



2003 ASSEMBLY BILL 808

February 5, 2004 – Introduced by Representatives ALBERS, MUSSER, AINSWORTH and BIES, cosponsored by Senators REYNOLDS and A. LASEE. Referred to Committee on Property Rights and Land Management.

1 **AN ACT** *to amend* 814.04 (intro.); and *to create* 893.78 and 895.45 of the
2 statutes; **relating to:** the taking of private real property as the result of
3 governmental action.

Analysis by the Legislative Reference Bureau

This bill gives a private real property owner the right to bring an action against a state or local governmental unit to void an action of that governmental unit if the property owner proves that the governmental unit's action has resulted in the taking of the private property. In the bill, a "taking" occurs if the action requires the governmental unit to compensate the private property owner or results in the reduction of the value of the private property to an amount that is 50 percent or less of the property's value before the governmental action. "Governmental action" under the bill includes enacting a law or ordinance, promulgating a rule, and creating a limit on the use of private property.

Under the bill, if the court determines that there has been a taking that results in the reduction of the value of the property to 50 percent or less of its previous value, the court must enter an order voiding the governmental action as it relates to the private property owner that brought the action unless the governmental unit pays that property owner an amount equal to the reduction in the value of the private property. The bill requires the court to award the prevailing party the costs of bringing the action, including attorney fees.

The bill excludes certain types of governmental action from being subject to court action as a taking, including the exercise of eminent domain, seizure or

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forfeiture of property as part of a proceeding related to a law violation, an action based on a court order declaring a property a nuisance, an action to regulate water safety, hunting, or fishing, or an action that is taken in good faith as necessary to prevent an immediate and substantial threat to life or property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 814.04 (intro.) of the statutes is amended to read:

2 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
3 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025,
4 814.245, 895.035 (4), 895.10 (3), 895.45 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80
5 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed, costs shall be as
6 follows:

7 **SECTION 2.** 893.78 of the statutes is created to read:

8 **893.78 Governmental actions affecting private property.** An action
9 under s. 895.45 (2) shall be commenced within 6 months after the plaintiff discovers
10 or should have discovered the effect of a governmental action on the fair market value
11 of his or her private real property or be barred.

12 **SECTION 3.** 895.45 of the statutes is created to read:

13 **895.45 Private real property rights. (1)** In this section:

14 (a) “Governmental action” means a governmental unit’s exercise of any power
15 or duty required or authorized by law, including all of the following actions, whether
16 temporary or permanent:

- 17 1. Enacting a law.
- 18 2. Promulgating an administrative rule.
- 19 3. Enacting an ordinance.

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1 4. Adopting a resolution.

2 5. Creating a condition on, requirement for, or limitation on the use of private
3 real property imposed as part of or as a condition of receiving any type of permit,
4 license, authorization, variance or exception.

5 6. Requiring the dedication of private real property as a part of or as a condition
6 for receiving any type of permit, license, authorization, variance, or exception related
7 to the use of the property.

8 (b) "Governmental unit" means the state, any county, town, city, village, or
9 other political subdivision of the state or any combination thereof, or a department,
10 division, board, or other agency of any of the foregoing.

11 (c) "Private real property" means real property that is not owned by the United
12 States, the state of Wisconsin or any other governmental unit or by a nonprofit
13 organization, as defined in s. 103.21 (2).

14 (d) "Taking" means a governmental action that does any of the following:

15 1. Directly affects a parcel of private real property in whole or in part in a
16 manner that requires the governmental unit to compensate the owner of the private
17 real property as provided by the 5th and 14th Amendments to the U.S. Constitution.

18 2. Directly results in the reduction in the fair market value of a parcel of private
19 real property to an amount that is 50 percent or less of the value of the property before
20 the governmental action.

21 **(2)** If a governmental action results in a taking of private real property under
22 sub. (1) (d) 2., the owner of the private real property may commence an action in
23 circuit court in the county where the private real property is located asking that the
24 governmental action be voided with respect to the owner's property.

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1 **(3)** If the finder of fact in an action commenced under sub. (2) determines that
2 a governmental action results in a taking of private real property under sub. (1) (d)
3 2., the court shall enter an order declaring that the governmental action is void with
4 respect to the private real property that is the subject of the action, unless the
5 governmental unit that took the action pays the owner of the private real property
6 an amount equal to the reduction in the value of the private real property.

7 **(4)** The court shall award the prevailing party in an action commenced under
8 sub. (2) costs, including reasonable attorney fees.

9 **(5)** This section does not apply to a governmental unit's failure to act or to any
10 of the following actions by a governmental unit:

11 (a) The exercise of the power of eminent domain.

12 (b) A law enforcement agency's seizure of private property for a violation of law
13 or as evidence in a criminal proceeding.

14 (c) The forfeiture of private property resulting from the violation of a law.

15 (d) An action taken that is a reasonable response to an obligation mandated by
16 federal law.

17 (e) An action taken by a political subdivision of the state that is a reasonable
18 response to an obligation mandated by state law.

19 (f) The discontinuance or modification of a program or previous governmental
20 action that provides a unilateral expectation that does not rise to the level of a
21 recognized interest in private real property.

22 (g) An action taken to prohibit or restrict a condition or use of a private real
23 property if the state or political subdivision of the state has obtained an order from
24 a court declaring that a building or dwelling on the private real property is a
25 nuisance.

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1 (h) An action taken out of a good faith belief that the action is necessary to
2 prevent an immediate and substantial threat to life or property.

3 (i) A rule promulgated or ordinance or statute enacted or resolution adopted
4 to regulate water safety, hunting, or fishing or to control nonindigenous aquatic
5 species.

6 (j) An action, other than a zoning ordinance, taken in response to a substantial
7 threat to public health or safety if the action is designed to significantly advance
8 public health or safety and the action does not impose a greater burden on private
9 real property than is necessary to respond to the substantial threat to public health
10 or safety.

11 (k) The denial, suspension, or revocation of a license to conduct certain
12 activities on a parcel of private real property.

13 (L) Verbal or written orders requiring environmental cleanup or prohibiting or
14 rescinding the use of certain pesticides.

15 (m) An administrative agency's approval or disapproval of ordinances proposed
16 by other governmental units.

17 **SECTION 4. Effective date.**

18 (1) This act takes effect on the first day of the 9th month beginning after
19 publication.

20 (END)