

## Property Rights Preservation Bill

Her Majesty, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

### Section 1. Preamble.

- A. It is the intent and policy of the democratically elected Government of the Province of Alberta that no private property may be taken from a resident of Alberta for public interest by governmental action without payment of just and fair compensation, in accordance with the meaning ascribed to in these precepts of due process of common law through the Court of Queen's Bench of Alberta and within the precepts of due process of English common law.
- B. The purpose of this Act is to require Provincial agencies, guided and overseen by the Attorney General, to evaluate proposed government actions that may result in taking of private property, in order to avoid unnecessary burdens on the public treasury and unwarranted interference with private property rights. It is not the purpose of this Act to affect the scope of private property protections afforded by any common law rights provided to Albertans by way of the English common law prior to the Canadian Federal Constitution enacted in 1982.

**Section 2. Short Title. This Act shall be known as the "Property Rights Preservation Act".**

### Section 3. Definitions. As used in this Act:

- A. "Provincial Agency" means the province of Alberta and any officer, physical board, commission, department or similar body of the executive branch of provincial government, and any of the political subdivisions of the province or agencies thereof;
- B. "Government Action" means:
  - i. existing and proposed rules and regulations that, if adopted or enforced, may limit the use of private property;
  - ii existing or proposed license [issuance requirements](#), leasing or permitting conditions, requirements or limitations on the use of private property;
  - iii. required dedications or exactions of private property;

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- C. The term “Government Action” does not include:
- i. the forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law;
  - ii. orders issued by a provincial agency or court of law that result from a violation of law and that are authorized by statute;
- D. “Taking(s)” means the taking of private property by Government Action such that compensation to the owner of that property is required by this Property Rights Preservation Act.
- E. “Property” for the purposes of this Act, refers to, and includes all things or possessions that are conveyable through a commercial or bequeathal action.

#### **Section 4. Criteria for Determining Takings**

- A. The Attorney General for Alberta shall develop and provide to provincial agencies fair and equitable criteria to assist in the identification and evaluation of Government Actions that may result in a Taking of private property from any resident of Alberta. The Attorney General shall update the criteria at least on an annual basis to take account of changes in the law and to ensure equity prevails.
- B. In developing such criteria, and subject to the provisions of subparagraph A. of this Section, the Attorney General shall adhere the following principles:
- i. if Government Actions shall result in a physical invasion or occupancy of private property or decrease the value or limit the use of property, these actions shall constitute a Taking;
  - ii. Government Action shall amount to a Taking even though it constitutes less than a complete deprivation of all use or value of all separate and distinct interest in the same private property or the action is only temporary in nature;
  - iii. the mere assertion of a public purpose is insufficient to avoid a Taking. Government Actions to protect the public health and safety or other wise to further the public interest should be taken only in response to real and substantial public needs and shall be designed significantly to address those needs;

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- iv. although normal government processes do not ordinarily constitute takings, undue or unreasonable delays in decision making that interfere with private property use shall be a Taking. In addition, a delay in processing may increase significantly the size of compensation due if a Taking is later found to have occurred; and
- v. these protections against Taking private property are self-executing and require compensation regardless of whether the underlying authority for the action contemplated a Taking or authorized the payment of compensation.

**Section 5. Designation of Responsible Official.** The Attorney General shall designate an official within the office of the Attorney General who shall be responsible for ensuring compliance with this Act.

**Section 6. Takings Assessment by Provincial Agency.** Before a Provincial Agency takes any Government Action, the agency shall prepare a written assessment of the Takings implications of such action, in compliance with the guidelines developed pursuant to Section 4 of this Act. The agency shall deliver copies of this assessment to the Premier of Alberta, the affected landowner, the respective municipal government, the appropriate financial management authority and the Attorney General. The agency's assessment shall:

- A. assess the likelihood that the Government Action may result in a Taking;
- B. clearly and specifically identify the purpose of the Government Action;
- C. explain why the Government Action is necessary substantially to advance that purpose, and why no alternative action is available that would achieve the agency's goals while reducing the impact on the private property owner;
- D. estimate the potential cost to the government if a court determines that the action constitutes a Taking;
- E. identify the source of payment within the agency's budget for a compensation that may be ordered;
- F. assess the consequential effect on the local tax base for municipal purposes; and
- G. certify that the benefits of the Government Action exceed the estimated compensation costs.

**Section 7. Emergency Action.** If there is an immediate threat to public health and safety that constitutes an emergency and requires an immediate response, the Takings assessment required by Section 6 of this Act may be made when the response is completed.

**Section 8. Source of Compensation.** Any award made to an owner of private property from a government agency for a Taking, including any award of solicitor (lawyer) – client fees and cost, shall come from the agency’s existing budget unless the agency has previously disclosed an estimate of the costs to the appropriate financial management authority and funds were included in the budget for that purpose.

**Section 9. Solicitor – Client Fees and Cost.** An owner of private property who successfully establishes that a government action is a Taking of such owner’s property requiring payment of just compensation shall be awarded reasonable Solicitor – client fees and other reasonable costs incurred in establishing that claim, including reasonable expert evidence required by property owner, in addition to other remedies provided by law.

**Section 10, Causes of Action.**

- A. An aggrieved property owner shall have a legal cause of action against a provincial agency that violates this Act for compensatory damages; including writs of mandamus or prohibition, or other appropriate legal or equitable relief.
- B. A Municipality may seek relief and cost recovery from the Provincial or Federal Government for any loss or incurred expense resulting from a Taking through government program.
- C. The Attorney General may bring an action to enforce compliance with this Act.

**Section 11. Valuation of Property.** The effect of Government Action that is a Taking on the fair market value of private property shall be reflected in the assessed valuation of such property for taxes, levies and similar purposes.

**Section 12. Effective Date.** This Act is effective January 1, 2006.

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