

SENATE BILL NO. 287

INTRODUCED BY S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY OWNERSHIP LAWS; LISTING ADDITIONAL CATEGORIES OF PROPERTY THAT MAY BE OWNED; PROVIDING THAT PROPERTY DAMAGED OR TAKEN FOR A PUBLIC USE IS SUBJECT TO REGULATORY TAKINGS SUIT; AND AMENDING SECTION 70-1-104, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-1-104, MCA, is amended to read:

"70-1-104. In what things property interests may exist -- regulatory taking. (1) There may be ownership of:

- (1)(a) all inanimate things ~~which~~ that are capable of appropriation or of manual delivery;
- (2)(b) all domestic animals;
- (3)(c) all obligations;
- (4)(d) ~~such~~ products of labor or skill such as the composition of an author, the goodwill of a business, trademarks, and signs; ~~and~~
- (5)(e) rights created or granted by statute;
- (f) licenses to pursue a business or livelihood, including state licenses that have been approved and issued and for which the holder has a legitimate claim of entitlement, and the property interests associated with licenses, including any authorized ability to freely transfer or dispose of the license;
- (g) real property and fixtures;
- (h) personal property and appurtenances;
- (i) water rights and beneficial water use permits or authorizations as defined in 85-2-102;
- (j) intangible property; and
- (k) mineral rights.

(2) (a) Except as provided in subsection (2)(b), the property interests in subsection (1) are

1 protectable private property interests under Article II, section 29, of the Montana constitution for which
2 compensation may be claimed and just compensation must be awarded when a court finds that the property
3 has been damaged or taken for a public use by means of eminent domain or a regulatory taking.

4 (b) Subsection (2)(a) may not be construed to limit the types of property interests or what may be
5 considered property recognized under the Montana constitution or by law for which just compensation may be
6 claimed and awarded, such as property interests recognized and protected under Article II, section 3, of the
7 Montana constitution and property as defined in 15-1-101.

8 (3) A court may not deny a regulatory taking on the basis that the property taken is associated with
9 a highly regulated business or industry."

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