HOUSE DOCKET, NO. 1734 FILED ON: 1/20/2011

HOUSE . . . . . No. 1358

The Commonwealth of Massachusetts

PRESENTED BY:

George N. Peterson, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act protecting the rights of private property owners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
George N. Peterson, Jr.	*9th Worcester*

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HOUSE . . . . . No. 1358

By Mr. Peterson of Grafton, a petition (accompanied by bill, House, No. 1358) of George N. Peterson, Jr., relative to protecting the rights of private property owners from certain land takings. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1665* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act protecting the rights of private property owners.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of Chapter 30A of the General Laws, as most recently amended by chapter 240 of the acts of 2010, is hereby amended in, by inserting at the end thereof the following definitions:—

"(7) "Policies that have constitution implications" means current or proposed regulations as defined above, law, agency policy statement, directive, or other restriction that, if implemented or enacted could affect a taking of private property without due process of law, such as policies, regulations, orders or agreements that propose or condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. This term does not include actions in which the power of eminent domain is formally exercised, or actions of law enforcement involving seizure of property for forfeiture or as evidence in criminal proceedings.

(8) "Private property" means all real property protected by amendments V and XIV of the constitution of the United States, or article X of the constitution of the Commonwealth of Massachusetts.

(9) "Taking" means an uncompensated damaging or deprivation of property in violation of the United States constitution or the constitution of the commonwealth." .

17 SECTION 2. Said chapter 30A is hereby amended by inserting after Section 1D the
18 following new section:—

19 "Section 1E. The attorney general shall develop a checklist and guidelines by December
20 31, 2011, to assist agencies in the identification and evaluation of policies that have
21 constitutional implications, including policies that may result in a taking. The attorney general
22 shall review and update the checklist and guidelines at least on an annual basis to maintain
23 consistency with amendments to the laws." .

24 SECTION 3. Section 5 of said chapter 30A is hereby amended in by inserting after the
25 second paragraph, the following paragraphs:—

26 "Any agency proposing or implementing policies that have constitutional implications
27 shall designate an official or officials in the agency to be responsible for ensuring compliance
28 with the provisions of this chapter. Each agency policy that has constitutional implications shall
29 be submitted to the designated official or officials for review. Using the checklist and guidelines
30 prepared pursuant to Section 1D, the designated official or officials shall prepare a constitutional
31 impact assessment which includes analysis of at least the following elements: (A) A description
32 of how the policy affects private property including the likelihood that the policy could result in
33 a taking of private property without due process of law; (B) Alternatives to the policy that would
34 fulfill the agency's legal obligations but that would reduce the impact on the private property
35 owner and the risk of a taking; and (C) An estimate of the financial cost to the commonwealth
36 for compensation, and a source of funding.

37 Prior to the implementation of any policies that have constitutional implications a copy of
38 the constitutional impact assessment shall be provided for review by the Secretary of
39 Administration and Finance and by the Committees on Ways and Means of the Senate and
40 House of Representatives.

41 Any award made to an owner of private from the commonwealth for a taking under this
42 act shall include an award of reasonable costs and attorney's fees." .

43 SECTION 4. Said chapter 30A is hereby amended by inserting after section 5A, the
44 following new section:—

45 "Section 5B. Owners of private property who successfully establish that any such policy
46 having constitutional implications results in an unconstitutional taking shall be awarded
47 reasonable costs and attorney's fees incurred in establishing their claim. The remedies provided
48 in this chapter shall be in addition to any other remedies provided by law. The effect of policies
49 that have constitutional implications on the fair market value of affected property shall be
50 reflected in the assessed valuation of that real property for taxes, levies and similar purposes." .