

HOUSE BILL No. 2641

By Representative Rhiley

2-3

1 AN ACT concerning real property; enacting the Kansas property rights
2 protection act; establishing protections for property value diminution
3 from actions of governmental entities; requiring just compensation be
4 provided to landowners for actions that burden or diminish the value of
5 private property.

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

8 Section 1. (a) This act shall be known and may be cited as the Kansas
9 property rights protection act.

10 (b) The purpose of this act is to safeguard the constitutional rights of
11 property owners under the 5th and 14th Amendments of the Constitution of
12 the United States, which prohibit the taking or deprivation of private
13 property without just compensation or due process of law. This act ensures
14 that governmental regulations or actions imposing burdens on private
15 property for public benefit require just compensation and preserves the
16 state's police power to protect public health and safety.

17 Sec. 2. As used in this act:

18 (a) "Corporation or developer" means any private entity responsible
19 for a project approved or facilitated by a governmental entity.

20 (b) "Fair market value" means the price a willing buyer would pay a
21 willing seller for the property in an arm's-length transaction, as determined
22 by a licensed appraiser.

23 (c) "Governmental action" means any action of a governmental entity
24 that affects real property or economic viability of a business, including, but
25 not limited to:

26 (1) A publicly funded public works project;

27 (2) approving, permitting or otherwise authorizing development or
28 construction of a privately funded project such as a wind energy
29 conversion system or data center; or

30 (3) the adoption or enforcement of any land use ordinance, resolution
31 or regulation.

32 (d) "Governmental entity" means the state, any county, city or other
33 political subdivision, or any agency thereof.

34 (e) "Permanent damages" means ongoing damages from the
35 development, construction or operation of a project, including noise, visual
36 pollution or long-term devaluation of real property or the economic

1 viability of such property.

2 (f) "Public health and safety" means measures necessary to prevent
3 imminent harm, such as abating nuisances, controlling pollution or
4 addressing threats to life or physical well-being. "Public health and safety"
5 does not include aesthetic, economic development or general welfare
6 goals.

7 (g) "Regulatory taking" means any governmental action that has the
8 effect of limiting a property owner's existing right to use, divide, sell or
9 possess private real property and results in a diminution of the property's
10 fair market value or economic viability.

11 (h) "Temporary damages" means temporary damages that are caused
12 during the development or construction of a project, including, access
13 restrictions or other impacts that cause the loss of revenue or income or
14 require relocation.

15 New Sec. 3. (a) If a governmental action causes a regulatory taking,
16 the property owner shall be entitled to just compensation from the
17 governmental entity that undertook such governmental action as follows:

18 (1) For temporary damages, compensation shall be an amount that is
19 not less than 110% of the amount of the temporary damages; and

20 (2) for permanent damages, compensation shall be an amount that is
21 not less than 150% of the diminution in the real property's value or interest
22 and any amount necessary to compensate for any other permanent
23 damages, which shall serve as a buyout option to allow purchase of
24 comparable property and cover moving expenses.

25 (b) The just compensation required pursuant to this act shall account
26 for noneconomic damages, including, but not limited to, noise pollution,
27 visual pollution or interference with or loss of use and enjoyment. The
28 valuation of noneconomic damages shall be determined by expert
29 testimony or appraisal.

30 (c) If a property owner's real property diminishes more than 10% in
31 value due to a regulatory taking, such property owner may require the
32 governmental entity to provide for a full buyout of the property owner's
33 real property at an amount that is not less than 150% of the property's fair
34 market value. The governmental entity shall be prohibited from contesting
35 a property owner's claim that such property owner's real property
36 diminished more than 10% in value without clear evidence to the contrary.

37 (d) To recover temporary or permanent damages pursuant to this act,
38 a property owner may file a claim by written notice to the governmental
39 entity within three years of the governmental action describing the harms
40 and providing the temporary and permanent damages suffered by the
41 property owner. Upon receipt of any such claim, the governmental entity
42 shall have 90 days to mitigate, compensate or deny the claim with a
43 description of the reasons for such denial.

1 (e) If a claim is denied by a governmental entity, the property owner
2 may file suit in the district court where such governmental entity is located
3 to seek recovery of the temporary and permanent damages. In any such
4 action, the governmental entity shall have the burden of proof to show that
5 no such regulatory taking occurred and that the property owner is not
6 entitled to temporary or permanent damages pursuant to this act. Any
7 property owner that prevails on any such claim and is awarded temporary
8 or permanent damages shall be eligible to recover attorney fees, costs and
9 expert expenses.

10 (f) A governmental entity shall not require any property owner to
11 waive any right to compensation pursuant to this act.

12 (g) If a governmental entity fails to pay any temporary or permanent
13 damages awarded by a court of competent jurisdiction, the governmental
14 entity shall be liable for payment of a penalty in an amount that does not
15 exceed \$10,000 per day as determined pursuant to a court of competent
16 jurisdiction. Any such penalty imposed upon a governmental entity
17 pursuant to this act shall be paid to the property owner that brought such
18 suit.

19 New Sec. 4. A governmental entity that is required to make any
20 payment or incurs costs due to a regulatory taking pursuant to section 3,
21 and amendments thereto, may recover all such costs and expenses from the
22 corporation or developer that is responsible for the project. Recovery may
23 be obtained through the imposition of additional fees, an agreement with
24 the corporation or developer, a special assessment against the property of
25 the corporation or developer or a civil action brought pursuant to this act.
26 Any such governmental entity may also recover from any such corporation
27 or developer any amount of lost tax revenue for the diminution of property
28 values caused by the project, administrative expenses and all legal fees
29 that the governmental entity incurs pursuant to this act. The governmental
30 entity shall bear the initial burden of proving that the corporation or
31 developer's actions caused damages. A corporation or developer may
32 establish a defense against such causation by clear and convincing
33 evidence that the corporation or developer did not cause or contribute to
34 such damages.

35 New Sec. 5. (a) This act does not apply to any governmental action
36 that:

37 (1) Abates common law nuisances;
38 (2) limits drug-related or adult-oriented businesses;
39 (3) establishes or is done for the purpose of operating public utilities
40 that are essential for public health and safety; or
41 (4) is necessary to comply with federal law mandating health and
42 safety protections.

43 (b) Aesthetic or economic development projects shall be subject to

1 the provisions of this act.

2 Sec. 6. If any provision of this act or the application thereof to any
3 person or circumstance is held invalid, the invalidity shall not affect other
4 provisions or applications of this act that can be given effect without the
5 invalid provision or application, and to this end, the provisions of this act
6 are declared to be severable.

7 Sec. 7. This act shall take effect and be in force from and after its
8 publication in the statute book.