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HOUSE BILL 159

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE PRIVATE PROPERTY RIGHTS PROTECTION ACT; CLARIFYING THE USE OF THE POWER OF EMINENT DOMAIN; PROVIDING FOR JUST COMPENSATION; ESTABLISHING A BURDEN OF PROOF; PROVIDING FOR ATTORNEY FEES AND COSTS.

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 Rights Protection Act".

Section 2. DEFINITIONS.--As used in the Private Property Rights Protection Act:

A. "comparable replacement dwelling" means a dwelling that is:

(1) decent, safe and sanitary;

(2) adequate in size to accommodate the

occupants;

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1 (3) within the financial means of the person
2 whose dwelling has been taken;

3 (4) functionally equivalent to the dwelling
4 that was taken;

5 (5) in an area not subject to unreasonable
6 adverse environmental conditions; and

7 (6) in a location generally not less desirable
8 than the location of the taken dwelling with respect to public
9 utilities, facilities, services and the place of employment of
10 the person whose dwelling has been taken;

11 B. "owner" means the holder of fee simple title to
12 real property;

13 C. "public use" means:

14 (1) the possession, occupation or enjoyment of
15 real property by the general public or by a public entity but
16 does not include the public benefit of economic development,
17 increased tax base or taxes, employment or general economic
18 health;

19 (2) the use of real property for the creation
20 or functioning of utilities, common carriers or public
21 infrastructure;

22 (3) the acquisition of real property to
23 eliminate a direct threat to public health or safety caused by
24 the property in its current condition, including the removal of
25 a structure that is beyond repair or unfit for human habitation

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1 or use; or

2 (4) the acquisition of abandoned real
3 property;

4 D. "slum" means an area in which numerous
5 buildings, improvements and structures, whether residential or
6 nonresidential, that, by reason of its dilapidation,
7 deterioration, age, obsolescence or inadequate provision for
8 ventilation, light, air, sanitation or open spaces, high
9 density of population, overcrowding or the existence of
10 conditions that endanger life or property by fire or other
11 causes, is conducive to ill health, transmission of disease,
12 infant mortality or crime and is detrimental to public health
13 and safety; and

14 E. "taken" or "taking" means the transfer of
15 ownership or use from a private property owner to the state or,
16 a political subdivision of the state or to a person by the
17 exercise of the power of eminent domain.

18 Section 3. EMINENT DOMAIN POWER LIMITED--CONTROLLING
19 LAW.--

20 A. The power of eminent domain may be exercised
21 only if its use is authorized by the state and for a public
22 use.

23 B. To the extent that any provision of the Private
24 Property Rights Protection Act may be inconsistent with any
25 other provision of law, other than the constitutions of New

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1 Mexico or the United States or preemptory federal law, the
2 provisions of the Private Property Rights Protection Act shall
3 control.

4 Section 4. SLUM CLEARANCE AND REDEVELOPMENT--COMPARABLE
5 REPLACEMENT DWELLING--MONETARY COMPENSATION.--In an exercise of
6 the power of eminent domain for the purpose of slum clearance
7 and redevelopment, if private property consisting of a person's
8 principal dwelling is taken, the entity exercising the power of
9 eminent domain shall provide the person with a comparable
10 replacement dwelling; provided that if the person desires
11 monetary compensation in lieu of a replacement dwelling, the
12 amount of compensation shall not be less than the amount of
13 money that would be necessary to purchase a comparable
14 replacement dwelling.

15 Section 5. JUDICIAL QUESTION--BURDEN OF PROOF.--

16 A. In an eminent domain judicial action, the
17 question of whether the taking is for a public use is a
18 question for the court to determine without regard to a
19 legislative declaration that the taking is for a public use.

20 B. In an eminent domain judicial action involving
21 slum clearance and redevelopment, the state or a political
22 subdivision of the state shall establish by clear and
23 convincing evidence that:

24 (1) the real property being taken is necessary
25 to eliminate a direct threat to the public health or safety

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1 caused by the property in its current condition, including the
2 need to remove structures that are beyond repair or unfit for
3 human habitation; or

4 (2) the taking is necessary to acquire
5 abandoned property; and

6 (3) there is no reasonable alternative to the
7 taking.

8 Section 6. ATTORNEY FEES AND COSTS.--An owner of real
9 property involved in an eminent domain judicial action:

10 A. is not liable to the state or a political
11 subdivision of the state for attorney fees or costs;

12 B. shall be awarded reasonable attorney fees, costs
13 and expenses if the taking is found not to be for a public use;
14 and

15 C. when the action involves slum clearance and
16 redevelopment, shall be awarded reasonable attorney fees, costs
17 and expenses when the final amount of just compensation offered
18 by the taking entity prior to a court trial is less than the
19 amount of just compensation awarded by a jury or by the court
20 if the owner waives a jury trial.

21 Section 7. SEVERABILITY.--If any part or application of
22 the Private Property Rights Protection Act is held invalid, the
23 remainder or its application to other situations or persons
24 shall not be affected.

25 Section 8. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2007.

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