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SENATE BILL 306

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO PROPERTY; ENACTING THE PRIVATE PROPERTY PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Private Property Protection Act".

Section 2. INVERSE CONDEMNATION. --

A. Whenever implementation by the state or any of its political subdivisions of any regulatory program operates to reduce the fair market value of real property by twenty-five percent for the uses permitted at the time the owner acquired a title interest, or the date immediately preceding the effective date of the regulatory program, whichever is later, the property shall be deemed to have been taken for the use of the public. As used in this section, regulatory

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1 programs include land-use planning or zoning programs.

2 B. The owner of real property described in
3 Subsection A of this section shall have the option to either
4 require condemnation by and just compensation from the
5 governmental unit, or units, when more than one governmental
6 unit is involved, imposing the regulation resulting in
7 decreased value, or to receive compensation for the reduction
8 in value caused by government action, and in either case to
9 have the compensation determined by a jury. When more than
10 one governmental unit is involved, the court shall determine
11 the proportion each unit shall be required to contribute to
12 the compensation and fix a settlement date not to exceed
13 ninety days.

14 C. The compensation for real property taken shall
15 be for the full value of the interest taken or for the full
16 amount of the decrease in fair market value and compensation
17 shall not be limited to the amount by which the decrease in
18 fair market value exceeds twenty-five percent of value as
19 calculated pursuant to Subsection A of this section. The
20 market value shall be established by fully accredited
21 commercial appraisers.

22 D. Governmental units subject to the provisions of
23 the Private Property Protection Act shall not make waiver of
24 the provisions of that act a condition for approval of the use
25 of real property or the issuance of any permit or other

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1 entitlement. An owner of real property may accept an approval
2 of use, permit or other entitlement granted by a governmental
3 unit without compromising rights under the Private Property
4 Protection Act if:

5 (1) a written reservation of rights is made
6 at the time of acceptance of the authorization, permit or
7 other entitlement; or

8 (2) an oral statement reserving rights is
9 made before the governmental unit granting the authorization,
10 permit or other entitlement at a public meeting at which the
11 governmental unit renders its decision.

12 Section 3. EXCEPTIONS. -- No compensation shall be
13 required pursuant to the Private Property Protection Act if
14 the governmental action:

15 A. is a nonregulatory act that results in a
16 diminution of the value of the property but does not otherwise
17 destroy, damage, trespass upon or take the property or
18 prohibit any rightful use of the property;

19 B. prohibits uses of the property that are
20 injurious or potentially injurious to others or to the public,
21 as defined by common law, statute, regulation or rule but only
22 if the prohibition does not confer a benefit on others or on
23 the public for which compensation is required under the
24 Private Property Protection Act; or

25 C. produces benefits to the owner equivalent to or

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1 greater than any loss to the owner as determined by the fair
2 market value of the property before and after the action.

3 Section 4. STATUTE OF LIMITATIONS. --

4 A. The statute of limitations for actions brought
5 pursuant to this section is the statute of limitations for
6 ordinary actions brought for injuries to real property. The
7 statute of limitations begins to run upon the final
8 administrative decision implementing the regulatory program
9 affecting the owner's property.

10 B. A program is implemented with respect to an
11 owner's real property when actually applied to that property
12 unless the enactment of the program by itself operates to
13 reduce the fair market value of the property, or any legally
14 recognized interest therein, to less than seventy-five percent
15 of its fair market value for the uses permitted at the time
16 the owner acquired a title interest, in which case the date of
17 enactment is the date of implementation.

18 C. The Private Property Protection Act shall apply
19 not only to new regulatory programs, but also to the
20 application of regulatory programs in effect on the effective
21 date of that act, including, but not limited to, land-use law
22 or zoning laws and regulations affecting the owner's property.

23 Section 5. ENFORCEMENT. --The Private Property Protection
24 Act shall be enforced through administrative procedure,
25 arbitration, suit at law or any combination thereof at the

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1 option of the owner. All enforcement costs, including
2 attorney fees, shall be borne by the governmental unit taking
3 the action, except that an owner who does not prevail in a
4 final action for compensation shall bear his own enforcement
5 costs and a pro-rata share of any administrative or court
6 costs, and an owner who does not prevail in an action for an
7 increase in a previously adjudicated compensation award shall
8 bear the like costs in the same proportion for subsequent
9 actions.

10 Section 6. REGULATORY ROLLBACK. --

11 A. If the governmental unit against which inverse
12 condemnation is successfully required under Section 2 of the
13 Private Property Protection Act is unwilling or unable to pay
14 the costs awarded, conditional relaxation is authorized and it
15 shall immediately relax the land-use planning, zoning or other
16 regulatory program as it affects the owner's land and all
17 similarly situated land in the jurisdiction in which the
18 regulatory program is in effect to the level of regulation in
19 place as of the time the owner acquired a title interest. In
20 that event, the governmental unit shall be liable to the land
21 owner or user for the reasonable and necessary costs of the
22 inverse condemnation action, plus any actual and demonstrable
23 economic losses caused him by the regulation during the period
24 in which it was in effect.

25 B. A governmental unit subject to an award of

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1 compensation under the Private Property Protection Act shall
2 relax the land-use planning, zoning or other regulatory
3 program without further public hearings, proceedings or
4 environmental review required. If a governmental unit elects
5 to relax the affected regulatory program, the previously
6 effective program shall automatically be in effect.

7 C. This section shall not be deemed to affect any
8 remedy which is constitutionally required.

9 D. Any permit, authorization or other entitlement
10 granted under a program rolled back pursuant to this section
11 shall, at owner's discretion, continue to be valid,
12 notwithstanding any provision of law in the program reinstated
13 by the rollback.

14 Section 7. LEGAL CHALLENGES. -- Nothing in the Private
15 Property Protection Act precludes property owners of real
16 property from bringing legal challenges to regulatory programs
17 affected by that act in instances where the regulatory
18 program caused diminution in value of the property or its use
19 does not exceed twenty-five percent of fair market value for
20 the uses permitted at the time the owner acquired title
21 interest, and it shall not preclude property owners from
22 bringing legal challenges to regulatory programs affected by
23 that act based on other provisions of law.