

## 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."

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NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to governmental actions involving eminent domain or regulatory takings that are initiated on or after [the effective date of this act].

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