



1997 ASSEMBLY BILL 806

February 19, 1998 - Introduced by Representatives ALBERS, GRONEMUS, JENSEN, SYKORA, SERATTI, MUSSER, SPILLNER, AINSWORTH, GOETSCH, BRANDEMUEHL, JOHNSRUD, SCHAFER, HAHN, F. LASEE and GUNDERSON, cosponsored by Senators WELCH, DRZEWIECKI, SCHULTZ and FARROW. Referred to Committee on Land Use.

1 **AN ACT to amend** 814.04 (intro.); and **to create** 16.004 (13), 893.78 and 895.45
2 of the statutes; **relating to:** the taking of private real property as the result of
3 governmental action and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the state and local governmental units to prepare an assessment of private real property if certain proposed governmental actions may result in the taking of private real property. "Taking" is defined as the reduction of the fair market value of private real property by 50% or more or the impact on the private real property in a way that requires the governmental unit to compensate the owner of that property. The bill does not apply to certain governmental actions, including the exercise of the power of eminent domain, a governmental action mandated by state or federal law and the forfeiture of property resulting from the violation of law.

If an assessment shows that the governmental action would result in the taking of private real property, the governmental unit, if governed by an elected body, may not implement the proposed governmental action until the governmental unit passes a statute, enacts an ordinance or adopts a resolution implementing the proposed governmental action by a three-fourths vote.

If an administrative agency proposes the governmental action that an assessment shows would result in a taking, the administrative agency may not promulgate a rule implementing the proposed governmental action or implement that governmental action.

The bill allows private real property owners to petition a governmental unit to complete an assessment if 12 or more owners believe a governmental action will result in a taking and one of those owners provides an assessment showing that a taking occurred.

The bill allows a private real property owner to commence an action to have a governmental action voided if that action results in or may result in the taking of his

or her real property and if the governmental unit did not conduct the assessment or comply with the procedures required under this bill . The bill permits the private real property owner to ask the district attorney or the department of administration (DOA) to commence the action regarding the taking. The bill allows DOA to commence an action regarding the taking on its own initiative and requires DOA to commence an action regarding the taking if the interests of the public are at stake.

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.** 16.004 (13) of the statutes is created to read:

2 16.004 (13) RULES ON ASSESSMENTS OF TAKINGS. The department shall, with the
3 advice of the Wisconsin land council, promulgate rules for the preparation of
4 assessments to determine if a taking has occurred under s. 895.45 (2).

5 **SECTION 2.** 814.04 (intro.) of the statutes, as affected by 1997 Wisconsin Acts
6 55 and (Senate Bill 384), is amended to read:

7 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
8 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.45
9 (6), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and
10 943.51 (2) (b), when allowed, costs shall be as follows:

11 **SECTION 3.** 893.78 of the statutes is created to read:

12 **893.78 Governmental actions affecting private property.** An action
13 under s. 895.45 (4) (a) 1. shall be commenced within 6 months after the plaintiff
14 discovers the effect of a governmental action on the fair market value of his or her
15 parcel of private real property or be barred. An action under s. 895.45 (4) (a) 2. and
16 3. and (b) shall be commenced within one year after a governmental action is final
17 and binding, or be barred.

18 **SECTION 4.** 895.45 of the statutes is created to read:

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

2 (a) “Assessment” means the determination of the fair market value of real
3 property.

4 (b) “Assessor” means an individual who assesses the value of real property for
5 tax purposes for a town, village, city or county or the department of revenue.

6 (c) “Certified appraiser” means an appraiser who is certified as a general
7 appraiser or as a residential appraiser under s. 458.06.

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

11 1. Creating a state statute.

12 2. Promulgating an administrative rule.

13 3. Enacting an ordinance.

14 4. Adopting a resolution.

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

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

21 (e) “Governmental unit” means the state, any county, town, city, village or other
22 political subdivision of the state or any combination thereof, or a department,
23 division, board or other agency of any of the foregoing.

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

4 (g) "Taking" means a governmental action that does any of the following:

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

8 2. Directly results in the reduction in the fair market value of a parcel of private
9 real property to an amount that is less than 50% of that value, as determined by an
10 assessment following the procedures under sub. (2) (a).

11 (2) (a) Before engaging in a governmental action that regulates private real
12 property in a way that creates a probability that the fair market value of a parcel of
13 private real property will be reduced or that results in the taking of a parcel of private
14 real property, a governmental unit shall prepare an assessment of the parcel of
15 private real property. The assessment shall be prepared on behalf of the
16 governmental unit that is charged with enforcing the proposed action. Two separate
17 assessments shall be conducted independently by 2 certified appraisers who are not
18 employed by a town, village, city or county or the department of revenue. The 2
19 assessments shall determine the fair market value of the private real property before
20 the proposed action is taken and the fair market value of the property assuming that
21 the proposed action is taken. The results of the 2 assessments shall be averaged to
22 determine if a taking has occurred by averaging the 2 pregovernmental action fair
23 market values and the 2 postgovernmental action fair market values. The 2
24 assessments shall be prepared in compliance with rules promulgated by the
25 department of administration under s. 16.004 (13). The results of the assessments

1 shall be made available to the public before the proposed governmental action is
2 completed.

3 (b) If 12 or more owners of private real property believe that a governmental
4 action resulted in the taking of their respective properties and if one of those owners
5 of private real property provides an assessment of the property before and after the
6 governmental action, completed by an assessor or certified appraiser, that shows
7 that a governmental action resulted in the taking of his or her private real property,
8 the property owners may petition the governmental unit that took the governmental
9 action to complete an assessment following the procedures under par. (a). Upon
10 receipt of a petition made under this paragraph, the governmental unit that took the
11 governmental action shall complete an assessment following the procedures under
12 par. (a).

13 **(3)** (a) If an assessment under sub. (2) that is completed by a governmental unit
14 governed by an elected body shows that the proposed governmental action would
15 result in the taking of private real property, the governmental unit may only
16 implement the proposed governmental action by the passage of a statute, enactment
17 of an ordinance or adoption of a resolution by a vote of three-fourths of all of the
18 members of the elected body.

19 (b) If an assessment under sub. (2) that is completed by a state administrative
20 agency shows that the proposed governmental action would result in the taking of
21 private real property, the state administrative agency may not submit the proposed
22 rule to the joint legislative council or implement the proposed rule.

23 (c) If an ordinance is enacted or a resolution is adopted under par. (a), the
24 governmental unit that enacted the ordinance or that adopted the resolution shall
25 send a copy of that ordinance or resolution to the department of revenue, including

1 the date of the enactment or adoption. The department of revenue shall annually
2 compile a list of all ordinances and resolutions submitted to the department under
3 this paragraph and shall distribute that list to all assessors and certified appraisers.

4 (d) This subsection first applies to governmental actions that are final and
5 binding and take effect on the effective date of this paragraph [revisor inserts
6 date].

7 (4) (a) If a governmental action results in or may result in a taking of private
8 real property and the governmental unit did not conduct an assessment under sub.
9 (2), or did not pass a statute, enact an ordinance or adopt a resolution under sub. (3)
10 (a) or violated sub. (3) (b), the owner of the private real property may do any of the
11 following:

12 1. Commence an action in the county where the private real property is located
13 asking that the governmental action be voided.

14 2. Request that the district attorney from the county where the private real
15 property is located commence an action asking that the governmental action be
16 voided.

17 3. Request that the state department of administration commence an action in
18 the county where the property is located asking that the governmental action be
19 voided.

20 (b) If a governmental action results in or may result in a taking of private real
21 property, the state department of administration may commence an action when any
22 violation of sub. (2) or (3) occurs, and shall commence an action when a violation of
23 sub. (2) or (3) occurs if the interests of the public are at stake.

24 (5) If the finder of fact in an action commenced under sub. (4) determines that
25 a governmental action results in or may result in a taking of private real property

1 and that a governmental unit did not conduct an assessment under sub. (2), or did
2 not pass a statute, enact an ordinance or adopt a resolution under sub. (3) (a) or
3 violated sub. (3) (b), the court shall enter an order declaring that the governmental
4 action is void.

5 (6) Notwithstanding s. 814.04, the court shall award the prevailing party in an
6 action commenced under sub. (4) costs, including reasonable attorney fees.

7 (7) This section does not apply to a governmental unit's failure to act or to any
8 of the following actions by a governmental unit:

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

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

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

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

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

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

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

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

1 (i) A rule promulgated or ordinance or statute enacted to regulate water safety,
2 hunting or fishing or to control nonindigenous aquatic species.

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

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

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

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

14 **SECTION 5. Nonstatutory provisions.**

15 (1) ASSESSMENTS ON TAKINGS. The authorized FTE positions for the department
16 of administration are increased by 1.0 GPR attorney position on the effective date of
17 this subsection, to be funded from the appropriation under section 20.505 (1) (a) of
18 the statutes, for the purpose of overseeing the state compliance with section 895.45
19 of the statutes, as created by this act.

20 **SECTION 6. Effective dates.** This act takes effect on the first day of the 9th
21 month beginning after publication, except as follows:

22 (1) The treatment of section 16.004 (13) of the statutes and SECTION 5 of this
23 act take effect on the day after publication.

24 (END)