

1 SENATE BILL NO. 287

2 INTRODUCED BY S. FITZPATRICK

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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."

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

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

12 "70-1-104. In what things property interests may exist -- regulatory taking. (1) There may be

13 ownership of:

- 14 ~~(1)(a)~~ all inanimate things ~~which that~~ are capable of appropriation or of manual delivery;
- 15 ~~(2)(b)~~ all domestic animals;
- 16 ~~(3)(c)~~ all obligations;
- 17 ~~(4)(d)~~ ~~such~~ products of labor or skill such as the composition of an author, the goodwill of a business,
- 18 trademarks, and signs; ~~and~~
- 19 ~~(5)(e)~~ rights created or granted by statute;
- 20 (f) licenses to pursue a business or livelihood, including state licenses that have been approved
- 21 and issued and for which the holder has a legitimate claim of entitlement, and the property interests associated
- 22 with licenses, including any authorized ability to freely transfer or dispose of the license;
- 23 (g) real property and fixtures;
- 24 (h) personal property and appurtenances;
- 25 (i) water rights and beneficial water use permits or authorizations as defined in 85-2-102;
- 26 (j) intangible property as described in 15-6-218; and
- 27 (k) mineral rights.

28 (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.

10 (4) This section does not affect the enforcement of existing terms of a license, permit, or  
11 government authorization, including requirements imposed by state, local, or federal law."

13 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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