

## 1 SENATE BILL NO. 260

2 INTRODUCED BY S. FITZPATRICK, M. BLASDEL, J. ELLSWORTH, J. SMALL

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO PROPERTY  
 5 INTERESTS; IDENTIFYING THINGS IN WHICH PROPERTY INTERESTS EXIST, INCLUDING GOODWILL  
 6 AND GOING CONCERN VALUE OF A BUSINESS, LICENSE TO PURSUE A BUSINESS OR LIVELIHOOD,  
 7 REAL PROPERTY AND FIXTURES, PERSONAL PROPERTY AND APPURTENANCES, WATER RIGHTS,  
 8 AND INTANGIBLE PROPERTY; PROVIDING THAT IDENTIFIED PROPERTY INTERESTS ARE  
 9 PROTECTED PRIVATE PROPERTY INTERESTS; PROVIDING EXCEPTIONS; AMENDING SECTION 70-1-  
 10 104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."  
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12 WHEREAS, the Legislature has the highest interest in vindicating private property rights and in  
 13 protecting private property rights and Montana businesses from wrongful and uncompensated government  
 14 takings; and

15 WHEREAS, section 70-1-104, MCA, specifically designates several categories of property in which a  
 16 property interest may be held under Montana law; and

17 WHEREAS, the Legislature desires to clarify and codify what constitutes a private property interest  
 18 under the Montana Constitution for which just compensation must be paid when the property interest is taken  
 19 for public purposes.

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 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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23 **Section 1.** Section 70-1-104, MCA, is amended to read:

24 **"70-1-104. In what things property interests may exist.** (1) There may be ownership of:

25 ~~(1)(a)~~ all inanimate things ~~which~~ that are capable of appropriation or of manual delivery;

26 ~~(2)(b)~~ all domestic animals;

27 ~~(3)(c)~~ all obligations;

28 ~~(4)(d)~~ ~~such~~ products of labor or skill such as the composition of an author, the goodwill and going

- 1 concern value of a business, trademarks, and signs; and
- 2 ~~(5)(e)~~ rights created or granted by statute;
- 3 (f) licenses to pursue a business or livelihood, including state licenses that have been approved and
- 4 issued and for which the holder has a legitimate claim of entitlement, and the property interests associated with
- 5 licenses, including any authorized ability to freely transfer or dispose of the license;
- 6 (g) real property and fixtures;
- 7 (h) personal property and appurtenances;
- 8 (i) water rights and beneficial water use permits or authorizations AS DEFINED IN 85-2-102; and
- 9 (j) intangible property; AND
- 10 (k) MINERAL RIGHTS.
- 11 (2) (a) The property interests in subsection (1) are protectable private property interests under Article
- 12 II, section 29, of the Montana constitution for which compensation may be claimed and just compensation must
- 13 be awarded when a court finds that the property has been damaged or taken for a public use by means of
- 14 eminent domain or a regulatory taking. Prima facie evidence of a regulatory taking occurs if there is 25% or
- 15 greater diminution in the private property's fair market value.
- 16 (b) Subsection (2)(a) may not be construed to limit the types of property interests or what may be
- 17 considered property recognized under the Montana constitution or by law for which just compensation may be
- 18 claimed and awarded, such as property interests recognized and protected under Article II, section 3, of the
- 19 Montana constitution and property as defined in 15-1-101.
- 20 (3) A court may not deny a regulatory taking on the basis that the property being taken is associated
- 21 with a highly regulated business or industry.
- 22 (4) THE POWER OR AUTHORITY OF A LOCAL GOVERNMENT TO LAWFULLY ENACT VALID ZONING, SUBDIVISION,
- 23 OR OTHER LAND USE REGULATIONS OR ORDINANCES THAT ARE REQUIRED BY LAW OR THAT ARE NECESSARY TO PROTECT
- 24 DOCUMENTED PUBLIC HEALTH, WELFARE, OR SAFETY IMPACTS IS SET FORTH IN TITLE 76, CHAPTERS 1 THROUGH 4, BUT
- 25 IS STILL SUBJECT TO THE 25% OR GREATER DIMINUTION OF VALUE SET FORTH IN SUBSECTION (2).
- 26 ~~(4)(5)~~ (a) This section does not affect:
- 27 (i) the enforcement of the terms of a license, permit, or authorization, including requirements imposed
- 28 by federal law; or

1 ~~(ii) the power or authority of a county, city, or town to lawfully enact valid zoning, subdivision, or other~~  
 2 ~~land use regulations or ordinances that are required by law or that are necessary to protect documented public~~  
 3 ~~health, welfare, or safety impacts~~ MONTANA LAW RELATIVE TO PRIMACY OF THE MINERAL ESTATE, CANNOT BE  
 4 CONSTRUED TO LIMIT ACCESS TO OR DEVELOPMENT OF THE MINERAL ESTATE, AND MAY NOT PREVENT THE COMPLETE  
 5 USE, DEVELOPMENT, OR RECOVERY OF ANY MINERAL; OR

6 (iii) AN ACTION TAKEN BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION UNDER 85-2-310  
 7 ON AN APPLICATION TO CHANGE A WATER RIGHT FILED PURSUANT TO TITLE 85.

8 (b) Compensation may not be claimed under subsection (2):

9 (i) for action taken pursuant to subsection ~~(4)(a)~~ (5)(A); OR

10 (ii) BY A PARTY WHO IS NOT THE APPLICANT OR HOLDER OF A PERMIT, LICENSE, APPROVAL OR AUTHORIZATION  
 11 UNDER TITLE 75 OR TITLE 82.

12 ~~(5)(6)~~ This section does not apply to:

13 (A) any license that is not transferable and may not be sold. This includes but is not limited to driver's  
 14 licenses, professional licenses held by individuals, LICENSES ISSUED BY A MUNICIPALITY, or any license relating to  
 15 OR BUSINESS INVOLVING THE GROWING, MANUFACTURING, DISTRIBUTION, OR SALE OF marijuana OR MARIJUANA  
 16 PRODUCTS;:

17 (B) DEPARTMENT OF TRANSPORTATION ACQUISITION OF INTEREST IN PROPERTY AUTHORIZED UNDER TITLE  
 18 60, CHAPTER 4, OR TITLE 67, CHAPTER 2;

19 (C) CLAIMS OF INVERSE CONDEMNATION RESULTING FROM LOCAL GOVERNMENT AND MUNICIPAL OPERATIONS;

20 ~~OR~~

21 (D) SITUATIONS IN WHICH GOVERNMENT ACTION GRANTS ADDITIONAL RIGHTS OR PRIVILEGES WITHIN THE  
 22 OVERALL COMMERCIAL MARKETPLACE TO THE DETRIMENT OF COMPETING PROPERTY INTERESTS;

23 (E) LAND USE DECISIONS THAT CAUSE A DECREASE IN VALUE OF A NEIGHBORING PARCEL OF LAND; OR

24 (F) BUSINESS ENTITY FILINGS WITH THE SECRETARY OF STATE.

25 ~~(6)(7)~~ In order to be protected under subsection (2), the property interests described in subsection (1)  
 26 must be owned by the claimant at the time of the government action for which a taking is being claimed. In the  
 27 case of a business interest, the business must have been authorized by law and must have been in existence  
 28 at the time of the government action for which a taking is being claimed."

