



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0587/1
RPN:kmg:jf

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 806**

March 16, 1998 - Offered by COMMITTEE ON LAND USE.

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

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

4 **SECTION 1.** 814.04 (intro.) of the statutes, as affected by 1997 Wisconsin Acts
5 55 and (Senate Bill 384), is amended to read:

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

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

11 **893.78 Governmental actions affecting private property.** An action
12 under s. 895.45 (2) shall be commenced within 6 months after the plaintiff discovers

1 or should have discovered the effect of a governmental action on the fair market value
2 of his or her parcel of private real property or be barred.

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

4 **895.45 Private real property rights. (1)** In this section:

5 (a) "Governmental action" means a governmental unit's exercise of any power
6 or duty required or authorized by law, including all of the following actions, whether
7 temporary or permanent:

8 1. Creating a state statute.

9 2. Promulgating an administrative rule.

10 3. Enacting an ordinance.

11 4. Adopting a resolution.

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

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

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

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

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

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

4 2. Directly results in the reduction in the fair market value of a parcel of private
5 real property to an amount that is less than 50% of that value.

6 **(2)** If a governmental action results in a taking of private real property, the
7 owner of the private real property may commence an action in circuit court in the
8 county where the private real property is located asking that the governmental
9 action be voided with respect to the owner's property.

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

16 **(4)** Notwithstanding s. 814.04, the court shall award the prevailing party in an
17 action commenced under sub. (2) costs, including reasonable attorney fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **SECTION 4. Effective date.**

