

1 SENATE BILL NO. 287

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY OWNERSHIP LAWS;
5 LISTING ADDITIONAL CATEGORIES OF PROPERTY THAT MAY BE OWNED; PROVIDING THAT
6 PROPERTY ~~DAMAGED OR~~ TAKEN FOR A PUBLIC USE IS SUBJECT TO REGULATORY TAKINGS SUIT;
7 ~~AND AMENDING SECTION 70-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN~~
8 APPLICABILITY DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 70-1-104, MCA, is amended to read:

13 **"70-1-104. In what things property interests may exist -- regulatory taking.** (1) There may be
14 ownership of:

15 (1)(a) all inanimate things ~~which that~~ are capable of appropriation or of manual delivery;

16 (2)(b) all domestic animals;

17 (3)(c) all obligations;

18 (4)(d) ~~such~~ products of labor or skill such as the composition of an author, the goodwill of a business,
19 trademarks, and signs; ~~and~~

20 (5)(e) rights created or granted by statute;

21 (f) ~~licenses to pursue a business or livelihood, including state licenses that have been approved~~
22 ~~and issued and for which the holder has a legitimate claim of entitlement, and the property interests associated~~
23 ~~with licenses, including any authorized ability to freely transfer or dispose of the license;~~

24 (g)(F) real property, ~~and fixtures, and appurtenances;~~

25 (h)(G) personal property ~~and appurtenances;~~

26 (i)(H) ~~existing water rights and beneficial water use permits or authorizations~~ as defined in 85-2-102;

27 (j)(I) ~~intangible PERSONAL property AS DEFINED IN 15-6-218; and~~

Amendment - 2nd Reading-yellow - Requested by: Steve Fitzpatrick - (S) Committee of Whole

- 2023

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1 ~~(k)(J)~~ mineral rights.

2 (2) (a) Except as provided in subsection (2)(b), the property interests in subsection (1) are
3 protectable private property interests under Article II, section 29, of the Montana constitution for which
4 compensation may be claimed and just compensation must be awarded when a court finds that the property
5 has been ~~damaged or~~ taken for a public use by means of eminent domain or a regulatory taking.

6 (b) Subsection (2)(a) may not be construed to:

7 (i) limit the types of property interests or what may be considered property recognized under the
8 Montana constitution or by law for which just compensation may be claimed and awarded, such as property
9 interests recognized and protected under Article II, section 3, of the Montana constitution and property as
10 defined in 15-1-101; OR

11 (ii) ESTABLISH LIABILITY OR AN AWARD OF ATTORNEY FEES IN INSTANCES IN WHICH PROPERTY LISTED IN
12 SUBSECTION (1) IS PHYSICALLY DAMAGED OR IN INSTANCES IN WHICH SUCH INJURY COULD BE THE BASIS OF A CLAIM
13 BASED ON NEGLIGENCE OR OTHER TORT.

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

16 (4) THIS SECTION DOES NOT AFFECT THE ENFORCEMENT OF TERMS OF A LICENSE, PERMIT, OR
17 GOVERNMENT AUTHORIZATION, INCLUDING REQUIREMENTS IMPOSED BY STATE, LOCAL, OR FEDERAL LAW."

18
19 NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

20
21 NEW SECTION. SECTION 3. APPLICABILITY. [THIS ACT] DOES NOT AFFECT ANY GOVERNMENT ACTION,
22 REGULATION, LICENSE, OR PERMIT ISSUED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

23 - END -