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HOUSE BILL 154

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Rob 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;

C. "nonregulatory act" includes closure of a

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1 military base or government facility;

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

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

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

17 Section 3. INVERSE CONDEMNATION.--

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

25 B. The owner of private property described in
Subsection A of this section may either require condemnation
by and just compensation from the government unit that

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1 imposed the regulatory program resulting in decreased value,
2 or receive compensation for the reduction in value caused by
3 the regulatory program, and in either case may have the
4 compensation determined by a jury. When more than one
5 government unit is involved, the court shall determine the
6 proportion each unit is required to contribute to the
7 compensation and fix a settlement date not to exceed thirty
8 days.

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

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

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

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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
23 market value of the property before and after the action.

24 Section 5. STATUTE OF LIMITATIONS.--

25 A. The statute of limitations for actions brought
pursuant to the Private Property Protection Act is the
statute of limitations for ordinary actions brought for

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1 injuries to real property, except that the time begins to run
2 upon the final administrative decision implementing the
3 regulatory program affecting the owner's private property.

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

13 Section 6. ENFORCEMENT.--

14 A. The Private Property Protection Act shall be
15 enforced through an inverse condemnation suit at law brought
16 by, and at, the sole discretion of the owner. All
17 enforcement costs, including attorney fees, shall be borne by
18 the government unit responsible for the regulatory program,
19 except that an owner who does not prevail in a final action
20 for compensation shall bear his own enforcement costs and a
21 pro-rata share of any court costs, and an owner who does not
22 prevail in an action for an increase in a previously
23 adjudicated compensation award shall bear the like costs in
24 the same proportion for subsequent actions.

25 B. A government unit subject to an award of
compensation under the Private Property Protection Act shall,
within the thirty-day period set by the court, pay to the

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1 owner the awarded compensation.

2 C. Alternatively, the government unit against
3 which inverse condemnation is successfully required under
4 Section 3 of the Private Property Protection Act may, within
5 the thirty days set by the court, rescind the land use
6 planning, zoning or other regulatory program as it affects
7 the owner's private property and all similarly situated land
8 in the jurisdiction in which the regulatory program is in
9 effect, without further public hearings, proceedings or
10 environmental review. If the government unit elects to
11 rescind the affected regulatory program, the program that was
12 in effect previously shall automatically be in effect. In
13 that event, the government unit shall be liable to the owner
14 for the reasonable and necessary costs of the inverse
15 condemnation action, plus any actual and demonstratable
16 economic losses caused the owner by the regulatory program
17 during the period in which that program was in effect.

18 D. This section does not affect any remedy that is
19 constitutionally required.

20 E. Any permit, authorization or other entitlement
21 granted under a regulatory program rolled back pursuant to
22 this section shall, at the owner's discretion, continue to be
23 valid, notwithstanding any provision of law in the program
24 reinstated by the rollback.

25 Section 7. LEGAL CHALLENGES.--Nothing in the Private
Property Protection Act precludes an owner from bringing
legal challenges to a regulatory program affected by that act

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1 in instances where the regulatory-program-caused diminution
2 in value of the private property or its use does not exceed
3 twenty-five percent of market value for the uses permitted at
4 the time the owner acquired title interest, and nothing in
5 the Private Property Protection Act precludes an owner from
6 bringing a legal challenge to a regulatory program affected
7 by that act based on other provisions of law.

8 Section 8. PROPERTY TAX ADJUSTMENT.--After a government
9 unit enacts a regulatory program in a way that reduces the
10 market value of a taxpayer's private property, the county
11 assessor shall adjust the value of the property for taxation
12 purposes to reflect that decrease.