| 1 | SENATE BILL NO. 287 |
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| 2 | INTRODUCED BY S. FITZPATRICK |
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| 4 | A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY OWNERSHIP LAWS; |
| 5 | LISTING ADDITIONAL CATEGORIES OF PROPERTY THAT MAY BE OWNED; PROVIDING THAT |
| 6 | PROPERTY DAMAGED OR TAKEN FOR A PUBLIC USE IS SUBJECT TO REGULATORY TAKINGS SUIT; |
| 7 | AND AMENDING SECTION 70-1-104, MCA: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN |
| 8 | APPLICABILITY DATE." |
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| 10 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: |
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| 12 | Section 1. Section 70-1-104, MCA, is amended to read: |
| 13 | "70-1-104. In what things property interests may exist regulatory taking. (1) There may be |
| 14 | ownership of: |
| 15 | (1)(a) all inanimate things which that are capable of appropriation or of manual delivery; |
| 16 | (2)(b) all domestic animals; |
| 17 | (3)(c) all obligations; |
| 18 | (4)(d) such-products of labor or skill such as the composition of an author, the goodwill of a business |
| 19 | trademarks, and signs; and |
| 20 | (5) (<u>e)</u> rights created or granted by statute <u>:</u> |
| 21 | (f) li censes to pursue a business or livelihood, including state licenses that have been approved |
| 22 | and issued and for which the holder has a legitimate claim of entitlement, and the property interests associated |
| 23 | with licenses, including any authorized ability to freely transfer or dispose of the license; |
| 24 | (g)(F) real property and fixtures; |
| 25 | (h)(G) personal property and appurtenances; |
| 26 | (i)(H) water rights and beneficial water use permits or authorizations as defined in 85-2-102; |
| 27 | (j)(I) intangible PERSONAL property AS DEFINED IN 15-6-218; and |
| 28 | (k)(J) mineral rights. |



| 1 | (2) (a) Except as provided in subsection (2)(b), the property interests in subsection (1) are |
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| 2 | protectable private property interests under Article II, section 29, of the Montana constitution for which |
| 3 | compensation may be claimed and just compensation must be awarded when a court finds that the property |
| 4 | has been damaged or taken for a public use by means of eminent domain or a regulatory taking. |
| 5 | (b) Subsection (2)(a) may not be construed to: |
| 6 | (I) limit the types of property interests or what may be considered property recognized under the |
| 7 | Montana constitution or by law for which just compensation may be claimed and awarded, such as property |
| 8 | interests recognized and protected under Article II, section 3, of the Montana constitution and property as |
| 9 | <u>defined in 15-1-101; OR</u> |
| 10 | (II) ESTABLISH LIABILITY OR AN AWARD OF ATTORNEY FEES IN INSTANCES IN WHICH PROPERTY LISTED IN |
| 11 | SUBSECTION (1) IS PHYSICALLY DAMAGED OR IN INSTANCES IN WHICH SUCH INJURY COULD BE THE BASIS OF A CLAIM |
| 12 | BASED ON NEGLIGENCE OR OTHER TORT. |
| 13 | (3) A court may not deny a regulatory taking on the basis that the property taken is associated with |
| 14 | a highly regulated business or industry. |
| 15 | (4) This section does not affect the enforcement of terms of a license, permit, or |
| 16 | GOVERNMENT AUTHORIZATION, INCLUDING REQUIREMENTS IMPOSED BY STATE, LOCAL, OR FEDERAL LAW." |
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| 18 | NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL. |
| 19 | |
| 20 | NEW SECTION. SECTION 3. APPLICABILITY. [THIS ACT] DOES NOT AFFECT ANY GOVERNMENT ACTION, |
| 21 | REGULATION, LICENSE, OR PERMIT ISSUED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT]. |
| 22 | - END - |

