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SENATE BILL 452

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO PROPERTY; PROVIDING THAT "PUBLIC USE" FOR EMINENT
DOMAIN DOES NOT INCLUDE THE PUBLIC BENEFITS OF ECONOMIC
DEVELOPMENT; REQUIRING JUST COMPENSATION TO BE AT LEAST EQUAL
TO THE PURCHASE PRICE; PROVIDING JUST COMPENSATION TO
LANDOWNERS FOR A DIMINUTION IN VALUE OF THEIR PROPERTY CAUSED
BY THE ENACTMENT OF A LAND USE LAW.

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

SECTION 1. A new section of the Eminent Domain Code is
enacted to read:

"[NEW MATERIAL] PUBLIC USE.--

A. Property may only be condemned if authorized by
law and for a public use; provided that "public use" does not
mean the public benefits of economic development, including an
increase in tax base, tax revenues, employment or general

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1 economic health.

2 B. Whenever an attempt is made to condemn property
3 for a use alleged to be public, the question whether the use is
4 public shall be a judicial question and determined without
5 regard to any legislative assertion that the use is public."

6 SECTION 2. A new section of the Eminent Domain Code is
7 enacted to read:

8 "[NEW MATERIAL] JUST COMPENSATION.--Just compensation for
9 the taking of a condemnee's property shall be an amount equal
10 to the original purchase price paid for the property by the
11 condemnee or the current appraised market value of the
12 property, whichever is greater."

13 SECTION 3. [NEW MATERIAL] DIMINUTION IN VALUE FROM
14 ENACTMENT OF LAND USE LAW--JUST COMPENSATION--EXEMPTIONS--
15 REMEDIES.--

16 A. If the existing rights to use, divide, sell or
17 possess real property are reduced by the enactment or
18 applicability of any land use law enacted after the date the
19 real property is transferred to the owner and such action
20 reduces the fair market value of the property, the owner is
21 entitled to just compensation from the state or the political
22 subdivision of the state that enacted the land use law.

23 B. This section does not apply to a land use law
24 that:

25 (1) limits or prohibits a use or division of

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1 real property if it is narrowly tailored to protect the public
2 health and safety, including rules and regulations relating to
3 fire and building codes, health and sanitation, transportation
4 or traffic control, solid or hazardous waste or pollution
5 control;

6 (2) limits or prohibits the use or division of
7 real property commonly and historically recognized as a public
8 nuisance under common law;

9 (3) is required by federal law;

10 (4) limits or prohibits the use or division of
11 private real property for the purpose of housing sex offenders,
12 selling illegal drugs, liquor control, pornography, obscenity,
13 nude or topless dancing or other adult-oriented businesses if
14 the land use laws are consistent with the constitution of New
15 Mexico or the United States constitution;

16 (5) establishes locations for utility
17 facilities; or

18 (6) does not directly regulate an owner's real
19 property.

20 C. The owner of real property shall make a written
21 demand in a specific amount for just compensation based on
22 diminution in value to the state or the political subdivision
23 of the state that enacted the land use law. The owner shall
24 not be required to submit a land use application to remove,
25 modify, vary or otherwise alter the application of the land use

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1 law to the owner's real property as a prerequisite to demanding
2 or receiving just compensation pursuant to this section.

3 D. If a land use law continues to apply to the
4 owner's real property more than ninety days after the owner
5 makes a written demand for just compensation pursuant to
6 Subsection C of this section, the owner may file suit in a
7 court of competent jurisdiction in the county in which the real
8 property is located, unless the state or political subdivision
9 of the state and the owner reach an agreement on the amount of
10 just compensation to be paid; the state or political
11 subdivision of the state amends or repeals the land use law; or
12 the state or political subdivision of the state issues to the
13 owner a binding waiver of enforcement of the land use law on
14 the owner's specific real property. A written demand for just
15 compensation supersedes any other statutory notice or demand
16 requirements.

17 E. Any demand for owner relief or any waiver that
18 is granted in lieu of compensation runs with the land.

19 F. An action for just compensation based on
20 diminution in value to real property shall be made or forever
21 barred within three years of the effective date of the land use
22 law or of the first date the reduction of the existing rights
23 to use, divide, sell or possess property applies to the owner's
24 real property, whichever is later. A written demand for just
25 compensation made by the owner of real property pursuant to

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1 Subsection C of this section is an exhaustion requirement that
2 tolls the three-year time period for ninety days or the length
3 of time that it takes the state or the political subdivision of
4 the state that enacted the land use law to deny the written
5 demand, whichever is less.

6 G. The remedy created by this section is in
7 addition to any other remedy that is provided by the laws and
8 constitution of New Mexico or the United States constitution
9 and is not intended to modify or replace any other remedy.

10 H. In an action for just compensation based on
11 diminution in value:

12 (1) the question whether a land use law is
13 exempt under Subsection B of this section shall be a judicial
14 question and determined without regard to any legislative
15 assertion that the land use law is exempt. The state or a
16 political subdivision of the state that enacted the land use
17 law shall establish by clear and convincing evidence that the
18 land use law is exempt pursuant to Subsection B of this
19 section; and

20 (2) a prevailing plaintiff in an action for
21 just compensation pursuant to this section may be awarded
22 costs, expenses and reasonable attorney fees. An owner shall
23 not be liable to the state or any political subdivision of the
24 state for attorney fees or costs in an action for just
25 compensation.

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1 I. Nothing in this section prohibits the state or
2 any political subdivision of the state from reaching an
3 agreement with an owner to waive the owner's claim for just
4 compensation based on diminution in value of the owner's real
5 property if the claim directly results from a government action
6 requested by the owner.

7 J. As used in this section:

8 (1) "fair market value" means the most likely
9 price estimated in terms of money that the real property would
10 bring if exposed for sale in the open market, with reasonable
11 time allowed in which to find a purchaser buying with knowledge
12 of all the uses and purposes to which the real property is
13 adapted and for which the real property is capable and is equal
14 to or greater than the original purchase price paid by the
15 owner for the real property;

16 (2) "just compensation" means the sum of money
17 that is equal to the reduction in fair market value of the real
18 property resulting from the enactment of the land use law as of
19 the date of enactment of the land use law;

20 (3) "land use law" means a statute, rule,
21 ordinance, resolution or law enacted by the state or a
22 political subdivision of the state that regulates the use or
23 division of land or any interest in land or that regulates
24 accepted farming or forestry practices; and

25 (4) "owner" means a holder of a fee title to

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real property.

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