

HOUSE BILL No. 2488

By Committee on Federal and State Affairs

2-9

9 AN ACT concerning state agencies, political and taxing subdivisions; re-
10 lating to regulations effecting a taking of property; creating a civil cause
11 of action.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) If the existing rights to use, divide, sell or possess pri-
15 vate real property are reduced by the enactment or application of any
16 land use law enacted after the date the property is transferred to the
17 owner and such action reduces the fair market value of the property, the
18 owner shall be entitled to just compensation from the state agency or the
19 political subdivision that enacted the land use law or regulation.

20 (b) This section shall not apply to land use laws that:

21 (1) Limit or prohibit a use or division of real property for the pro-
22 tection of the public's health and safety, including rules and regulations
23 relating to fire and building codes, health and sanitation, transportation
24 or traffic control, solid or hazardous waste, and pollution control;

25 (2) limit or prohibit the use or division of real property commonly
26 and historically recognized as a public nuisance under common law;

27 (3) are required by federal law;

28 (4) establish locations for utility facilities;

29 (5) do not directly regulate an owner's land; or

30 (6) were enacted before the effective date of this act.

31 (c) The state or the political subdivision that enacted the land use law
32 shall have the burden of demonstrating that the land use law is exempt
33 pursuant to subsection (b).

34 (d) The owner shall not be required to first submit a land use appli-
35 cation to remove, modify, vary or otherwise alter the application of the
36 land use law to the owner's property as a prerequisite to demanding or
37 receiving just compensation pursuant to this section.

38 (e) If an effort is made to enforce a land use law against private real
39 property more than 180 days after the owner of the property has made a
40 written demand for a specific amount of just compensation to the state
41 agency or the political subdivision, the owner may file an action for just
42 compensation in a court in the county in which the property is located.

43 (f) Any waiver that is granted in lieu of compensation shall run with

1 the land.

2 (g) An action for just compensation based on diminution in value shall
3 be brought within three years of the effective date of the land use law,
4 or of the first date the reduction of the existing rights to use, divide, sell
5 or possess property applies to the owner's parcel, whichever is later.

6 (h) The remedy created by this section is in addition to any other
7 remedy that is provided by the laws and constitution of this state or the
8 United States and is not intended to modify or replace any other remedy.

9 (i) Nothing in this section shall prohibit this state or any political
10 subdivision of this state from reaching an agreement with a private prop-
11 erty owner to waive a claim for diminution in value regarding any pro-
12 posed action by this state or a political subdivision of this state or action
13 requested by the property owner.

14 Sec. 2. (a) A property owner is not liable to the state or any political
15 subdivision of the state for attorney fees or costs in action for diminution
16 in value.

17 (b) A prevailing plaintiff in an action for just compensation that is
18 based on diminution in value pursuant to section 1, and amendments
19 thereto, may be awarded costs, expenses and reasonable attorney fees.

20 Sec. 3. The following terms shall mean:

21 (a) "Fair market value" means the most likely price estimated in
22 terms of money which the land would bring if offered for sale in the open
23 market, with reasonable time allowed in which to find a purchaser, buying
24 with knowledge of all the uses and purposes to which it is adapted and
25 for which it is capable.

26 (b) "Just compensation" means the sum of money that is equal to the
27 reduction in fair market value of the property resulting from the enact-
28 ment of the land use law as of the date of enactment of the land use law.

29 (c) "Land use law" means any statute, rule, ordinance, resolution or
30 law enacted by this state or a political subdivision of this state that reg-
31 ulates the use or division of land or any interest in land or that regulates
32 accepted farming or forestry practices.

33 (d) "Owner" means the holder of fee title to the subject real property.

34 Sec. 4. If a conflict between this act and any other law arises, this act
35 controls.

36 Sec. 5. If any provision of this act or its application to any person or
37 circumstance is held invalid that invalidity does not affect other provisions
38 or applications of the act that can be given effect without the invalid
39 provision or application, and to this end the provisions of this act are
40 severable.

41 Sec. 6. This act shall take effect and be in force from and after its
42 publication in the statute book.