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HOUSE BILL 819

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

INTRODUCED BY

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AN ACT

RELATING TO PROPERTY; ESTABLISHING A PROCESS FOR THE REVIEW OF
PROPOSED GOVERNMENT ACTIONS AND POLICIES THAT HAVE CONSTITUTIONAL
IMPLICATIONS TO IDENTIFY MEASURES THAT MAY BE INJURIOUS TO OR IN
VIOLATION OF PROPERTY RIGHTS.

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

Section 1. SHORT TITLE. -- This act may be cited as
"Regulatory Practices Act".

Section 2. DECLARATION OF POLICY AND PURPOSE. --

A. The legislature finds and declares that:

(1) Article 2, Section 20 of the constitution of
New Mexico and the fifth and fourteenth amendments of the United
States constitution provide that no person shall be deprived of
property without due process of law and no private property shall
be taken or damaged for public use without just compensation

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1 having first being paid;

2 (2) recent decisions by the United States
3 supreme court have established a criteria and tests to be used
4 in helping to determine the constitutionality of regulatory
5 programs; and

6 (3) there is sufficient cause to establish a
7 statutory process that regulatory agencies of government shall
8 follow to carefully evaluate their programs and actions that
9 affect private property so as to assure constitutional
10 compliance.

11 B. The purpose of the Regulatory Practices Act is
12 to establish an orderly, consistent process that will better
13 facilitate government agencies in their evaluation of proposed
14 regulatory programs or administrative policies to pre-
15 emptively identify actions that are injurious to or result in
16 a taking of private property without providing for the just
17 compensation that is constitutionally required.

18 Section 3. DEFINITIONS. -- As used in the Regulatory
19 Practices Act:

20 A. "actions or policies that have constitutional
21 implications" means rules, ordinances, resolutions, proposed
22 legislation or government agency policy statements that if
23 implemented or enacted could deprive a person of vested rights
24 of property ownership by limiting the self-directed use or
25 disposition, requiring dedications or exactions from owners of

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1 private property without due process of law. The term does
2 not include:

3 (1) actions in which the power of eminent
4 domain is formally exercised;

5 (2) law enforcement actions involving seizure
6 of property for forfeiture or as evidence in criminal
7 proceeding;

8 (3) rules with a genesis in public health or
9 safety that do not go beyond the pale; and

10 (4) rules that prohibit uses that constitute
11 a public nuisance as defined by background principles of
12 common law;

13 B. "government agency" means an officer, agency,
14 board, commission, department, institution, branch or
15 instrumentality of the state or any political subdivision of
16 the state;

17 C. "private property" means all property, real and
18 personal, or ownership interests in property protected by the
19 fifth and fourteenth amendments of the United States
20 constitution or Article 2, Section 20 of the constitution of
21 New Mexico; and

22 D. "taking" means an uncompensated damaging or
23 deprivation of private property in violation of the state or
24 federal constitution.

25 Section 4. GUIDELINES FOR ACTIONS OR POLICIES.--

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1 A. The attorney general shall prepare and publish
2 guidelines to assist government agencies in identifying and
3 evaluating actions or policies that have constitutional
4 implications. The attorney general shall review and update
5 the guidelines annually to maintain consistency with changes
6 in the law.

7 B. A person may make comments, suggestions or
8 provide information in writing to the attorney general
9 concerning the guidelines, and such material shall be
10 considered public information. The attorney general shall
11 consider the comments, suggestions and information in the
12 annual review process.

13 Section 5. CONSTITUTIONAL IMPACT ASSESSMENT. --

14 A. Each government agency proposing or
15 implementing actions or policies that have constitutional
16 implications shall designate a person in the government agency
17 to be responsible for ensuring compliance with the provisions
18 of the Regulatory Practices Act. All proposed actions or
19 policies that have constitutional implications shall be
20 submitted to the designated person for review.

21 B. Using the attorney general's guidelines, the
22 government agency shall prepare a written constitutional
23 impact assessment that includes:

- 24 (1) the economic impact of the action or
25 policy on the property owner;

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1 (2) a description of how the action or policy
2 will affect private property and an assessment of the
3 likelihood that the action or policy could result in a taking
4 or deprive persons of vested rights of ownership in property
5 without due process of law;

6 (3) an estimate of the financial cost to the
7 government agency for compensation should a taking be
8 determined and a source of payment within the agency's budget;

9 (4) the extent to which the action or policy
10 will interfere with an owner's distinct investment-backed
11 expectations;

12 (5) the extent to which the action or policy
13 conflicts with a private property owner's expectations of
14 self-directed use and disposition of property;

15 (6) the character of the action or policy and
16 the nexus of its stated purpose; and

17 (7) alternatives to the action or policy that
18 would most nearly fulfill the government agency's purpose, but
19 that would reduce the impact on private property owners and
20 the risk of a taking.

21 C. A copy of the constitutional impact assessment
22 shall be submitted to the department of finance and
23 administration prior to publishing the public notice of intent
24 of the proposed action or policy that has constitutional
25 implications.

1 Section 6. PUBLIC NOTICE. --

2 A. A government agency that proposes to engage in
3 actions or policies that have constitutional implications that
4 may result in a taking shall provide at least thirty days'
5 notice of its intent to engage in the proposed action or
6 policy by providing a reasonably specific description of the
7 proposed action or policy in a notice published in a newspaper
8 of general circulation published in the county in which
9 affected private real property is located. If a newspaper of
10 general circulation is not published in that county, the
11 government agency shall publish the notice in a newspaper of
12 general circulation located in a county adjacent to the county
13 in which affected private real property is located. The
14 government agency shall, at a minimum, include in the notice a
15 reasonably specific summary of the constitutional impact
16 assessment that was prepared and the name of the person of the
17 government agency from whom a copy of the full constitutional
18 impact assessment may be obtained.

19 B. A copy of the notice shall be published in the
20 state register.

21 Section 7. ENFORCEMENT. --

22 A. A government action or policy that has
23 constitutional implications requiring a constitutional impact
24 assessment is void if an assessment is not prepared or
25 required notices are not given. A private real property owner

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1 affected by a government action or policy taken without the
2 preparation of a constitutional impact assessment may bring
3 suit to invalidate the government action.

4 B. A suit filed pursuant to this section shall be
5 filed in the district court in the county in which the private
6 real property owner's affected property is located. If the
7 affected property is located in more than one county, the
8 owner may file suit in any county in which the affected
9 property is located.

10 C. The court shall award a private real property
11 owner who prevails in a suit under this section reasonable and
12 necessary attorney fees and court costs.

13 Section 8. UPDATING OF CERTAIN CONSTITUTIONAL IMPACT
14 ASSESSMENTS REQUIRED. --

15 A. A state agency that proposes actions or
16 policies with constitutional implications that may result in a
17 taking as indicated by the constitutional impact assessment
18 shall update the assessment if the action or policy is not
19 adopted before the one hundred eightieth day after the date
20 the public notice is given.