

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 618

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

AN ACT

RELATING TO PROPERTY; ENACTING THE PRIVATE PROPERTY PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Private Property Protection Act".

Section 2. DEFINITIONS. -- As used in the Private Property Protection Act:

A. "government unit" means a political subdivision of the state, including a board, commission, council or combination thereof, or department or agency in the executive branch of government;

B. "market value" means the price a buyer would pay a seller after considering all factors in the marketplace that influence the price of private property;

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 C. "nonregulatory act" includes closure of a
2 military base or government facility;

3 D. "owner" means a person or other legal entity
4 holding legal or equitable title to private property for all
5 its beneficial uses available at the time of acquisition and
6 for the value of its future dispositions;

7 E. "private property" means an interest in real
8 property as recognized by common law, including land, ground
9 water or surface water rights of any kind that are not owned
10 by the federal government or a government unit; and

11 F. "regulatory program" means an action of a
12 government unit that affects an owner's private property in
13 whole or in part, temporarily or permanently, in a manner that
14 restricts or limits the owner's vested rights in property that
15 would otherwise exist in the absence of the government action.
16 A "regulatory program" includes a land-use planning or zoning
17 program.

18 Section 3. INVERSE CONDEMNATION. --

19 A. Whenever implementation of a regulatory program
20 by a government unit operates to reduce the market value of
21 private property by twenty-five percent for the uses permitted
22 at the time the owner acquired a title interest, or the date
23 immediately preceding the effective date of the regulatory
24 program, whichever is later, the property is deemed to have
25 been taken for the use of the public.

. 135224. 2

underscored material = new
[bracketed material] = delete

1 B. The owner of private property described in
2 Subsection A of this section may either require condemnation
3 by and just compensation from the government unit that imposed
4 the regulatory program resulting in decreased value, or
5 receive compensation for the reduction in value caused by the
6 regulatory program.

7 C. The compensation for private property taken
8 shall be for the full value of the interest taken or for the
9 full amount of the decrease in market value, and compensation
10 shall not be limited to the amount by which the decrease in
11 market value exceeds twenty-five percent of value as
12 calculated pursuant to Subsection A of this section. The
13 market value shall be established by fully accredited
14 commercial appraisers.

15 D. Government units subject to the provisions of
16 the Private Property Protection Act shall not make waiver of
17 the provisions of that act a condition for approval of the use
18 of private property or the issuance of a permit or other
19 entitlement. An owner of private property may accept an
20 approval of use, permit or other entitlement granted by a
21 government unit without compromising rights pursuant to the
22 Private Property Protection Act if:

23 (1) a written reservation of rights is made
24 at the time of acceptance of the authorization, permit or
25 other entitlement; or

underscored material = new
[bracketed material] = delete

1 (2) an oral statement reserving rights is
2 made before the government unit granting the authorization,
3 permit or other entitlement at a public meeting at which the
4 government unit renders its decision.

5 E. A percent reduction in market value shall be
6 determined by comparing the market value of the private
7 property when the regulatory program is in effect to the
8 market value when the program is not in effect.

9 Section 4. EXCEPTIONS. -- No compensation is required
10 pursuant to the Private Property Protection Act if the
11 regulatory program:

12 A. is a nonregulatory act that results in a
13 diminution of the value of the private property but does not
14 otherwise destroy, damage, trespass upon or take the property
15 or prohibit any rightful use of the property;

16 B. prohibits a use of the private property that is
17 injurious or potentially injurious to the public health and
18 safety or is a public nuisance, as defined by common law,
19 statute or rule unless the use is an unproven potentially
20 injurious use; or

21 C. produces benefits to the owner equivalent to or
22 greater than any loss to the owner as determined by the market
23 value of the property before and after the action.

24 Section 5. STATUTE OF LIMITATIONS. --

25 A. The statute of limitations for actions brought

underscored material = new
[bracketed material] = delete

1 pursuant to the Private Property Protection Act is the statute
2 of limitations for ordinary actions brought for injuries to
3 real property, except that the time begins to run upon the
4 final administrative decision implementing the regulatory
5 program affecting the owner's private property.

6 B. A regulatory program is implemented with
7 respect to an owner's private property when actually applied
8 to that property unless the enactment of the program by itself
9 operates to reduce the market value of the property, or any
10 legally recognized interest therein, to less than seventy-five
11 percent of its market value for the uses permitted at the time
12 the owner acquired a title interest, in which case the date of
13 enactment is the date of implementation.

14 Section 6. ENFORCEMENT-- BINDING ARBITRATION. --

15 A. An owner may enforce the provisions of the
16 Private Property Protection Act by filing a complaint and a
17 written demand for binding arbitration with the government
18 unit that implemented or mandated the regulatory program.
19 Within thirty days after the filing of the complaint, the
20 owner and the government unit shall each designate an
21 arbitrator and the two arbitrators shall select a third
22 arbitrator. The arbitrators shall be independent individuals
23 with no vested interest in the result of the arbitration and
24 shall be versed in property law or property values and
25 preferably have experience in the practice of law. The

. 135224. 2

1 arbitration panel shall conduct a hearing within sixty days of
2 the filing of the complaint. Unless otherwise provided in
3 this section, the procedures for the arbitration shall be
4 governed by the Uniform Arbitration Act. The award of the
5 arbitration panel shall be final and binding. No arbitrator
6 shall be subject to liability for actions taken pursuant to
7 this section.

8 B. The owner and the government unit shall share
9 the cost of the arbitration panel and each party shall
10 otherwise bear its own costs.

11 C. If the government unit is a political
12 subdivision of the state and if the arbitration panel finds
13 that the government unit implemented the regulatory program
14 because of a mandate imposed by a federal or state agency or a
15 federal or state law, then the owner's complaint shall be
16 dismissed; provided that nothing in the Private Property
17 Protection Act prohibits such an owner from filing another
18 complaint with the appropriate state agency.

19 D. A government unit subject to an award of
20 compensation under the Private Property Protection Act shall,
21 within thirty days after the award, pay to the owner the
22 awarded compensation.

23 E. Alternatively, the government unit against
24 which inverse condemnation is successfully required under the
25 Private Property Protection Act may, within thirty days of the

underscored material = new
[bracketed material] = delete

1 decision rescind the land use planning, zoning or other
2 regulatory program as it affects the owner's private property
3 and all similarly situated land in the jurisdiction in which
4 the regulatory program is in effect, without further public
5 hearings, proceedings or environmental review. If the
6 government unit elects to rescind the affected regulatory
7 program, the program that was in effect previously shall
8 automatically be in effect. In that event, the government
9 unit shall be liable to the owner for the reasonable and
10 necessary costs of the inverse condemnation action, plus any
11 actual and demonstrable economic losses caused the owner by
12 the regulatory program during the period in which that program
13 was in effect.

14 F. This section does not affect any remedy that is
15 constitutionally required.

16 G. Any permit, authorization or other entitlement
17 granted under a regulatory program rolled back pursuant to
18 this section shall, at the owner's discretion, continue to be
19 valid, notwithstanding any provision of law in the program
20 reinstated by the rollback.

21 Section 7. LEGAL CHALLENGES. -- Nothing in the Private
22 Property Protection Act precludes an owner from bringing legal
23 challenges to a regulatory program affected by that act in
24 instances where the regulatory program caused diminution in
25 value of the private property or its use does not exceed

underscored material = new
[bracketed material] = delete

1 twenty-five percent of market value for the uses permitted at
2 the time the owner acquired title interest, and nothing in the
3 Private Property Protection Act precludes an owner from
4 bringing a legal challenge to a regulatory program affected by
5 that act based on other provisions of law.

6 Section 8. PROPERTY TAX ADJUSTMENT.--If the arbitration
7 panel finds that the regulatory program has reduced the market
8 value of a taxpayer's private property, the county assessor
9 shall adjust the value of the property for taxation purposes
10 to reflect that decrease.

11 Section 9. APPLICABILITY.--No complaint shall be brought
12 pursuant to the Private Property Protection Act for damages
13 caused by a regulatory program in effect or proposed and
14 pending prior to the effective date of that act.