

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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SENATE
S. No. 1846

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article II, provides:

Section 9. 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.*


MIRIAM DEFENSOR SANTIAGO

* This bill was re-filed during the Thirteenth Congress, First Regular Session.

RECEIVED
JAN 12 2007

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

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

6 SECTION 1. *Short Title.* – This Act shall be known as the “Private Property Rights Act
7 of 2007.”

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

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

12 (A) “Agency” means a department, agency, independent agency, or instrumentality,
13 including any military department, government corporation, government-owned and
14 controlled corporation, or other establishment in the executive branch of the
15 government.

16 (B) “Agency action” means any action, inaction, or decision, taken by an agency and
17 includes such an action, inaction, or decision taken by, or pursuant to –

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

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

20 (C) “Owner” means the person with title, possession, or other property rights in property
21 affected by any taking of such property; and

22 (D) “Taking of private property” means any action whereby private property is taken in
23 such a way as to require compensation.

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

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

7 (B) *Non-Application.* – Paragraph (A) shall not apply to –

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

9 (2) An action taken—

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

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

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

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

19 (5) Any military or foreign affairs function, including a procurement function
20 under a military or foreign affairs function;

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

25 (C) *Content of Analysis.* – A private property taking impact analysis shall be a written
26 statement that includes —

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

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

1 (3) An evaluation of whether such agency action is likely to require compensation
2 to private property owners;

3 (4) Alternatives to the agency action that would—

4 (a) Achieve the intended purposes of the agency action; and

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

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

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

12 (E) *Public Availability of Analysis.* – An agency shall—

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

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

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

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

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

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

1 (B) *Reports.* – Not later than one (1) year after the date of the enactment of this Act and
2 at the end of each one (1) year period thereafter, each agency shall submit a report to the
3 Secretary of the Department of Budget and Management that identifies—

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

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

7 (3) Any award of compensation pursuant to the just compensation clause of the
8 Constitution.

9 (C) *Publication of Reports.* – The budget and management secretary shall publish in the
10 Register, on an annual basis, a compilation of the reports of all agencies made under this
11 paragraph.

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

16 (A) Such analysis was completed after 5 years or more before the date of such action or
17 proceedings; and

18 (B) Such costs, values, or estimates have not been modified within the five (5) year
19 period preceding the date of such action or proceeding.

20 SECTION 9. *Separability Clause.* – If any provision or part hereof, is held invalid or
21 unconstitutional, the remainder of the law of the provision not otherwise affected shall remain
22 valid and subsisting.

23 SECTION 10. *Repealing Clause.* – Any law, presidential decree or issuance, executive
24 order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent
25 with, the provisions of this Act is hereby repealed, modified or amended accordingly.

1 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

3 Approved,