by the commission pursuant thereto, upon the fair

1 market value of real property in the Hackensack Meadowlands
2 District; an estimate of the number of properties subject to the
3 "Hackensack Meadowlands Reclamation and Development Act" and
4 State action taken pursuant thereto that may qualify for such a
5 compensation program; an assessment of the potential total loss in fair
6 market value of real property in the Hackensack Meadowlands District
7 because of State action taken pursuant to the "Hackensack
8 Meadowlands Reclamation and Development Act"; and an evaluation
9 of the effect of the size of a parcel upon the relative loss in fair market
10 value of real property in the Hackensack Meadowlands District
11 attributable to State action taken pursuant to the "Hackensack
12 Meadowlands Reclamation and Development Act."

13 d. For the purposes of this section, the use of real property shall be
14 deemed "limited" if a particular legal right to use that property no
15 longer exists because of the State action.

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17 4. (New section) The department, the Pinelands Commission, and
18 the Hackensack Meadowlands Development Commission each shall be
19 entitled to call to its assistance and avail itself of the services of such
20 employees of any State, county, or municipal department, authority,
21 board, bureau, commission, agency, or entity, or of Rutgers, The State
22 University or any other public institution of higher education in the
23 State, as it may require and as may be available to it for the purpose
24 of carrying out its duties under this act.

25

26 5. (New section) The department, the Pinelands Commission, and
27 the Hackensack Meadowlands Development Commission shall each
28 report their findings and conclusions based upon the respective
29 studies, and any recommendations for legislative or administrative
30 action, to the Governor and the Legislature within one year of the
31 effective date of this act. Copies of the reports shall be made available
32 to the public at the cost of reproduction. In the interest of efficiency
33 and to save costs, the department, the Pinelands Commission, and the
34 Hackensack Meadowlands Development Commission may agree to
35 consolidate their respective reports into one document.

36

37 6. (New section) Nothing in this act shall be construed to apply to
38 the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

39

40 7. (New section) The Attorney General shall establish guidelines
41 that shall be used by State agencies in their evaluation of rules prior to
42 their adoption, amendment, or repeal to assess the potential of a rule
43 to constitute a taking of real property. The guidelines shall be based
44 upon the most current law as articulated by the United States Supreme
45 Court and the New Jersey Supreme Court. The Attorney General shall
46 review and, if necessary, update the guidelines on an annual basis.

1 As used in this section, "State agency" means each of the principal
2 departments in the executive branch of the State government, and all
3 boards, divisions, commissions, agencies, councils, authorities, offices,
4 or officers with any such department authorized to grant, deny,
5 modify, suspend, or revoke a license, permit, certificate, approval,
6 registration, or other form of permission required by law, other than
7 a license or certificate issued to an individual for the practice of a
8 profession or occupation, and "taking" means the taking of real
9 property for public use that would require compensation pursuant to
10 the United States Constitution or the New Jersey Constitution.

11

12 8. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
13 as follows:

14 4. (a) Prior to the adoption, amendment, or repeal of any rule,
15 except as may be otherwise provided, the agency shall:

16 (1) Give at least 30 days' notice of its intended action. The notice
17 shall include a statement of either the terms or substance of the
18 intended action or a description of the subjects and issues involved,
19 and the time when, the place where, and the manner in which
20 interested persons may present their views thereon. The notice shall
21 be mailed to all persons who have made timely requests of the agency
22 for advance notice of its rule-making proceedings and in addition to
23 other public notice required by law shall be published in the New
24 Jersey Register and shall be filed with the President of the Senate and
25 the Speaker of the General Assembly. The notice shall be additionally
26 publicized in such manner as the agency deems most appropriate in
27 order to inform those persons most likely to be affected by or
28 interested in the intended action. Methods that may be employed
29 include publication of the notice in newspapers of general circulation
30 or in trade, industry, governmental or professional publications,
31 distribution of press releases to the news media and posting of notices
32 in appropriate locations;

33 (2) Prepare for public distribution at the time the notice appears in
34 the Register a statement setting forth a summary of the proposed rule,
35 a clear and concise explanation of the purpose and effect of the rule,
36 the specific legal authority under which its adoption is authorized, a
37 description of the expected socio-economic impact of the rule, [and]
38 a regulatory flexibility analysis, or the statement of finding that a
39 regulatory flexibility analysis is not required, as provided in section 4
40 of P.L.1986, c.169 (C.52:14B-19) , and an evaluation of the rule for
41 its potential to result in a taking of private property for public use
42 without just compensation, based upon guidelines established therefor
43 by the Attorney General pursuant to section 7 of P.L. , c. (C.)
44 (now before the Legislature as this bill) ;

45 (3) Afford all interested persons reasonable opportunity to submit
46 data, views, or arguments, orally or in writing. The agency shall

1 consider fully all written and oral submissions respecting the proposed
2 rule.

3 The agency shall conduct a public hearing on the proposed rule at
4 the request of a committee of the Legislature, or a governmental
5 agency or subdivision, provided such request is made to the agency
6 within 15 days following publication of the proposed rule in the
7 Register. The agency shall provide at least 15 days' notice of such
8 hearing, which shall be conducted in accordance with the provisions
9 of subsection (g) of this section;

10 (4) Prepare for public distribution a report listing all parties
11 offering written or oral submissions concerning the rule, summarizing
12 the content of the submissions and providing the agency's response to
13 the data, views and arguments contained in the submissions.

14 (b) A rule prescribing the organization of an agency may be
15 adopted at any time without prior notice or hearing. Such rules shall
16 be effective upon filing in accordance with section 5 of this act or
17 upon any later date specified by the agency.

18 (c) If an agency finds that an imminent peril to the public health,
19 safety, or welfare requires adoption of a rule upon fewer than 30 days'
20 notice and states in writing its reasons for that finding, and the
21 Governor concurs in writing that an imminent peril exists, it may
22 proceed without prior notice or hearing, or upon any abbreviated
23 notice and hearing that it finds practicable, to adopt the rule. The rule
24 shall be effective for a period of not more than 60 days unless each
25 house of the Legislature passes a resolution concurring in its extension
26 for a period of not more than 60 additional days. The rule shall not be
27 effective for more than 120 days unless repromulgated in accordance
28 with normal rule-making procedures.

29 (d) No rule hereafter adopted is valid unless adopted in substantial
30 compliance with this act. A proceeding to contest any rule on the
31 ground of noncompliance with the procedural requirements of this act
32 shall be commenced within one year from the effective date of the rule.

33 (e) An agency may file a notice of intent with respect to a proposed
34 rule-making proceeding with the Office of Administrative Law, for
35 publication in the New Jersey Register at any time prior to the formal
36 notice of action required in subsection (a) of this section. The notice
37 shall be for the purpose of eliciting the views of interested parties on
38 an action prior to the filing of a formal rule proposal. An agency may
39 use informal conferences and consultations as means of obtaining the
40 viewpoints and advice of interested persons with respect to
41 contemplated rule-making. An agency may also appoint committees of
42 experts or interested persons or representatives of the general public
43 to advise it with respect to any contemplated rule-making.

44 (f) An interested person may petition an agency to promulgate,
45 amend or repeal any rule. Each agency shall prescribe the form for the
46 petition and the procedure for the submission, consideration and

1 disposition of the petition. The petition shall state clearly and
2 concisely:

3 (1) The substance or nature of the rule-making which is requested;

4 (2) The reasons for the request and the petitioner's interest in the
5 request;

6 (3) References to the authority of the agency to take the requested
7 action.

8 Within 30 days following receipt of any such petition, the agency
9 shall either deny the petition, giving a written statement of its reasons,
10 or shall proceed to act on the petition, which action may include the
11 initiation of a formal rule-making proceeding. Upon the receipt of the
12 petition, the agency shall file a notice stating the name of the petitioner
13 and the nature of the request with the Office of Administrative Law for
14 publication in the New Jersey Register. Notice of formal agency action
15 on such petition shall also be filed with the division for publication in
16 the Register.

17 (g) All public hearings shall be conducted by a hearing officer, who
18 may be an official of the agency, a member of its staff, a person on
19 assignment from another agency, a person from the Office of
20 Administrative Law assigned pursuant to subsection o. of section 5 of
21 P.L.1978, c.67 (C.52:14F-5o.) or an independent contractor. The
22 hearing officer shall have the responsibility to make recommendations
23 to the agency regarding the adoption, amendment or repeal of a rule.
24 These recommendations shall be made public. At the beginning of
25 each hearing, or series of hearings, the agency, if it has made a
26 proposal, shall present a summary of the factual information on which
27 its proposal is based, and shall respond to questions posed by any
28 interested party. Hearings shall be conducted at such times and in
29 locations which shall afford interested parties the opportunity to
30 attend. A verbatim transcript of each hearing shall be maintained, and
31 copies of the transcript shall be available to the public at no more than
32 the actual cost.

33 (cf: P.L.1986, c.169, s.7)

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35 9. This act shall take effect immediately.
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38 STATEMENT

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40 This bill would require the Department of Environmental Protection
41 to conduct a study to evaluate the economic costs, and the various
42 possible methods and procedures that could be utilized for
43 implementation, of a program to compensate any owner of real
44 property whose use of all or any portion of that property has been
45 limited by State action pursuant to an environmental land use law that,
46 either singly or in combination with State action taken pursuant to

1 other environmental land use laws, diminishes the fair market value of
2 the entire property by 40% or more. Under the bill, "environmental
3 land use law" is defined to mean: R.S.12:5-1 et seq.; "The Wetlands
4 Act of 1970"; the "Freshwater Wetlands Protection Act," but only with
5 respect to those standards and requirements thereof that exceed
6 standards and requirements imposed by any federal law, or any rule or
7 regulation adopted pursuant thereto, pertaining to freshwater
8 wetlands, including but not limited to the "Federal Water Pollution
9 Control Act" and any amendment or supplement thereto; the "Coastal
10 Area Facility Review Act"; and the "Flood Hazard Area Control Act."
11 The department would be authorized to expand the study to include
12 environmental laws under its jurisdiction that affect land use other than
13 those defined in the bill.

14 The bill would also require the Pinelands Commission to conduct
15 a similar study with respect to the "Pinelands Protection Act" and the
16 Hackensack Meadowlands Development Commission to do so with
17 respect to the "Hackensack Meadowlands Reclamation and
18 Development Act."

19 All three studies would be required to be completed and submitted
20 to the Governor and the Legislature within one year of the effective
21 date of the bill.

22 This bill would also require that the notice of the adoption,
23 amendment, or repeal of any administrative rule include an evaluation
24 of the rule's potential to constitute a taking of real property in
25 violation of the federal and State constitutional provisions that prohibit
26 the taking of private property for public use without just
27 compensation. The bill would require that the Attorney General
28 establish guidelines for the review of administrative rules that conform
29 to the law regarding "takings" as articulated in the most current United
30 States Supreme Court and Supreme Court of New Jersey opinions.

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35 Requires various State studies and evaluations concerning potential
36 regulatory takings.