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FISCAL IMPACT REPORT

SPONSOR:	Burpo	DATE TYPED:	01/30/00	HB	154
SHORT TITLE:	Private Property Protection Act			SB	
				ANALYST:	Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY00	FY01	FY00	FY01		
	\$ 0.0	See Fiscal Implications Narrative			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB819

SOURCES OF INFORMATION

LFC Files

Energy, Minerals and Natural Resources Department

State Land Office

Attorney General's Office

SUMMARY

Synopsis of Bill

House Bill 154 would enact the "Private Property Protection Act." The new statute would create legal remedies for private property owners or users to initiate when any governmental entity implements a regulation, with few exceptions, that in some way decreases the real property value by 25 percent, including land use and zoning actions. Additionally, the bill requires the governmental entity to pay the private property owner for their loss. The bill also outlines enforcement actions, statute of limitations for actions, procedures for legal challenges and property tax adjustments.

Significant Issues

The Constitutions of the United States and of New Mexico require the government to compensate private property owners when the government exerts its legal authority of eminent domain to condemn private property ("takings") for a public use. Private property owners have attempted to apply this same "takings" principle to regulatory actions that severely restrict the property's use, a process known as an inverse condemnation action.

The debate over the appropriate role of the state government has focused attention on the government's regulatory actions. Private property owners have voiced their dissatisfaction with the current level of protection for private property rights, particularly rights associated with real property such as land. When these owners assert an infringement on their rights and pursue a remedy in the courts, the courts have applied constitutional takings jurisprudence (body of law spawned from Supreme Court decisions on the Fifth

Amendment of the Constitution) to rule that the effect of a regulation on private property is not considered a "takings", therefore would not require compensation.

Private property owners have generally lost these court cases because an explicit "reduction-in-value" test to determine eligibility for compensation does not exist, though the courts do consider the "reduction-in-value" argument. House Bill 154 seeks to create this legal mechanism. Problematic with the structure of House Bill 154 is that the calculation would be completed specifically on the portion of the property affected by the regulation, instead of the entire property. As mentioned, courts do weigh the reduction in property values in making their decisions, but it also weighs other factors such as the harm that the regulation prevents, which House Bill 820 does not address. The courts also have ruled that a property owner, in many cases, is well aware of the potential that regulatory programs may inhibit their ability to use their property.

In effect, House Bill 154 seeks to create the statutory mechanisms to ensure that private property owners are successful in their "takings" lawsuits against governmental entities.

FISCAL IMPLICATIONS

House Bill 154 does not contain an appropriation. However, enactment of the bill would have huge fiscal impacts. Passage of the bill would require governmental agencies to compensate private property owners for the loss in market value. Where the courts have normally ruled against private property owners, the bill could give the owners legal standing in these cases. In effect, the bill could potentially allow compensation for almost any regulatory action.

The fiscal impact is indeterminable, but it is conservative to say that the state would face millions of dollars of liability.

ADMINISTRATIVE IMPLICATIONS

House Bill 154 would have an equally large administrative impact on governmental entities.

MFV/njw