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HOUSE BILL 1281

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JAMES G. TAYLOR

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. INVERSE CONDEMNATION. --

A. Whenever implementation by the state or any of its political subdivisions of any regulatory program operates to reduce the fair market value of real property by twenty-five percent for the uses permitted at the time the owner acquired a title interest, or the date preceding the effective date of the regulatory program, whichever is later, the property shall be deemed to have been taken for the use of the public. As used in this section, regulatory programs include land use planning or

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1 zoning programs.

2 B. The owner or user of real property described in
3 Subsection A of this section shall have the right to require
4 condemnation by and just compensation from the governmental
5 unit, or units, when more than one governmental unit is
6 involved, imposing the regulation resulting in decreased value,
7 or to receive compensation for the reduction in value caused by
8 government action, and in either case to have the compensation
9 determined by a jury. When more than one governmental unit is
10 involved, the court shall determine the proportion each unit
11 shall be required to contribute to the compensation; and fix a
12 settlement date not to exceed ninety days.

13 C. The compensation for real property taken shall be
14 for the full value of the interest taken or for the full amount
15 of the decrease in fair market value and shall not be limited to
16 the amount by which the decrease in fair market value exceeds
17 twenty-five percent. The market value shall be established by
18 fully accredited commercial appraisers.

19 D. Governmental units subject to the provisions of
20 the Private Property Protection Act shall not make waiver of the
21 provisions of that act a condition for approval of the use of
22 real property or the issuance of any permit or other
23 entitlement. An owner or user of real property may accept an
24 approval of use, permit or other entitlement granted by a
25 governmental unit without compromising rights under the Private

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1 Property Protection Act if:

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

5 (2) an oral statement is made before the
6 governmental unit granting the authorization, permit or other
7 entitlement at a public meeting at which the governmental unit
8 renders its decision.

9 Section 3. EXCEPTIONS. --No compensation shall be required
10 by virtue of the Private Property Protection Act if the
11 governmental action:

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

16 B. prohibits uses of the property that are injurious
17 or potentially injurious to others or to the public, as defined
18 by common law, statute, regulation or rule, but injurious or
19 potentially injurious uses does not include uses the prohibition
20 of which would confer a benefit on others or on the public for
21 which compensation is required under the Private Property
22 Protection Act; or

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

1 Section 4. STATUTE OF LIMITATIONS. --

2 A. The statute of limitations for actions brought
3 pursuant to this section is the statute of limitations for
4 ordinary actions brought for injuries to real property. The
5 statute of limitations begins to run upon the final
6 administrative decision implementing the regulatory program
7 affecting the owner's or user's property.

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

16 C. The Private Property Protection Act shall apply
17 not only to new regulatory programs, but also to the application
18 of regulatory programs in effect on the effective date of that
19 act, including, but not limited to, land use law or zoning laws
20 and regulations affecting the owner's property.

21 Section 5. ENFORCEMENT. --The Private Property Protection
22 Act shall be enforced through administrative procedure,
23 arbitration, suit at law or any combination thereof at the
24 option of the owner. All enforcement costs, including attorney
25 fees, shall be borne by the governmental unit taking the action,

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1 except that an owner who does not prevail in a final action for
2 compensation shall bear his own enforcement costs and a pro-rata
3 share of any administrative or court costs, and an owner who
4 does not prevail in an action for an increase in a previously
5 adjudicated compensation award shall bear the like costs in the
6 same proportion for any such subsequent actions.

7 Section 6. REGULATORY ROLLBACK. --

8 A. If the governmental unit against which inverse
9 condemnation is successfully required under Section 2 of the
10 Private Property Protection Act is unwilling or unable to pay
11 the costs awarded, conditional relaxation is authorized and it
12 shall immediately relax the land use planning, zoning or other
13 regulatory program as it affects the owner's land and all
14 similarly situated land in the jurisdiction in which the
15 regulatory program is in effect to the level of regulation in
16 place as of the time the owner acquired a title interest. In
17 that event, the governmental unit shall be liable to the land
18 owner or user for the reasonable and necessary costs of the
19 inverse condemnation action, plus any actual and demonstrable
20 economic losses caused him by the regulation during the period
21 in which it was in effect.

22 B. A governmental unit subject to an award of
23 compensation under the Private Property Protection Act shall
24 relax the land use planning, zoning or other regulatory program
25 without further public hearings, proceedings or environmental

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1 review required. If a governmental unit elects to relax the
2 affected regulatory program, the previously effective program
3 shall automatically be in effect.

4 C. This section shall not be deemed to affect any
5 remedy which is constitutionally required.

6 D. Any permit, authorization, or other entitlement
7 granted under a program rolled back pursuant to this section
8 shall, at owner's discretion, continue to be valid,
9 notwithstanding any provision of law in the program reinstated
10 by the rollback.

11 Section 7. LEGAL CHALLENGES. --Nothing in the Private
12 Property Protection Act precludes property owners from bringing
13 legal challenges to regulatory programs affected by that act in
14 instances where the regulatory program caused diminution in
15 value of the property or its use does not exceed twenty-five
16 percent of fair market value for the uses permitted at the time
17 the owner acquired title interest, and it shall not preclude
18 property owners from bringing legal challenges to regulatory
19 programs affected by that act based on other provisions of law.

20 Section 8. PROPERTY TAX ADJUSTMENT. --After the state or
21 any of its political subdivisions enacts a regulatory program in
22 a way that reduces the fair market value of a taxpayer's
23 property, the county assessor shall adjust the value of the
24 property for taxation purposes to reflect that decrease.