

IN THE SENATE

SENATE BILL NO. 1325

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO REGULATORY TAKINGS; AMENDING SECTION 67-8003, IDAHO CODE, TO  
2 PROVIDE THAT AN OWNER OF PRIVATE PROPERTY MAY SUBMIT A WRITTEN REQUEST  
3 FOR A REGULATORY TAKINGS ANALYSIS WITH THE CLERK OR THE AGENCY OR ENTITY  
4 UNDERTAKING THE REGULATORY OR ADMINISTRATIVE ACTION AND TO PROVIDE THAT  
5 A PRIVATE PROPERTY OWNER IS NOT REQUIRED TO SUBMIT A REQUEST UNDER THE  
6 REGULATORY TAKINGS CHAPTER AND THE FAILURE TO SUBMIT A WRITTEN REQUEST  
7 SHALL NOT PREVENT OR PROHIBIT THE PRIVATE PROPERTY OWNER FROM SEEKING  
8 ANY LEGAL OR EQUITABLE REMEDY INCLUDING, BUT NOT LIMITED TO, THE PAYMENT  
9 OF JUST COMPENSATION.  
10

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

12 SECTION 1. That Section 67-8003, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 67-8003. PROTECTION OF PRIVATE PROPERTY. (1) The attorney general  
15 shall establish, by October 1, 1994, an orderly, consistent process, includ-  
16 ing a checklist, that better enables a state agency or local government to  
17 evaluate proposed regulatory or administrative actions to assure that such  
18 actions do not result in an unconstitutional taking of private property. The  
19 attorney general shall review and update the process at least on an annual  
20 basis to maintain consistency with changes in law. All state agencies and  
21 local governments shall follow the guidelines of the attorney general.

22 (2) ~~Upon the written request of a~~ An owner of real private property that  
23 is the subject of such action, ~~such may submit a written request being filed~~  
24 with the clerk or the agency or entity undertaking the regulatory or admin-  
25 istrative action. Not more than twenty-eight (28) days after the final de-  
26 cision concerning the matter at issue, a state agency or local governmental  
27 entity shall prepare a written taking analysis concerning the action. Any  
28 regulatory taking analysis prepared hereto shall comply with the process set  
29 forth in this chapter, including use of the checklist developed by the at-  
30 torney general pursuant to subsection (1) of this section and shall be pro-  
31 vided to the real private property owner no longer than forty-two (42) days  
32 after the date of filing the request with the clerk or secretary of the agency  
33 whose action is questioned. A regulatory taking analysis prepared pursuant  
34 to this section shall be considered public information.

35 (3) A governmental action is voidable if a written taking analysis  
36 is not prepared after a request has been made pursuant to this chapter. A  
37 private ~~real~~ property owner, whose property is the subject of governmen-  
38 tal action, affected by a governmental action without the preparation of  
39 a requested taking analysis as required by this section may seek judicial  
40 determination of the validity of the governmental action by initiating a  
41 declaratory judgment action or other appropriate legal procedure. A suit  
42 seeking to invalidate a governmental action for noncompliance with subsec-

1 tion (2) of this section must be filed in a district court in the county in  
2 which the private property owner's affected ~~real~~ private property is lo-  
3 cated. If the affected property is located in more than one (1) county, the  
4 private property owner may file suit in any county in which the affected ~~real~~  
5 private property is located.

6 (4) During the preparation of the taking analysis, any time limitation  
7 relevant to the regulatory or administrative actions shall be tolled. Such  
8 tolling shall cease when the taking analysis has been provided to the prop-  
9 erty owner. Both the request for a taking analysis and the taking analysis  
10 shall be part of the official record regarding the regulatory or administra-  
11 tive action.

12 (5) A private property owner is not required to submit a request under  
13 this chapter. The decision by the private property owner not to submit a re-  
14 quest under this chapter shall not prevent or prohibit the private property  
15 owner from seeking any legal or equitable remedy including, but not limited  
16 to, the payment of just compensation.