

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 160

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO REGULATORY TAKINGS OF PRIVATE PROPERTY; AMENDING SECTION  
2 67-8001, IDAHO CODE, TO REVISE THE DECLARATION OF PURPOSE; AMENDING  
3 SECTION 67-8002, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING  
4 SECTION 67-8003, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE  
5 PROTECTION OF PRIVATE PROPERTY IN LIGHT OF CERTAIN REGULATORY OR ADMIN-  
6 ISTRATIVE ACTIONS, TO REVISE PROVISIONS RELATING TO A REGULATORY TAKING  
7 ANALYSIS, TO REVISE PROVISIONS RELATING TO THE DELIVERY OF AN ANALYSIS,  
8 TO ESTABLISH PROVISIONS RELATING TO DETERMINING WHETHER A REGULATORY  
9 TAKING HAS OCCURRED, TO ESTABLISH PROVISIONS RELATING TO RESCINDING  
10 A REGULATORY OR ADMINISTRATIVE ACTION, TO PROVIDE FOR BIFURCATED AC-  
11 TION, TO PROVIDE FOR A TRIAL, TO PROVIDE FOR DAMAGES, TO PROVIDE FOR  
12 PROSPECTIVE APPLICATION OF LAW, TO ESTABLISH PROVISIONS RELATING TO  
13 THE APPLICATION OF LAW, TO PROVIDE THAT CERTAIN PROVISIONS OF LAW SHALL  
14 NOT APPLY TO CERTAIN ACTIONS AND TO PROVIDE THAT A COURT MAY USE CERTAIN  
15 ELEMENTS OF EMINENT DOMAIN LAW FOR THE MEASUREMENT OF DAMAGES.  
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 67-8001, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 67-8001. DECLARATION OF PURPOSE. The purpose of this chapter is to  
21 establish an orderly, consistent review process that better enables state  
22 agencies and local governments to evaluate whether proposed regulatory or  
23 administrative actions may result in a taking of private property without  
24 due process of law. It is ~~not~~ the purpose of this chapter to expand ~~or reduce~~  
25 the scope of private property protections ~~provided in the state and federal~~  
26 constitutions in Idaho.

27 SECTION 2. That Section 67-8002, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 67-8002. DEFINITIONS. As used in this chapter:

30 (1) "Local government" means any city, county, taxing district or other  
31 political subdivision of state government with a governing body.

32 (2) "Private property" means all property protected by the constitu-  
33 tion of the United States or the constitution of the state of Idaho.

34 (3) "State agency" means the state of Idaho and any officer, agency,  
35 board, commission, department or similar body of the executive branch of the  
36 state government.

37 (4) "Regulatory taking" means a regulatory or administrative action  
38 resulting in deprivation of private property or resulting in damage of pri-  
39 private property under the provisions of this chapter that is the subject of

1 such action, whether such deprivation or damage is total or partial, perma-  
 2 nent or temporary, in violation of the state or federal constitution.

3 SECTION 3. That Section 67-8003, Idaho Code, be, and the same is hereby  
 4 amended to read as follows:

5 67-8003. PROTECTION OF PRIVATE PROPERTY. (1) The attorney general  
 6 shall establish, by October 1, 1994, an orderly, consistent process, includ-  
 7 ing a checklist, that better enables a state agency or local government to  
 8 evaluate proposed regulatory or administrative actions to assure that such  
 9 actions do not result in an ~~unconstitutional~~ taking of private property. The  
 10 attorney general shall review and update the process at least on an annual  
 11 basis to maintain consistency with changes in law. All state agencies and  
 12 local governments shall follow the guidelines of the attorney general.

13 (2) Upon the written request of an owner of real property that is the  
 14 subject of such action, such request being filed with the clerk or the agency  
 15 or entity undertaking the regulatory or administrative action not more than  
 16 twenty-eight (28) days after the final decision concerning the matter at is-  
 17 sue, a state agency or local governmental entity shall prepare a written tak-  
 18 ing analysis concerning the action. Any regulatory taking analysis prepared  
 19 hereto shall comply with the process set forth in this chapter, including use  
 20 of the checklist developed by the attorney general pursuant to subsection  
 21 (1) of this section and shall be provided to the real property owner no longer  
 22 than ~~forty six~~ forty six-two (462) days after the date of filing the request with the  
 23 clerk or secretary of the agency whose action is questioned. A regulatory  
 24 taking analysis prepared pursuant to this section shall be considered public  
 25 information. If unique physical, legal or economic attributes of a property  
 26 are impacted by a particular regulation, and the agency needs more time or  
 27 information from the landowner to evaluate the impacts, the taking analysis  
 28 time limit may be further extended by an additional thirty (30) days if the  
 29 regulation is suspended and not enforced.

30 (3) A governmental action is voidable if a written taking analysis  
 31 is not prepared after a request has been made pursuant to this chapter. A  
 32 private real property owner, whose property is the subject of governmental  
 33 action, affected by a governmental action without the preparation of a re-  
 34 quested taking analysis as required by this section may seek judicial deter-  
 35 mination of the validity of the governmental action by initiating a declara-  
 36 tory judgment action or other appropriate legal procedure. A suit seeking  
 37 to invalidate a governmental action for noncompliance with subsection (2)  
 38 of this section must be filed in a district court in the county in which the  
 39 private property owner's affected real property is located. If the affected  
 40 property is located in more than one (1) county, the private property owner  
 41 may file suit in any county in which the affected real property is located.

42 (4) During the preparation of the taking analysis, any time limitation  
 43 relevant to the regulatory or administrative actions shall be tolled. Such  
 44 tolling shall cease when the taking analysis has been ~~provided~~ delivered to  
 45 the property owner. Delivery of the analysis may be made only in person or by  
 46 certified mail, return receipt requested, or process service with return af-  
 47 fidavit. When delivery is made in person, delivery of the analysis must be  
 48 acknowledged by a signed receipt. When delivery is made by certified mail,  
 49 delivery must be acknowledged by the return of the certified mail receipt

1 from the property owner. Both the request for a taking analysis and the tak-  
2 ing analysis shall be part of the official record regarding the regulatory or  
3 administrative action.

4 (5) For purposes of establishing whether a regulatory taking has oc-  
5 curring, damage or diminution to the property value in excess of fifty per-  
6 cent (50%) of the property value, as measured by the diminution in market  
7 value before and after imposition of the regulation, shall constitute a tak-  
8 ing when the damage is the direct result of the government action. A regula-  
9 tory taking occurs when the regulation is the producing cause of the property  
10 value loss as determined by this chapter. When a government entity takes an  
11 action not exempted under this chapter that devalues a property by more than  
12 fifty percent (50%), the affected owner may seek relief under the provisions  
13 of this chapter.

14 (6) Any local government or state agency that enacts a regulatory or ad-  
15 ministrative action found by a court to constitute a regulatory taking shall  
16 have the opportunity to rescind the regulatory or administrative action and  
17 pay only attorney's fees and costs incurred by the landowner if a suit to de-  
18 termine whether the regulatory or administrative action constituted a regu-  
19 latory taking is filed. Any court action brought under this chapter shall be  
20 bifurcated. The issue of whether the regulation is the direct cause of a com-  
21 pensable taking under this chapter shall be tried first. If the agency does  
22 not opt to rescind the regulatory or administrative action and pay costs and  
23 attorney's fees to the property owner, then the property owner may proceed  
24 with a trial for damages. Any award for damages under this chapter shall in-  
25 clude a reasonable award for costs and attorney's fees.

26 (7) This chapter shall operate prospectively on government regulations  
27 adopted after July 1, 2013. No local government or state agency may assert as  
28 a defense that the regulation is not permanent if the duration of the regula-  
29 tion exceeds two (2) years or has been renewed or reenacted for two (2) years  
30 or more prior to bringing a court action.

31 (8) This chapter shall apply only to all private property and real  
32 property and all interests, rights, appurtenances therein and improvements  
33 thereon.

34 (9) The provisions found in subsections (5), (6) and (7) of this section  
35 shall not apply to the following actions:

36 (a) Any water call or adjudication of water rights;

37 (b) State statutory or regulatory actions carrying out federal man-  
38 dates or city or county ordinances carrying out state mandates;

39 (c) An exaction or impact fee ordinance shall be exempt from the provi-  
40 sions of this chapter if it is directly related to the actual project im-  
41 pacts as can be determined on an individualized basis, not part of a gen-  
42 eralized ordinance or fee schedule;

43 (d) Licenses, franchises, or government permits, including the cancel-  
44 lation, termination, or failure to renew;

45 (e) The lawful seizure, forfeiture, or search of property as evidence  
46 or contraband in the prosecution of a crime;

47 (f) A preexisting law, ordinance, rule or regulation governing con-  
48 struction or flood conditions or abatement of hazards within a flood  
49 plain;

1 (g) A preexisting law, ordinance, rule or regulation governing on-site  
2 septic, sewage, garbage, landfills, groundwater, stormwater, water  
3 rights, streambeds or forest practices;

4 (h) Laws, ordinances, rules or regulations reflecting ad valorem as-  
5 essment of real property;

6 (i) Any action, law, ordinance, rule or regulation required to protect  
7 a sole source aquifer under the safe drinking water act or existing de-  
8 partment of environmental quality water quality rules or regulations  
9 for drinking water sources;

10 (j) Any action taken by the state, or a county or a civil court to pre-  
11 vent waste of oil, gas, or mineral resources, or to abate a nuisance,  
12 or to prevent pollution related to the same, including acid runoff or  
13 contamination from tailings or mining wastes; or any action related to  
14 contamination cleanup, any superfund action, or agency ordered miti-  
15 gation program adopted pursuant to a remediation plan, or action under  
16 currently adopted law, ordinances, rules or regulations;

17 (k) Any action taken by a state, city or county to fight fire, control  
18 a wildfire, or resulting from a backfire action or other emergency ac-  
19 tions to fight or control a fire; and

20 (l) Any government proceeding under an eminent domain action.

21 (10) In any suit brought under this chapter, the court may use those el-  
22 ements of eminent domain law as may be applicable for the measurement of dam-  
23 ages using a before and after analysis to measure the diminution in value  
24 that is a direct cause of the government rule or regulation.