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FISCAL IMPACT REPORT



SPONSOR: Griego DATE TYPED: 02/05/02 HB _____

SHORT TITLE: Vested Property Right SB 161

ANALYST: Sandoval

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC files

Responses Received

Attorney General's Office

No Response

Department of Finance and Administration (DFA)

SUMMARY

Senate Bill 161 requires cities and counties prepare an impact study on the effect of certain proposed land use regulations. This bill also grants a vested property right to the owner of undeveloped property upon the approval or conditional approval of a subdivision plat by appropriate county or municipal officials. The vested property right is to last for a minimum of two years, or longer if determined to be necessary by county or municipal officials. The vested property right allows the developer to undertake and complete the development in accordance with the terms and conditions of a subdivision plat. The vested property right runs with the land and precludes the adoption, amendment or repeal of a land use regulation that would alter, impair, prevent, diminish, or otherwise delay the development or use of the real property. Vested property rights do not preclude the application of ordinances, rules or regulations that are general in nature and are applicable to all property subject to land use regulation by the municipality or county.

Significant Issues

Impact studies are to include the effect of the proposal on the estimated increase or decrease in housing construction costs, New Mexico Mortgage Finance Authority income eligibility requirements and affected businesses.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Section 47-6-11.1 NMSA 1978 provides for a two-year expiration date on preliminary plats and provides methodology for its extension.

TECHNICAL ISSUES

Section 1 of this bill provides that municipalities shall prepare an impact study on the specified matters when adopting subdivision regulations. There is no such counterpart for Counties when enacting subdivision regulations.

Section 4(A) of this bill provides that once established, a vested property right precludes any adoption, amendment or repeal of a land use regulation that would “alter, impair, prevent, diminish or otherwise delay the development or use of the property.” Section 4(B) states that a vested property right does not preclude the application of ordinances, rules or regulations that are general in nature and are applicable to all property subject to land use regulation by a county or municipality. According to the Attorney General’s Office, “..these would appear to be contradictory provisions unless construed to mean: (1) that only subdivision-specific regulations are precluded, or, (2) that only generally applicable non-land use police-power ordinances are effective as to the vested property.”

OTHER SUBSTANTIVE ISSUES

According to the Attorney General’s Office, section 3 of this bill provides that a vested property right that is established upon the approval or conditional approval of “a subdivision plat by appropriate county and municipal officials.” Section 3 amends Chapter 3, Article 20, which does not have a definition of “subdivision plat”. Section 3-20-1(C) NMSA 1978 defines “plat” to include “a map, chart, survey, plan or replat certified by a licensed land surveyor containing a description of the subdivided land with ties to permanent monuments.” It is advisable that section 3 define the type of subdivision plat which results in a vested property right, whether that be a preliminary plat, a final plat or just a surveyed conceptual plan or “plat”.

According to the Attorney General’s Office, a definition of who the “appropriate county and municipal officials” are would be help to avoid future problems. For example, does appropriate county and municipal officials mean a Planning Commission or County Commissions and/or City Councils. This could be remedied by defining these officials the same way that Section 3(D) does, by adding the language “who are authorized to approve or disapprove subdivision plats.”

Section 3 of this bill changes New Mexico law by providing for a vested property right. According to the Attorney General’s Office, a vested property right is established where there is an initial governmental approval and a substantial change of position in reliance on that approval. This bill appears to eliminate the second prong of the “Brazos test” which provides that a vested property right

shall be attach to and run with the applicable property. In other words, the land may be and the new owner would have all the vested rights of the original developer. According to the Attorney General's Office, "Eliminating the requirement for detrimental reliance (investment) on the approval may encourage land speculation."

Section 3(D) of this bill provides that a vested property right shall remain "vested for a minimum of two years, or longer if determined to be necessary by the county and municipal officials who are authorized to approve or disapprove subdivision plats." It is advisable to clarify whether vested rights commence at the approval of a preliminary plat or a final plat in order to determine when the two-year vesting period starts and ends. An indication as to the manner in which vested right extensions are to be approved is advisable. For example, is a public hearing required? Are notices to opponents of a subdivision required? What standard or type of proof does a subdivider have to show to prove that an extension of vested rights is "necessary"?

POSSIBLE QUESTIONS

1. What is involved in an impact study and how much will it cost?
2. What is the "Brazos Test"?

JFS/ar