

SENATE, No. 317

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator SCOTT

1 AN ACT concerning diminution in the fair market value of real  
2 property due to State action pursuant to certain laws, amending and  
3 supplementing P.L.1968, c.410 (C.52:14B-1 et seq.), and  
4 supplementing Title 20 of the Revised Statutes.

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

8  
9 1. (New section) Sections 1 through 7 of this act shall be known,  
10 and may be cited, as the "New Jersey Property Rights Protection Act."  
11

12 2. (New section) The Legislature finds and declares that:  
13 a. The right to own real property is essential to the existence of a  
14 free and strong democratic society, and reasonable and limited  
15 regulatory controls on the development of real property are essential  
16 to ensure the protection of unwarranted and inappropriate  
17 development by one landowner that would unfairly impinge on the  
18 rights of other landowners or jeopardize the health or safety of New  
19 Jersey's citizens;

20 b. Actions taken by the Department of Environmental Protection,  
21 the Pinelands Commission, and other State bureaucracies to regulate  
22 the development of real property have often been excessive and  
23 unreasonable and have significantly and unfairly diminished the value  
24 of real property owned by individuals, thereby eroding substantial  
25 lifetime investments, individual freedom, and economic independence;

26 c. The United States Supreme Court and the New Jersey Supreme  
27 Court have both held that, unless the value of real property is reduced  
28 to virtually nothing by the action or actions of the State, there is no  
29 governmental obligation to compensate the property owner for that  
30 lost value;

31 d. The New Jersey Supreme Court has even gone so far as to hold  
32 that restricting a property owner in the pinelands area to developing

**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 his or her land at a rate of one residential unit per 40 acres does not  
2 necessarily constitute a taking and, therefore, does not require  
3 payment of any compensation to the affected property owner even  
4 though significant lifetime investments may have been virtually  
5 destroyed;

6 e. The costs associated with seeking compensatory relief through  
7 judicial intervention is prohibitively expensive, time-consuming, and  
8 unpredictable, given the unclear, contradictory and vague rulings of  
9 the courts as to the meaning and application of the "takings" clauses  
10 of the United States Constitution and the New Jersey Constitution;

11 f. The open and democratic legislative process is the appropriate  
12 forum to debate and establish the level of regulation that may be  
13 forced upon property owners by the State without the State being  
14 required to pay compensation; and

15 g. It is therefore appropriate for the State to compensate any  
16 property owner whose property is diminished in value by 20% or more  
17 as a result of an action or actions taken by the State, and to require the  
18 Attorney General to establish standards for the adoption of regulations  
19 in order to ensure that the State does not adopt regulations that  
20 constitute a regulatory taking of private property as established by the  
21 courts.

22

23 3. (New section) As used in sections 1 through 7 of this act:

24 "Environmental law" means R.S.12:5-1 et seq.; "The Wetlands Act  
25 of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater  
26 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); the  
27 "Hackensack Meadowlands Reclamation and Development Act,"  
28 P.L.1968, c.404 (C.13:17-1 et seq.); the "Pinelands Protection Act,"  
29 P.L.1979, c.111 (C.13:18A-1 et seq.); the "Coastal Area Facility  
30 Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); and the "Flood  
31 Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.); or  
32 any amendment or supplement to any of those laws;

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

39 "Property" or "real property" means privately owned land, or any  
40 right, easement, or other interest therein, and all structures located  
41 thereon;

42 "State action" means enactment of an environmental law, adoption  
43 of a rule or regulation pursuant to an environmental law, an  
44 administrative application or interpretation by a State agency of such  
45 a rule or regulation, or an action of a State agency to grant, deny,  
46 modify, suspend, or revoke a license, permit, certificate, approval,

1 registration, or other form of permission required by an environmental  
2 law.

3 "State agency" means the Department of Environmental Protection,  
4 the Pinelands Commission, or the Hackensack Meadowlands  
5 Development Commission; and

6 "Tax lot" means a single entry on the property tax list of a  
7 municipality.

8

9 4. (New section) a. The State shall compensate the owner of real  
10 property whose use of all or any portion of that property has been  
11 limited by State action, occurring during the time of ownership, that  
12 diminishes the fair market value of the entire property by 20 percent  
13 or more. The amount of the compensation shall equal the diminution  
14 in fair market value that resulted from the State action. If the  
15 diminution in the fair market value of the property is greater than 50%,  
16 at the option of the owner the State shall purchase the entire property,  
17 or the affected portion thereof as designated by the owner, for its fair  
18 market value. For purposes of calculating the percentage diminution  
19 in fair market value pursuant to this subsection, at the option of the  
20 property owner, the property at issue may be considered as one parcel  
21 regardless of the number of contiguous tax lots comprising that parcel,  
22 or each such component tax lot may be considered to be a separate  
23 parcel from all of the other contiguous tax lots owned by that person.

24 b. Real property with respect to which compensation has been paid  
25 under this act shall not thereafter be used contrary to the limitation  
26 imposed by the State action, even if that action is later rescinded or  
27 otherwise vitiated. If, however, that action is later rescinded or  
28 otherwise vitiated, and the property owner refunds the amount of the  
29 compensation paid, adjusted for inflation, to the General Fund of the  
30 State of New Jersey, the property may be used contrary to the  
31 limitation imposed by the State action. An inflation adjustment  
32 required pursuant to this subsection shall be an amount equal to the  
33 percentage increase in the consumer price index for all urban  
34 consumers in the New York and Philadelphia areas as reported by the  
35 United States Department of Labor, from the date of payment of  
36 compensation by the State to the property owner to the date of  
37 payment of the refund of the amount of compensation by the property  
38 owner to the State.

39 c. (1) A person may apply for compensation pursuant to this act  
40 only while the person still owns the parcel of real property that was  
41 subject to the State action.

42 (2) An owner of real property may not apply for compensation  
43 pursuant to this act for a State action that occurred prior to  
44 ownership.

45 d. For the purposes of sections 1 through 7 of this act, the use of  
46 real property shall be deemed "limited" if a particular legal right to use

1 that property no longer exists because of the State action.

2

3 5. (New section) a. An owner of real property seeking  
4 compensation under this act shall make a written request for  
5 compensation to the State agency whose action resulted in the  
6 limitation on the use of the property. If the State action for which  
7 compensation is sought is the enactment of an environmental law, the  
8 owner of the real property shall make the written request to the State  
9 agency with statutory responsibility for administering the  
10 environmental law at issue.

11 b. The State agency may bargain with the property owner to  
12 establish the amount of compensation. If the State agency and the  
13 owner agree to the amount of compensation, the State Treasurer shall  
14 promptly pay it to the property owner from funds from the annual  
15 appropriation to the State agency.

16 c. If, within 180 days after the written request is made by the  
17 property owner, the State agency and the property owner do not reach  
18 an agreement as to the right to and amount of compensation, the  
19 property owner may choose to submit two appraisals conducted by  
20 two different real estate appraisers, who are licensed by the State Real  
21 Estate Appraiser Board pursuant to P.L.1991, c.68 (C.45:14F-1 et  
22 seq.), showing the percentage and absolute diminution in fair market  
23 value of the property attributable to the State action, and the average  
24 of the two appraisals of the absolute diminution in fair market value  
25 attributable to the State action, and an amount equal to the property  
26 owner's cost in obtaining the two appraisals, shall be paid promptly by  
27 the State Treasurer to the property owner.

28 d. (1) Any payment made pursuant to this section to a property  
29 owner shall, notwithstanding the provisions of any other law, be made  
30 by the State Treasurer from such funds as may be made available  
31 therefor pursuant to an annual appropriation by the Legislature to the  
32 applicable State agencies.

33 (2) If insufficient funds exist for the payment of compensation, the  
34 head of the State agency shall enter into a memorandum of  
35 understanding with the property owner that shall provide that the State  
36 action leading to the diminution in fair market value of the real  
37 property shall not be applied, implemented, or enforced, as the case  
38 may be, with respect to that property, notwithstanding any law, rule,  
39 or regulation to the contrary.

40

41 6. (New section) Whenever a State agency takes an action  
42 pursuant to an environmental law that results in limiting the use of real  
43 property, the State agency shall give appropriate notice to the affected  
44 property owners explaining their rights under this act and the  
45 procedures for obtaining any compensation that may be due to them  
46 under this act. With respect to the proposal or adoption of any rule or

1 regulation pursuant to an environmental law that may limit the use of  
2 real property, at a minimum such notice shall be published in the New  
3 Jersey Register at the time the rule or regulation is proposed or  
4 adopted, as the case may be. Notice shall also be included in every  
5 application form for a license, permit, certificate, approval,  
6 registration, or other form of permission required by an environmental  
7 law.

8

9 7. (New section) a. Nothing in this act shall be construed to limit  
10 any right of compensation that exists under the New Jersey  
11 Constitution, any other State law, the United States Constitution, or  
12 any federal law.

13 b. Payment of compensation under this act, other than when the  
14 property is purchased by the State at the option of the property owner,  
15 shall not confer any rights on the State other than the limitation on use  
16 resulting from the State action.

17

18 8. (New section) The Attorney General shall establish guidelines  
19 that shall be used by State agencies in their evaluation of rules prior to  
20 their adoption, amendment, or repeal to assess the potential of a rule  
21 to constitute a taking of real property. The guidelines shall be based  
22 upon the most current law as articulated by the United States Supreme  
23 Court and the New Jersey Supreme Court. The Attorney General shall  
24 review and, if necessary, update the guidelines on an annual basis.

25 As used in this section, "State agency" means each of the principal  
26 departments in the executive branch of the State government, and all  
27 boards, divisions, commissions, agencies, councils, authorities, offices,  
28 or officers with any such department authorized to grant, deny,  
29 modify, suspend, or revoke a license, permit, certificate, approval,  
30 registration, or other form of permission required by law, other than  
31 a license or certificate issued to an individual for the practice of a  
32 profession or occupation; and "taking" means the taking of real  
33 property for public use that would require compensation pursuant to  
34 the United States Constitution or the New Jersey Constitution.

35

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

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

40 (1) Give at least 30 days' notice of its intended action. The notice  
41 shall include a statement of either the terms or substance of the  
42 intended action or a description of the subjects and issues involved,  
43 and the time when, the place where, and the manner in which  
44 interested persons may present their views thereon. The notice shall  
45 be mailed to all persons who have made timely requests of the agency  
46 for advance notice of its rule-making proceedings and in addition to

1 other public notice required by law shall be published in the New  
2 Jersey Register and shall be filed with the President of the Senate and  
3 the Speaker of the General Assembly. The notice shall be additionally  
4 publicized in such manner as the agency deems most appropriate in  
5 order to inform those persons most likely to be affected by or  
6 interested in the intended action. Methods that may be employed  
7 include publication of the notice in newspapers of general circulation  
8 or in trade, industry, governmental or professional publications,  
9 distribution of press releases to the news media and posting of notices  
10 in appropriate locations;

11 (2) Prepare for public distribution at the time the notice appears in  
12 the Register a statement setting forth a summary of the proposed rule,  
13 a clear and concise explanation of the purpose and effect of the rule,  
14 the specific legal authority under which its adoption is authorized, a  
15 description of the expected socio-economic impact of the rule, [and]  
16 a regulatory flexibility analysis, or the statement of finding that a  
17 regulatory flexibility analysis is not required, as provided in section 4  
18 of P.L.1986, c.169 (C.52:14B-19) , and an evaluation of the rule for  
19 its potential to result in a taking of private property for public use  
20 without just compensation, based upon guidelines established therefor  
21 by the Attorney General pursuant to section 8 of P.L. , c. (C. )  
22 (now before the Legislature as this bill) ;

23 (3) Afford all interested persons reasonable opportunity to submit  
24 data, views, or arguments, orally or in writing. The agency shall  
25 consider fully all written and oral submissions respecting the proposed  
26 rule.

27 The agency shall conduct a public hearing on the proposed rule at  
28 the request of a committee of the Legislature, or a governmental  
29 agency or subdivision, provided such request is made to the agency  
30 within 15 days following publication of the proposed rule in the  
31 Register. The agency shall provide at least 15 days' notice of such  
32 hearing, which shall be conducted in accordance with the provisions  
33 of subsection (g) of this section;

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

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

42 (c) If an agency finds that an imminent peril to the public health,  
43 safety, or welfare requires adoption of a rule upon fewer than 30 days'  
44 notice and states in writing its reasons for that finding, and the  
45 Governor concurs in writing that an imminent peril exists, it may  
46 proceed without prior notice or hearing, or upon any abbreviated

1 notice and hearing that it finds practicable, to adopt the rule. The rule  
2 shall be effective for a period of not more than 60 days unless each  
3 house of the Legislature passes a resolution concurring in its extension  
4 for a period of not more than 60 additional days. The rule shall not be  
5 effective for more than 120 days unless repromulgated in accordance  
6 with normal rule-making procedures.

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

11 (e) An agency may file a notice of intent with respect to a proposed  
12 rule-making proceeding with the Office of Administrative Law, for  
13 publication in the New Jersey Register at any time prior to the formal  
14 notice of action required in subsection (a) of this section. The notice  
15 shall be for the purpose of eliciting the views of interested parties on  
16 an action prior to the filing of a formal rule proposal. An agency may  
17 use informal conferences and consultations as means of obtaining the  
18 viewpoints and advice of interested persons with respect to  
19 contemplated rule-making. An agency may also appoint committees of  
20 experts or interested persons or representatives of the general public  
21 to advise it with respect to any contemplated rule-making.

22 (f) An interested person may petition an agency to promulgate,  
23 amend or repeal any rule. Each agency shall prescribe the form for the  
24 petition and the procedure for the submission, consideration and  
25 disposition of the petition. The petition shall state clearly and  
26 concisely:

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

28 (2) The reasons for the request and the petitioner's interest in the  
29 request;

30 (3) References to the authority of the agency to take the requested  
31 action.

32 Within 30 days following receipt of any such petition, the agency  
33 shall either deny the petition, giving a written statement of its reasons,  
34 or shall proceed to act on the petition, which action may include the  
35 initiation of a formal rule-making proceeding. Upon the receipt of the  
36 petition, the agency shall file a notice stating the name of the petitioner  
37 and the nature of the request with the Office of Administrative Law for  
38 publication in the New Jersey Register. Notice of formal agency action  
39 on such petition shall also be filed with the division for publication in  
40 the Register.

41 (g) All public hearings shall be conducted by a hearing officer, who  
42 may be an official of the agency, a member of its staff, a person on  
43 assignment from another agency, a person from the Office of  
44 Administrative Law assigned pursuant to subsection o. of section 5 of  
45 P.L.1978, c.67 (C.52:14F-5o.) or an independent contractor. The  
46 hearing officer shall have the responsibility to make recommendations

1 to the agency regarding the adoption, amendment or repeal of a rule.  
2 These recommendations shall be made public. At the beginning of  
3 each hearing, or series of hearings, the agency, if it has made a  
4 proposal, shall present a summary of the factual information on which  
5 its proposal is based, and shall respond to questions posed by any  
6 interested party. Hearings shall be conducted at such times and in  
7 locations which shall afford interested parties the opportunity to  
8 attend. A verbatim transcript of each hearing shall be maintained, and  
9 copies of the transcript shall be available to the public at no more than  
10 the actual cost.

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

12

13 10. This act shall take effect immediately.

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#### STATEMENT

17

18 This bill would require the State to compensate any property owner  
19 whose use of all or any portion of that person's property has been  
20 limited by State action, occurring during the time of ownership, that  
21 diminishes the fair market value of the entire property by 20 percent  
22 or more. The amount of the compensation would equal the diminution  
23 in fair market value that resulted from the State action. If the  
24 diminution in the fair market value of the property is greater than 50%,  
25 at the option of the owner the State would be required to purchase the  
26 entire property, or the affected portion thereof as designated by the  
27 owner, for its fair market value. For purposes of calculating the  
28 percentage diminution in fair market value pursuant to the bill, at the  
29 option of the property owner, the property at issue may be considered  
30 as one parcel regardless of the number of contiguous tax lots  
31 comprising that parcel, or each such component tax lot may be  
32 considered to be a separate parcel from all of the other contiguous tax  
33 lots owned by that person.

34 The bill defines "State action" to mean enactment of an  
35 environmental law, adoption of a rule or regulation pursuant to an  
36 environmental law, an administrative application or interpretation by  
37 a State agency of such a rule or regulation, or an action of a State  
38 agency to grant, deny, modify, suspend, or revoke a license, permit,  
39 certificate, approval, registration, or other form of permission required  
40 by an environmental law; "State agency" to mean the Department of  
41 Environmental Protection, the Pinelands Commission, or the  
42 Hackensack Meadowlands Development Commission; and  
43 "environmental law" to mean the waterfront development law, "The  
44 Wetlands Act of 1970," the "Freshwater Wetlands Protection Act," the  
45 "Hackensack Meadowlands Reclamation and Development Act," the  
46 "Pinelands Protection Act," the "Coastal Area Facility Review Act,"

1 and the "Flood Hazard Area Control Act," or any amendment or  
2 supplement to any of those laws.

3 Real property with respect to which compensation has been paid  
4 under the bill could not thereafter be used contrary to the limitation  
5 imposed by the State action, even if that action is later rescinded or  
6 otherwise vitiated. If, however, that action is later rescinded or  
7 otherwise vitiated, and the property owner refunds the amount of the  
8 compensation paid, adjusted for inflation, to the State, the property  
9 could be used contrary to the limitation imposed by the State action.

10 Under the bill, a person may apply for compensation pursuant to the  
11 bill only while the person still owns the parcel of real property that  
12 was subject to the State action. Also, an owner of real property may  
13 not apply for compensation pursuant to the bill for a State action that  
14 occurred prior to ownership.

15 The bill would provide that any payment made pursuant to the bill  
16 to a property owner would, notwithstanding the provisions of any  
17 other law, be made by the State Treasurer from such funds as may be  
18 made available therefor pursuant to an annual appropriation by the  
19 Legislature to the applicable State agencies. If insufficient funds exist  
20 for the payment of compensation, the head of the affected State  
21 agency would be required to enter into a memorandum of  
22 understanding with the property owner that would provide that the  
23 State action leading to the diminution in fair market value of the real  
24 property shall not be applied, implemented, or enforced, as the case  
25 may be, with respect to that property, notwithstanding any law, rule,  
26 or regulation to the contrary.

27 The bill also sets forth procedures for providing notice of the bill's  
28 provisions to affected property owners and procedures for applying to  
29 obtain compensation.

30 This bill would also require that the notice of the adoption,  
31 amendment, or repeal of any administrative rule include an evaluation  
32 of the rule's potential to constitute a taking of real property in  
33 violation of the federal and State constitutional provisions that prohibit  
34 the taking of private property for public use without just  
35 compensation. The bill would require that the Attorney General  
36 establish guidelines for the review of administrative rules that conform  
37 to the law as articulated in the most current United States Supreme  
38 Court and Supreme Court of New Jersey opinions.

39 The provisions of this bill put into action a national trend of state  
40 governments, as well as the federal government, to be more sensitive  
41 to the effect of regulations upon the rights of private property owners.

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2

3 Requires State compensation of property owners for certain property  
4 devalued due to certain environmental laws; and requires State  
5 agencies to evaluate proposed administrative rules for potential to  
6 constitute taking of real property.