



1995 SENATE BILL 298

August 16, 1995 - Introduced by Senators DRZEWIECKI, HUELSMAN, A. LASEE, SCHULTZ and PETAK, cosponsored by Representatives ALBERS, JOHNSRUD, GREEN, SERATTI, HARSDORF, FREESE, AINSWORTH, BRANCEL, BRANDEMUEHL, GOETSCH, GRONEMUS, GROTHMAN, GUNDERSON, HAHN, HUEBSCH, JENSEN, KREIBICH, LEHMAN, MUSSER, PORTER, RYBA, SKINDRUD, WALKER and ZUKOWSKI. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT to amend** 20.865 (1) (a), 20.865 (1) (g) and 20.865 (1) (q); and **to create**
2 20.855 (8), subchapter III of chapter 32 [precedes 32.80], 70.32 (1p), 70.47 (9)
3 (am) and 893.78 of the statutes; **relating to:** imposing a duty on state agencies
4 and local governmental units to minimize the adverse effect of governmental
5 actions on private property value, creating a cause of action for certain
6 governmental actions affecting private property and making an appropriation.

Analysis by the Legislative Reference Bureau

Under this bill, a state executive agency or a local governmental agency, in taking certain actions that affect the use of private property and reduce the fair market value of private property, must do so in a manner that results in the least amount of reduction in the fair market value of that private property while accomplishing the intended objective of the governmental action. If an action by the state or a local governmental agency results in a reduction in the fair market value of the private property, the bill provides that the owner of the private property may commence an action in response to the governmental action. Under the bill, a governmental agency has several defenses to the lawsuit, including the defense that the governmental action is necessary to prevent a threat to harm health.

Under the bill, if a court determines that a governmental action lowers the fair market value of private property, the court must order the assessor to adjust the property's assessed valuation to reflect the reduced value. If a court determines that the governmental action reduces the fair market value by more than 20%, the bill requires the court to order the governmental agency to pay damages equal to the amount of the reduction in the fair market value of the private property if the plaintiff still owns the property at the time that the judgment is entered. If the plaintiff does not own the property at the time that the judgment is entered, in a case

involving a reduction in the fair market value by more than 20%, the bill provides that the court must order the governmental agency to pay damages equal to the amount of the reduction in the fair market value of the private property that was attributable to the governmental action at the time that the plaintiff sold the private property.

The bill permits a court to allow a local unit of government to pay any damages under an action under this bill in up to 5 equal annual instalments, with interest.

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.** 20.855 (8) of the statutes is created to read:

2 20.855 (8) JUDGMENTS. (a) *State actions reducing private property value.* A sum
3 sufficient to pay for the costs of judgments, orders and settlements of actions, appeals
4 and complaints under s. 32.82 (1) not chargeable under s. 20.865 (1) (a), (g) or (q).

5 **SECTION 2.** 20.865 (1) (a) of the statutes is amended to read:

6 20.865 (1) (a) *Judgments and legal expenses.* A sum sufficient to pay for legal
7 expenses under ss. 59.31 and 776.43, for costs under ss. 227.485 and 814.245 and for
8 the costs of judgments, orders and settlements of actions, appeals and complaints
9 under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards,
10 orders and settlements under ss. 21.13, 32.82 (1), 165.25 (6), 775.04 and 895.46 that
11 are not otherwise reimbursable as liability costs under par. (fm). Release of moneys
12 under this paragraph pursuant to any settlement agreement, whether or not
13 incorporated into an order, is subject to approval of by the attorney general.

14 **SECTION 3.** 20.865 (1) (g) of the statutes is amended to read:

15 20.865 (1) (g) *Judgments and legal expenses; program revenues.* From the
16 appropriate program revenue and program revenue-service accounts, a sum
17 sufficient to pay for legal expenses under ss. 59.31 and 776.43, for costs under ss.

1 227.485 and 814.245 and for the cost of judgments, orders and settlements of actions,
2 appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and
3 those judgments, awards, orders and settlements under ss. 21.13, 32.82 (1), 165.25
4 (6), 775.04 and 895.46 that are not otherwise reimbursable as liability costs under
5 par. (fm). Release of moneys under this paragraph pursuant to any settlement
6 agreement, whether or not incorporated into an order, is subject to approval of the
7 attorney general.

8 **SECTION 4.** 20.865 (1) (q) of the statutes is amended to read:

9 20.865 (1) (q) *Judgments and legal expenses; segregated revenues.* From the
10 appropriate segregated funds, a sum sufficient to pay for legal expenses under ss.
11 59.31 and 776.43, for costs under ss. 227.485 and 814.245 and for the cost of
12 judgments, orders and settlements of actions, appeals and complaints under subch.
13 II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and
14 settlements under ss. 21.13, 32.82 (1), 165.25 (6), 775.04 and 895.46 that are not
15 otherwise reimbursable as liability costs under par. (fm). Release of moneys under
16 this paragraph pursuant to any settlement agreement, whether or not incorporated
17 into an order, is subject to approval of by the attorney general.

18 **SECTION 5.** Subchapter III of chapter 32 [precedes 32.80] of the statutes is
19 created to read:

20 **CHAPTER 32**

21 **SUBCHAPTER III**

22 **PRIVATE PROPERTY RIGHTS**

23 **32.80 Definitions.** In this subchapter:

1 **(1)** (a) “Governmental action” means the exercise of any power or duty required
2 or authorized by law, including all of the following actions, whether temporary or
3 permanent:

4 1. Creating a state statute.

5 2. Promulgating an administrative rule.

6 3. Enacting an ordinance.

7 4. Adopting a resolution.

8 5. Entering into a memorandum of understanding or a memorandum of
9 agreement.

10 6. Entering into an intergovernmental cooperation contract.

11 7. Creating a condition on, requirement for or limitation on the use of private
12 property imposed as part of or as a condition of receiving any type of permit, license,
13 authorization, variance or exception.

14 8. Requiring the dedication or exaction by the owner of private property as a
15 part of or as a condition to receiving any type of permit, license, authorization,
16 variance or exception related to the use of the property.

17 (b) Notwithstanding par. (a), “governmental action” does not include any of the
18 following actions:

19 1. The formal exercise of the power of eminent domain.

20 2. A law enforcement agency’s seizure of private property for a violation of law
21 or as evidence in a criminal proceeding.

22 3. The forfeiture of private property resulting from the violation of law.

23 4. The regulation of metallic mining under ss. 144.80 to 144.94.

24 **(2)** “Local governmental unit” means a political subdivision of this state, a
25 special purpose district in this state, an instrumentality or corporation of the

1 political subdivision or special purpose district or a combination or subunit of any of
2 the foregoing.

3 (3) "Private property" means real property that is not owned by the United
4 States, the state or a local governmental unit.

5 (4) "Regulatory taking" means any of the following governmental actions that
6 affect the use of private property and result in a reduction in the fair market value
7 of the private property by more than 20%:

8 (a) One or more governmental actions by the state or a local governmental unit.

9 (b) Governmental action by the state and one or more local governmental units
10 or by 2 or more local governmental units, if each of the governmental actions relate
11 to a common regulatory scheme or purpose.

12 (5) "State agency" means any department, independent agency, board,
13 commission or office in the executive branch of state government.

14 **32.81 Effect of governmental actions on private property.** A state agency
15 or local governmental unit, in taking any governmental action that affects the use
16 of private property and that reduces the fair market value of private property, shall
17 exercise its authority in a manner that results in the least amount of reduction in the
18 fair market value of private property, while still accomplishing the intended
19 objective of the governmental action.

20 **32.82 Liability for governmental actions; cause of action.** (1) The owner
21 of private property may commence an action against the state or a local
22 governmental unit if a governmental action of that unit of government affects the use
23 of private property and reduces the fair market value of the private property. This
24 subsection first applies to governmental actions that are final and binding and take
25 effect on the effective date of this subsection [revisor inserts date].

1 (2) Any action filed under sub. (1) is not subject to s. 16.007, 775.01, 893.80 or
2 893.82.

3 (3) The venue for an action under sub. (1) shall be the county where the plaintiff
4 resides or the county where the private property is located, at the option of the
5 plaintiff.

6 (4) (a) In any action under sub. (1) that relates to administrative rules, the joint
7 committee for review of administrative rules shall be served with a copy of the
8 summons and complaint. With the approval of the joint committee on legislative
9 organization, the joint committee for review of administrative rules shall be made
10 a party to the action.

11 (b) Failure to serve a summons and complaint as required under this
12 subsection does not affect the jurisdiction of the court.

13 **32.83 Plaintiff to determine private property affected by**
14 **governmental action.** (1) In an action under s. 32.82 (1), the plaintiff may
15 determine which part of the plaintiff's private property is the subject of the cause of
16 action. The state or a local governmental unit may not contest the determination of
17 the plaintiff regarding the part of the private property that is the subject of the cause
18 of action.

19 (2) The plaintiff may designate any contiguous area of land under common
20 ownership as the subject of the cause of action.

21 **32.84 Remedies.** (1) If the finder of fact in an action under s. 32.82 (1)
22 determines that governmental action that affects the use of private property reduced
23 the fair market value of the private property and the plaintiff owns the private
24 property when the judgment is entered, the finder of fact shall determine the fair
25 market value of the private property as affected by the governmental action. The

1 court shall enter an order directing the assessor to adjust the property's valuation
2 to reflect the value determined by the finder of fact, as adjusted according to the
3 assessment ratio in that taxation district for the current assessment under s. 70.05.

4 **(2)** (a) If the finder of fact determines that a regulatory taking has occurred,
5 the court shall order the payment of damages as follows:

6 1. If the plaintiff owns the private property when the judgment is entered, the
7 court shall order the state or local governmental unit to pay damages equal to the
8 amount of the reduction in the fair market value of the private property attributable
9 to the governmental action.

10 2. If the plaintiff does not own the private property when the judgment is
11 entered, the court shall order the state or local governmental unit to pay damages
12 equal to the amount of the reduction in the fair market value of the private property
13 attributable to the governmental action at the time that the plaintiff sold the private
14 property.

15 3. In addition to the damages under subd. 1. or 2., the court shall order the state
16 or local governmental unit to pay the actual damages to the private property for any
17 governmental action that is no longer in effect when the judgment is entered or the
18 property was sold.

19 (b) If damages are awarded against a local governmental unit under par. (a),
20 the court shall give the local governmental unit the option to pay the damages in a
21 lump sum or in up to 5 equal annual instalments, with interest at the market interest
22 rate, as determined by the court. If the date of the court's order is on or after January
23 1 and before November 1, the court shall order the local governmental unit to pay the
24 damages or commence the first payment of the damages on February 15 of the
25 following calendar year. If the date of the court's order is on or after November 1 and

1 before January 1, the court shall order the local governmental unit to pay the
2 damages or commence the first payment of the damages on February 15 of the
3 calendar year after the next calendar year.

4 (c) If the finder of fact in an action under s. 32.82 (1) determines that part or
5 all of the reduced private property value relates to exclusive agricultural zoning or
6 a historic preservation ordinance, and the plaintiff received a farmland preservation
7 tax credit or a historic rehabilitation tax credit, the court shall do one or more of the
8 following:

9 1. Order the department of agriculture, trade and consumer protection to
10 prepare and record a lien against the property as provided in s. 91.19 (8) to (10).

11 2. Order the plaintiff to add to his or her income tax liability the applicable
12 amount under s. 71.07 (9r) (k) as if the property was sold on the same date that the
13 judgment was entered.

14 (3) Any judgment awarding damages for a regulatory taking under sub. (2)
15 shall apportion the damages among multiple defendants in proportion to the
16 contribution by each to the governmental action that resulted in the regulatory
17 taking. The state and each local each governmental unit that was involved in a
18 regulatory taking defined under s. 32.80 (4) (b) are jointly and severally liable for the
19 damages resulting from the regulatory taking.

20 (4) The remedies in this section are the only remedies in an action under s.
21 32.82 (1).

22 **32.85 Defenses.** The following are defenses in an action under s. 32.82 (1):

23 (1) The governmental action is mandated by the federal government and is no
24 more restrictive than required by the federal government.

1 (2) The governmental action is necessary to prevent or mitigate a threat to
2 human health or safety and all of the following are shown by evidence that is clear
3 and convincing:

4 (a) The threat to human health or safety is imminent and substantial.

5 (b) The application of the governmental action to the plaintiff's private
6 property is necessary to prevent or mitigate the threat to human health or safety.

7 (c) The state agency and local governmental unit fulfilled the responsibility
8 under s. 32.81.

9 **32.86 Relation to other law.** The causes of action provided in this subchapter
10 are in addition to any cause of action provided in any other statutes or provided by
11 common law.

12 **SECTION 6.** 70.32 (1p) of the statutes is created to read:

13 70.32 (1p) In addition to the factors in sub. (1), the assessor shall adjust the
14 property's valuation according to the judgment in an action under s. 32.82 (1).

15 **SECTION 7.** 70.47 (9) (am) of the statutes is created to read:

16 70.47 (9) (am) The board shall, in correcting assessments under par. (a), adjust
17 the valuation of a parcel according to the value specified in the judgment in an action
18 under s. 32.82 (1), as adjusted by the assessment ratio for the current assessment
19 value under s. 70.05.

20 **SECTION 8.** 893.78 of the statutes is created to read:

21 **893.78 Governmental actions affecting private property.** An action
22 under s. 32.82 (1) shall be commenced within 2 years after the plaintiff discovers the
23 effect of a governmental action on the fair market value of his or her private property.

24 **(END)**