

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



Senate
Office of the Secretary

'16 JAN 25 P5:10

SENATE
S. No. 3112

RECEIVED BY: *[Signature]*

Introduced by Senator Miriam Defensor Santiago

AN ACT
PROTECTING PRIVATE PROPERTY RIGHTS BY REQUIRING
GOVERNMENT AGENCIES TO PREPARE PRIVATE PROPERTY TAKING
IMPACT ANALYSIS

EXPLANATORY NOTE

The Constitution, Article 3, Section 9, provides:

Private property shall not be taken for public use without just compensation.

The ownership of private property plays an important role in the economic and social well-being of the country. Thus, even agency actions that merely restrict the use of private property and result in a significant diminution of its value should constitute a taking of that property and should be properly compensated.

This bill seeks to protect private property rights by requiring government agencies to prepare private property taking impact analyses. This is important, as agencies should consider the impact of agency actions, including regulations, on the use and ownership of private property.¹

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
7P

¹ This bill was originally filed during the Thirteenth Congress, First Regular Session and refiled during the Fourteenth Congress, First Regular Session.


SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



Senate
Office of the Secretary

'16 JAN 25 P5:10

SENATE
S. No. 3112

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
PROTECTING PRIVATE PROPERTY RIGHTS BY REQUIRING
GOVERNMENT AGENCIES TO PREPARE PRIVATE PROPERTY TAKING
IMPACT ANALYSIS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Short Title.* – This Act shall be known as the “Private Property
2 Rights Act.”

3 SECTION 2. *Statement of Policy.* – The policy of the government is to protect the
4 health, safety, and general welfare of the public in a manner that, to the extent
5 practicable, avoids taking of private property.

6 SECTION 3. *Definition of Terms.* – For purposes of this Act, the term:

7 (A) “Agency” means a department, agency, independent agency, or
8 instrumentality, including any military department, government corporation, government-
9 owned and controlled corporation, or other establishment in the executive branch of the
10 government;

11 (B) “Agency action” means any action, inaction, or decision, taken by an agency
12 and includes such an action, inaction, or decision taken by, or pursuant to:

13 (1) A statute, rule, regulation, order, guideline, or policy; or

14 (2) The issuance, denial, or suspension of any permit, license, or
15 authorization;

1 (C) "Owner" means the person with title, possession, or other property rights in
2 property affected by any taking of such property; and

3 (D) "Taking of private property" means any action whereby private property is
4 taken in such a way as to require compensation.

5 SECTION 4. *Requirement for Private Property Taking Impact Analysis.* –

6 (A) *In General.* – To the fullest extent possible, all policies, regulations, and
7 public laws shall be interpreted and administered in accordance with the policies under
8 this Act, and, subject to paragraph (B) hereunder, each agency shall complete a private
9 property taking impact analysis before taking any agency action, including the
10 promulgation of a regulation, which is likely to result in a taking of private property.

11 (B) *Non-application.* – Paragraph (A) shall not apply to:

12 (1) An action in which the power of eminent domain is formally exercised;

13 (2) An action taken:

14 (a) With respect to property held in trust by the government; or

15 (b) In preparation for, or in connection with, treaty negotiations with
16 foreign nations;

17 (3) Law enforcement action, including seizure, for a violation of law, of
18 property for forfeiture as evidence in a criminal proceeding;

19 (4) A communication between an agency and local land-use planning
20 agency concerning a planned proposed local activity that regulates private
21 property, regardless of whether the communication is initiated by an agency or is
22 undertaken in response to an invitation by the local authority;

23 (5) Any military or foreign affairs function, including a procurement
24 function under a military or foreign affairs function; or

1 (6) Any case in which there is an immediate threat to health or safety that
2 constitutes an emergency requiring immediate response, if the taking impact
3 analysis is completed after the emergency action is carried out or the regulation is
4 published.

5 (C) *Content of Analysis.* – A private property taking impact analysis shall be a
6 written statement that includes:

7 (1) The specific purpose of the agency action;

8 (2) An assessment of the likelihood that a taking of private property will
9 occur under such agency action;

10 (3) An evaluation of whether such agency action is likely to require
11 compensation to private property owners; and

12 (4) Alternatives to the agency action that would:

13 (a) Achieve the intended purposes of the agency action;

14 (b) Lessen the likelihood that a taking of private property will occur;

15 or

16 (c) An estimate of the potential liability of the government if the
17 government is required to compensate a private property owner as a result
18 of the agency action.

19 (D) *Submission to the Department of Budget and Management (DBM).* – Each
20 agency shall provide analysis required under this section as part of any submission
21 otherwise required to be made to the DBM relating to an agency action.

22 (E) *Public Availability of Analysis.* – An agency shall:

23 (1) Make each private property taking impact analysis available to the
24 public; and

1 (2) To the greatest extent practicable, transmit a copy of such analysis to
2 the owner and any other person with a property right or interest in the affected
3 property.

4 **SECTION 5. *Alternatives to Taking of Property.*** – Before taking any final agency
5 action, the agency shall fully consider alternatives described in Section 4(C)(4) and shall,
6 to the maximum extent practicable, alter the action to avoid or minimize the taking of
7 private property.

8 **SECTION 6. *Civil Action.*** – If an agency action results in the taking of private
9 property, the owner of such property may obtain appropriate relief in a civil action
10 against the agency that has caused the taking to occur.

11 **SECTION 7. *Guidance and Reporting Requirement.*** –

12 **(A) *Guidance.*** – The Solicitor General shall provide legal guidance in a timely
13 manner, in response to a request by an agency, to assist the agency in complying with this
14 Act.

15 **(B) *Reports.*** – Not later than one year after the date of the enactment of this Act
16 and at the end of each one year period thereafter, each agency shall submit a report to the
17 Secretary of the DBM that identifies:

18 (1) Each agency action that has resulted in the preparation of a taking
19 impact analysis;

20 (2) The filing of a taking claim; and

21 (3) Any award of compensation pursuant to the just compensation clause of
22 the Constitution.

1 (C) *Publication of Reports.* – The Secretary of the DBM shall publish in the
2 Register, on an annual basis, a compilation of the reports of all agencies made under this
3 paragraph.

4 SECTION 8. *Presumption in Proceedings.* – For the purpose of any agency action
5 or administrative or judicial proceeding, there shall be a rebuttable presumption that the
6 costs, values, and estimates in any private property taking impact analysis shall be
7 outdated and inaccurate, if

8 (A) Such analysis was completed after five years or more before the date of such
9 action or proceeding; and

10 (B) Such costs, values, or estimates have not been modified within the five year
11 period preceding the date of such action or proceeding.

12 SECTION 9. *Separability Clause.* – If any provision of this Act is held invalid or
13 unconstitutional, the same shall not affect the validity and effectivity of the other
14 provisions hereof.

15 SECTION 10. *Repealing Clause.* – All laws, decrees, orders, and issuances, or
16 portions thereof, which are inconsistent with the provisions of this Act, are hereby
17 repealed, amended or modified accordingly.

18 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
19 after its publication in the *Official Gazette* or in two (2) newspapers of general
20 circulation.

Approved,

/ml23Nov2015