

1 SENATE BILL NO. 397

2 INTRODUCED BY A. CURTISS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING JUST COMPENSATION TO PROPERTY OWNERS
5 IF GOVERNMENT REGULATORY RESTRICTIONS REDUCE THE VALUE OF REAL PROPERTY."

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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9 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context requires
10 otherwise, the following definitions apply:11 (1) "Just compensation" means payment for the reduction in value of real property and includes
12 reasonable attorney fees and expenses necessary to collect on a claim if a valid claim for compensation is
13 denied or not fully paid within 90 days of filing.14 (2) "Real property" means but is not limited to any structure built or located on the property, aggregate
15 and other removable minerals, and any forest product or other crop grown on the property.16 (3) "Reduction in the fair market value" means the difference in the fair market value of the property
17 before and after application of the regulation and includes but is not limited to the net cost to the landowner of
18 an affirmative obligation to protect, provide, or preserve wildlife habitat, natural areas, wetlands, ecosystems,
19 scenery, open space, historical, archaeological, or cultural resources, or low-income housing.20 (4) "Regulation" means any law, rule, ordinance, resolution, goal, or other enforceable regulation of
21 government.

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23 NEW SECTION. Section 2. Compensation for regulatory restriction. (1) Subject to [section 3], if
24 the state, a political subdivision of the state, or a local government enacts or enforces a regulation that restricts
25 the use of private real property and the restriction on the property reduces the value of the property, the property
26 owner must be paid just compensation equal to the reduction in the fair market value of the property.27 (2) Just compensation must be paid by the governing body that is responsible for enforcing the
28 regulation that restricts the use of the private property pursuant to [sections 1 through 4]. In lieu of payment for
29 just compensation, the responsible governing body may modify or remove the application of the regulation from
30 the real property subject to the claim for just compensation.

1 (3) As used in this section, the term "governing body" does not include a court of competent jurisdiction.

2 (4) For the purposes of this section, adoption or enforcement of historically and commonly recognized
3 nuisance laws may not be considered to cause a reduction in the value of real property. The phrase, "historically
4 and commonly recognized nuisance laws," must be narrowly construed in favor of a finding that just
5 compensation is required under this section.

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7 **NEW SECTION. Section 3. Exceptions.** (1) A regulating entity may impose, to the minimum extent
8 required, a regulation to implement a requirement of federal law without payment of just compensation under
9 [sections 1 through 4].

10 (2) Nothing in [sections 1 through 4] requires the payment of just compensation due to a government
11 regulation prohibiting the use of real property for the purpose of selling pornography, performing nude dancing,
12 selling alcoholic beverages or other controlled substances, or operating a casino or a gaming or gambling
13 establishment.

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15 **NEW SECTION. Section 4. Just compensation -- when applicable -- cause of action.** (1) Just
16 compensation is due to the property owner if the regulation is adopted, first enforced, or applied after the current
17 owner of the property became the property owner and continues to apply to the property 90 days after the owner
18 applies for just compensation under [sections 1 through 4].

19 (2) If a valid claim for just compensation is denied or not fully paid within 90 days of submittal to the
20 appropriate governing body, a person has a cause of action for compensation pursuant to [sections 1 through
21 4] in the district court for the county where the real property subject to the claim is located.

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23 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
25 the part remains in effect in all valid applications that are severable from the invalid applications.

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