

SENATE BILL NO. 260

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

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO PROPERTY INTERESTS; IDENTIFYING THINGS IN WHICH PROPERTY INTERESTS EXIST, INCLUDING GOODWILL AND GOING CONCERN VALUE OF A BUSINESS, LICENSE TO PURSUE A BUSINESS OR LIVELIHOOD, REAL PROPERTY AND FIXTURES, PERSONAL PROPERTY AND APPURTENANCES, WATER RIGHTS, AND INTANGIBLE PROPERTY; PROVIDING THAT IDENTIFIED PROPERTY INTERESTS ARE PROTECTED PRIVATE PROPERTY INTERESTS; PROVIDING EXCEPTIONS; AMENDING SECTION 70-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature has the highest interest in vindicating private property rights and in protecting private property rights and Montana businesses from wrongful and uncompensated government takings; and

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

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

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

Section 1. Section 70-1-104, MCA, is amended to read:

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

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

(2)(b) all domestic animals;

(3)(c) all obligations;

(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.

10 (2) (a) The property interests in subsection (1) are protectable private property interests under Article
 11 II, section 29, of the Montana constitution for which compensation may be claimed and just compensation must
 12 be awarded when a court finds that the property has been damaged or taken for a public use by means of
 13 eminent domain or a regulatory taking. Prima facie evidence of a regulatory taking occurs if there is 25% or
 14 greater diminution in the private property's fair market value.

15 (b) Subsection (2)(a) may not be construed to limit the types of property interests or what may be
 16 considered property recognized under the Montana constitution or by law for which just compensation may be
 17 claimed and awarded, such as property interests recognized and protected under Article II, section 3, of the
 18 Montana constitution and property as defined in 15-1-101.

19 (3) A court may not deny a regulatory taking on the basis that the property being taken is associated
 20 with a highly regulated business or industry.

21 (4) (a) This section does not affect:

22 (i) the enforcement of the terms of a license, permit, or authorization, including requirements imposed
 23 by federal law; or

24 (ii) the power or authority of a county, city, or town to lawfully enact valid zoning, subdivision, or other
 25 land use regulations or ordinances that are required by law or that are necessary to protect documented public
 26 health, welfare, or safety impacts; OR

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

