

SHORT TITLE: Property; creating Property Rights Preservation Act;
codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 396

By: Price

AS INTRODUCED

An Act relating to property; creating the Property Rights Preservation Act and providing short title; defining terms; requiring development of certain guidelines regarding actions which impact private property rights; requiring consideration of certain principles when developing guidelines; requiring preparation of certain assessment before commencement of certain actions and providing exception; authorizing certain causes of action; providing for determination of valuation of certain property; stating source of compensation to certain owner under certain circumstances; providing for awards of attorney's fees or costs; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Property Rights Preservation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "State agency" means the State of Oklahoma and any officer, agency, board, commission, department, or similar body of the executive branch of state government, and any of the political subdivisions of the state or agencies thereof;

2. a. "Government action" means:

(1) existing and proposed rules and regulations that if adopted or enforced may limit the use of private property,

(2) existing or proposed licensing or permitting conditions, requirements, or limitations on the use of private property, or

b. "Government action" does not mean:

(1) the formal exercise of the power of eminent domain,

(2) the forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law,

(3) orders issued by a state agency or court of law that result from a violation of law and that are authorized by statute, or

(4) the discontinuance of government programs; and

3. "Constitutional taking" or "taking" means the taking of private property by government action such that compensation to the owner of the property is required by either:

a. the Fifth or Fourteenth Amendment to the United States Constitution, or

b. Section 7 or 24 of Article 2 of the Constitution of the State of Oklahoma.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1103 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General shall develop and provide to state agencies guidelines to assist in the identification and evaluation of government actions that may result in a constitutional taking. The Attorney General shall base the guidelines on current law as articulated by the United States Supreme Court and the Supreme Court of the State of Oklahoma, and shall update the guidelines on an annual basis.

B. In developing the guidelines, the Attorney General shall observe the following principles:

1. Government actions that result in a physical invasion or occupancy of private property or that decrease the value or limit the use of property may constitute a taking;

2. Government action may amount to a taking even though it constitutes less than a complete deprivation of all use or value of all separate and distinct interests in the same private property or the action is only temporary in nature;

3. The mere assertion of a public purpose is insufficient to avoid a taking. Government actions to protect the public health and safety or otherwise to further the public interest should be taken only in response to real and substantial public needs and shall be designed significantly to address those needs;

4. Although normal government processes do not ordinarily constitute takings, undue delays in decision making that interfere with private property use may be a taking. In addition, a delay in processing may increase significantly the size of compensation due if a constitutional taking is later found to have occurred; and

5. The constitutional protections against taking private property are self-executing and require compensation regardless of

whether the underlying authority for the action contemplated a taking or authorized the payment of compensation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1104 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Before a state agency takes any government action, the agency shall prepare a written assessment of the constitutional takings implications of the action, in compliance with the guidelines developed pursuant to Section 3 of this act. The agency shall deliver copies of this assessment to the Governor, the Office of State Finance and the Office of the Attorney General. The agency's assessment shall:

1. Assess the likelihood that that government action may result in a constitutional taking;

2. Clearly and specifically identify the purpose of the government action;

3. Explain why the government action is substantially necessary to advance that purpose, and why no alternative action is available that would achieve the agency's goals while reducing the impact on the private property owner;

4. Estimate the potential cost to the government if a court determines that the action constitutes a constitutional taking;

5. Identify the source of payment within the agency's budget for any compensation that may be ordered; and

6. Certify that the benefits of the government action exceed the estimated compensation costs.

B. If there is an immediate threat to public health and safety that constitutes an emergency and requires an immediate response, the assessment may be made when the response is completed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. An aggrieved property owner shall have a legal cause of action against a state agency that violates the provisions of this act for compensatory damages or other appropriate legal or equitable relief.

B. The Attorney General may bring an action to enforce compliance with the provisions of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1106 of Title 60, unless there is created a duplication in numbering, reads as follows:

The effect of government action that is a constitutional taking on the fair market value of private property shall be reflected in the assessed valuation of the property for taxes, levies, and similar purposes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1107 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any award made to an owner of private property from a government agency for a constitutional taking, including any award of attorney's fees or costs, shall come from the agency's budget.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1108 of Title 60, unless there is created a duplication in numbering, reads as follows:

An owner of private property who successfully establishes that a government action is a constitutional taking of the owner's property requiring payment of just compensation shall be awarded reasonable attorney's fees and costs incurred in establishing that claim, in addition to other remedies provided by law.

SECTION 9. This act shall become effective November 1, 1997.

46-1-0362 KSM