HOUSE BILL 570

Introduced by Grinde, et al. 2/10 Introduced 2/10 Referred to Judiciary 2/10 First Reading 2/11 Fiscal Note Requested 2/15 Hearing 2/17 Fiscal Note Received 2/18 Fiscal Note Printed 2/20 Committee Report--Bill Passed as Amended 2/22 2nd Reading Passed as Amended 3/22 Taken from Engrossing and Rereferred to Appropriations 3/09 Revised Fiscal Note Requested Revised Fiscal Note Received 3/16 Revised Fiscal Note Printed 2/17 3/17 Revised Fiscal Note Requested 3/19 Committee Report--Bill Passed as Amended 3/20 Revised Fiscal Note Received 3/20 Revised Fiscal Note Printed 2nd Reading Passed 3/23 3rd Reading Passed 3/24 Transmitted to Senate 3/26 First Reading 3/26 Referred to Judiciary 4/06 Hearing 4/13 Tabled in Committee Motion Failed to Take From Committee 4/14 and Place on 2nd Reading

LC 1328/01

LOUSE BILL NO. 570 1 INTRODUCED BY LARRY HAL CTRINGE -2 ALLA NATHE 3 201 Untison Jum ACT REQUIRING AN ASSESSMENT AN ACT ENTITLED: MACE VERNMENTAL ACTIONS 5 AFFECT THE USE OF PRIVATE PROPERTY: REOUIRING AN ASSESSMENT OF THE CONSTITUTIONAL 6 7 IMPLICATIONS OF GOVERNMENT ACTIONS: REOUIRING PRIVATE 8 PROPERTY ASSESSMENTS TO BE SUBMITTED TO THE GOVERNOR AND THE 9 LEGISLATURE; AND PROVIDING AN EPPECTIVE DATE."

10

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

12 <u>NEW SECTION.</u> Section 1. Short title. [Sections 1 13 through 6] may be cited as the "Montana Private Property 14 Assessment Act".

NEW SECTION. Section 2. Policy -- purpose. (1) It is 15 16 the policy of this state that a person may not be deprived 17 of the use of private property without due process of law 18 and that private property may not be taken by governmental 19 action without just compensation being made. The legislature 20 intends that [sections 1 through 6] implement Article II. 21 section 29, of the Montana constitution in a manner that 22 protects private property owners, the interests of the 23 general public, and the fiscal health of the state.

24 (2) The purposes of [sections 1 through 6] are to25 require the assessment of governmental actions that affect

the use and value of private property, to require an 3 assessment of the effect of governmental actions on 2 constitutionally protected private property interests, and 3 to avoid any unnecessary burdens on the public treasury. It 4 is not the purpose of [sections 1 through 6] to reduce the 5 6 scope of private property protections provided in the United States constitution or the Montana constitution. [Sections] 7 8 through 6] do not preclude private property owners from challenging governmental actions in a court of competent 9 jurisdiction or from seeking compensation or other available 10 11 relief from governmental actions that affect private property rights. 12

13 <u>NEW SECTION.</u> Section 3. Definitions. As used in
14 [sections 1 through 6], the following definitions apply:

15 (1) "Damaging" means depriving a property owner of a
16 portion of the property or a portion of the economic value
17 of the property.

(2) (a) "Governmental action" or "action" means a
statute, rule, regulation, licensing requirement, or
permitting requirement that if imposed by a government
entity, will or may result in a taking or damaging of
private property.

23 (b) The term does not include:

24 (i) the formal exercise of the power of eminent domain25 in accordance with law;

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(ii) the discontinuance of governmental programs other
 than law enforcement protection;

3 (iii) the reduction of governmental interference with
4 the use of private property by the repeal or amendment of
5 rules or statutes;

6 (iv) the seizure or forfeiture of private property for a
7 violation of criminal law or as evidence in a criminal
8 proceeding, as provided by statute;

9 (v) actions that abate a nuisance to the extent that
10 the restricted conduct constitutes a nuisance under the law
11 in effect on July 1, 1993; or

12 (vi) county, city, or town variances or processes for
13 variances concerning local regulations, ordinances, or
14 zoning.

15 (3) (a) "Government entity" means the legislature or an
officer or agency of the state that is authorized by law to
adopt rules. The term includes political subdivisions of the
state.

19 (b) The term does not include the judicial branch of 20 state government.

(4) "Private property" means any property interest in
this state that is protected by either:

23 (a) the fifth amendment to the United States24 constitution; or

25 (b) Article II, section 29, of the Montana

1 constitution.

2 (5) "Property owner" means a nongovernment entity
3 owning an interest in property.

4 (6) "State agency" means an officer or agency of the
5 executive branch of state government.

6 (7) "Taking" means a governmental action depriving a 7 property owner of either ownership of the private property 8 or a portion of or all of the economic value of the private 9 property that is compensable under the fifth amendment to 10 the United States constitution and under Article II, section 11 29, of the Montana constitution.

12 <u>NEW SECTION.</u> Section 4. Assessment of impact on 13 private property -- general directions. (1) Before taking a 14 governmental action, a government entity shall prepare a 15 written assessment that includes an analysis of at least the 16 following elements:

17 (a) a description of the governmental action, its
18 purpose, and a plan for implementation of the action,
19 including any specific public health or safety risk the
20 action is designed to prevent, mitigate, or remedy;

(b) the impact that the governmental action has on
private property rights, including a description of how the
action affects the use or value of private property and
whether a taking will result;

25 (c) an identification of private property interests

1 affected or potentially affected by the governmental action;
2 (d) alternatives to the proposed governmental action
3 that may:

4 (i) fulfill a government entity's legal obligations;

5 (ii) reduce the effect on the private property owner;6 and

(iii) reduce the risk of a taking of private property;

7

6 (e) an estimate of financial cost to the government
9 entity for compensation and the source of payment within the
10 government entity's budget if a constitutional taking would
11 result; and

12 (f) an evaluation of the extent to which the proposed
13 action imposes costs on property owners not borne by other
14 citizens of the state or locality.

15 (2) For legislation introduced before the legislature, 16 the agency responsible for doing an analysis for a fiscal 17 note for the legislation shall prepare the assessment 18 required by subsection (1).

19 <u>NEW SECTION.</u> Section 5. Governmental actions — state 20 agency procedure. (1) In addition to the assessment required 21 in [section 4], a state agency shall adhere to the following 22 criteria in implementing or enforcing governmental actions: 23 (a) When a governmental action requires a permit or 24 other permission for a specific use of private property, any 25 conditions imposed on the issuance of the permit or authorization must substantially further the purposes that
 the permitting or permission process was designed to achieve
 and must be expressly authorized by law.

4 (b) The state agency shall ensure that restrictions 5 imposed on the use of private property are proportionate to 6 the extent the use contributes to any harm the restriction 7 is designed to prevent, mitigate, or remedy.

8 (c) The state agency shall estimate, to the extent 9 possible, the potential cost to the state if a court 10 determines that the governmental action constitutes a 11 taking.

12 (2) If there is an immediate threat to public health or
13 safety that requires an immediate response by a state
14 agency, the criteria required by subsection (1) may be met
15 when the response is completed.

16 (3) The state agency shall ensure a diligent and speedy
17 resolution of any procedures that are part of a process of
18 seeking a permit or other permission to use private
19 property.

(4) Before a state agency implements a governmental
action that has an impact on the use or value of private
property, the state agency shall submit a copy of the
assessment required by [section 4] to the governor, the
private property owner, and:

25 (a) if the legislature is in session, to the senate

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1 finance and claims committee and the house appropriations
2 committee; or

3 (b) if the legislature is not in session, to the4 legislative finance committee.

5 NEW SECTION. Section 6. Cause of action. (1) An aggrieved property owner has a cause of action against a 6 7 government entity that acts in violation of [sections] through 6]. A property owner who proves that the property 8 owner has been damaged by a violation of [sections 1 through 9 6) is entitled to compensatory damages, a writ of mandamus 10 11 or prohibition, or any other appropriate legal or equitable relief. 12

13 (2) The government entity has the burden of proof on
any affirmative defense it may raise, including the defense
that the action complained of is not a governmental action.
(3) [Sections 1 through 6] may not be construed to
infringe or impair a property owner's right to proceed
judicially under eminent domain or inverse condemnation
laws.

20 <u>NEW SECTION.</u> Section 7. Effective date. [This act] is
21 effective July 1, 1993.

-End-

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STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for <u>HB0570, as introduced</u>.

<u>DESCRIPTION OF PROPOSED LEGISLATION</u>: An act requiring an assessment of governmental actions that affect the use of private property; requiring an assessment of the constitutional implications of government actions; and requiring private property assessments to be submitted to the governor and the legislature.

ASSUMPTIONS:

Department of Fish, Wildlife and Parks (FWP):

- 1. Existing legislation will not be affected by this bill.
- Additional assessments will need to be made before any rule making can be finalized. This will require additional staff time. The additional work will be absorbed by current budgets.
- 3. FWP will receive 2 challenges per year. Preparation to defend against these challenges will require 0.10 FTE per challenge and \$1,000 in operating costs.
- 4. FWP will prevail in any litigation brought against it due to this bill.

Department of Health and Environmental Sciences (DHES):

- 5. DHES averages 25 sets of new rules per year. The number of permits or licenses issued number in the tens of thousands. The relative economic burdens or off-setting beneficial economic impacts associated with issuing DHES licenses, permits, or rules is perhaps incalculable.
- 6. DHES does not have economists, lawyers and support staff to assess economic or legal impacts of "governmental actions" defined in the bill. The preparation of the assessments required under this bill would require economists, lawyers, appraisers, budget specialists, researchers and clerical support. Estimating very conservatively, the average assessment would probably take on the average about two (2) weeks to prepare (depending on the scope of the governmental action), using a team of a lawyer, appraiser, economist, researcher, and clerical staff.
- 7. DHES does not have time within the time constraints existing for preparation of this fiscal note to count all of the licenses, permits, and rules it issues which contain conditions that could be construed as depriving an entity of all or some portion of the economic value of the private property affected. Therefore, even estimating the number of required hours and the combined rate for the FTE or contracted services used, the overall number of "governmental actions" cannot be calculated and therefore the overall cost cannot be calculated.
- 8. Assuming implementation of the bill, transaction costs of litigation to the agency over issues such as constitutionality of the bill, deviance of the bill from legally established standards for a "taking" under the United States or Montana Constitution, and of litigating the amount of compensation owed for each "taking" is incalculable.

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BUDGET DIRECTOR LEWIS,

Office of Budget and Program Planning

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LARRY HAL GRINDE,	PRIMARY	SPONSOR	DATE

Fiscal Note for <u>HB0570</u>, as introduced

HB570

Fiscal Note Request, <u>HB0570, as introduced</u> Form BD-15 page 2 (continued)

Department of State Lands (DSL):

-). DSL does not have the existing staff or budget to complete these assessments.
- 10. Pursuant to section 4, programmatic assessments will need to be prepared for the adoption of a new statute or administrative rule.
- 11. Pursuant to section 5, DSL estimates that approximately 2000 actions per year will require an assessment/estimate. These 2000 include actions from Land Administration, Forestry, and Reclamation Divisions.
- 12. These assessments/estimates will need to be performed by individuals with expertise in appraising/economics.
- 13. Bach appraiser/economist position can perform 200 assessments per year. Therefore 10 appraiser/economist positions will be required (2000/200 assessment = 10 FTE).
- 14. Administrative support for the 10 FTE appraiser/economist positions will require 2.0 FTE.
- 15. The resolution of any lawsuits that result from section 6 would be the responsibility of the Risk Management and Tort Defense Division of the Department of Administration.
- 16. Any additional unanticipated costs to DSL will need to be addressed through a budget amendment.

Department of Natural Resources and Conservation (DNRC):

17. Virtually every action taken by DNRC in the ordinary course of business could qualify as a governmental action under HB0570, and, therefore, an assessment of impact would be required on all DNRC activities. The DNRC is unaware of any federal, state or local government entity that is implementing the program mandated by this bill. This means there are no experience factors to rely on; consequently, there is virtually no way to accurately determine the fiscal impacts associated with the bill.

FISCAL IMPACT:

Department of Fish, Wildlife and Parks:

Expenditures:	<u>FY94</u>	<u>FY95</u>
Personal Services (0.20 grade 17 attorney)	7,900	7,900
Operating Expenses	2,000	2,000
	9,900	9,900

<u>Net Impact:</u> Additional costs to the Department of Fish, Wildlife and Parks of \$9,900 per year.

Department of Health and Environmental Sciences: Incalculable at this time.

Department of State Lands: Expenditures:

10 FTE (Appraiser/economists) X \$43,000	=	430,000/Year
(salaries, benefits, operating expenses)		
2 FTE (Administrative support)X \$25,000	=	50,000/year
		480,000/year

Net Impact: Projected DSL annual expenditures of \$480,000 will require a general fund appropriation.

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Fiscal Note Request, <u>HB0570, as introduced</u> Form BD-15 page 3 (continued)

Department of Natural Resources and Conservation: Significant fiscal impact not calculable.

Department of Commerce: No fiscal impact.

Environmental Quality Council: Impacts could range from none to extensive costs.

Department of Justice: Cannot be readily estimated.

Department of Transportation: None.

Department of Administration: No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local government rules and regulations and any local actions taken under these rules and regulations (such as issuing a permit) would be subject to HB0570. For example, business permits, subdivision permits, municipal ordinances, zoning permits (except for variances), and other local government rules, regulations, permits and licenses would be subject to HB0570.

The definition of "governmental entities" which would be affected by this proposed law includes "political subdivisions of the state." Those "political subdivisions" affected would include, but may not be limited to, municipalities, counties, county water districts, county sewer districts, conservation districts and other special local governmental districts which have rules and regulations or take actions which may have an impact on private property.

HB0570 could increase local government expenditures due to the need for local governments to prepare the required impact statements (section 4 of the bill) and the need to pay costs, including legal costs, of the "compensatory damages, writ of mandamus or prohibition, or any other appropriate legal or equitable relief" (section 6 of the bill). Due to the comprehensive scope of local rules and regulations which would be affected and the different types of "political subdivisions" which would be affected, it is not possible to quantify these costs on a statewide basis.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: It is anticipated that the above outlined expenditures for the departments will continue on an annual basis.

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Fiscal Note Request, <u>HB0570, as introduced</u> Form BD-15 page 4 (continued)

TECHNICAL NOTES:

The requirement in section 4 (2) may not be practicable, depending on the time-frame intended. It reads: "For legislation introduced before the legislature, the agency responsible for doing an analysis for a fiscal note is the legislation shall prepare the assessment required by subsection (1)."

The time-frame of this requirement is not clear. The referenced subsection (1) talks about doing the assessment "before taking a governmental action", which by definition may include statute or rule. If the intent is to complet the assessment in the same time-frame as a fiscal note, then it is definitely infeasible. Even if it means to complet the assessment prior to passage of the introduced legislation, it may still not be feasible. The time-frame for the requirement in Section 4 (2) should be clarified.

2. Since section 3(6) of HB0570 does not exempt property tax recovery actions, the proposed bill could complicate the tax deed and personal property tax seizure and sale process.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0570, third reading.

DESCRIPTION OF PROPOSED LEGISLATION: An act requiring an assessment of governmental actions that affect the use of private property; requiring an assessment of the constitutional implications of government actions; and requiring private property assessments to be submitted to the governor and the legislature.

ASSUMPTIONS:

Department of Fish, Wildlife and Parks (FWP):

- 1. Existing legislation will not be affected by this bill.
- 2. Additional assessments will need to be made before any rule making can be finalized. This will require additional staff time. The additional work will be absorbed by current budgets.
- 3. FWP will receive 2 challenges per year. Preparation to defend against these challenges will require 0.10 FTE per challenge and \$1,000 in operating costs.
- 4. FWP will prevail in any litigation brought against it due to this bill.

Department of Health and Environmental Sciences (DHES):

- 5. This bill would apply to ongoing formulation of regulations and agency action implementing state regulations or statutes such as permitting, licensing or plan review.
- 6. DHES conducts approximately 26 rulemakings per year involving amendments to existing rules or new rules.
- 7. DHES conducts several thousand plan reviews, subdivision approvals and issues several thousand permits or licenses per year which could be argued to fit within the new statutory definition of damaging or taking. The definitions of damaging and taking contain court established standards and a new statutory definition which goes beyond the court established standards.
- 8. The definition of damaging or taking must be applied when interpreting the definition of "governmental action".
- 9. DHES would be required to analyze most if not all of its permitting, licensing, plan review, and rulemaking actions to know whether these actions fall within the definition of "governmental action" or whether the actions would be exempted. The clarification of real property does not substantially change the breadth of application of the bill.
- 10. There are no universal criteria to apply to determine whether actions are a taking or damaging and therefore "governmental action"; the criteria for a taking or damaging established by the courts are in flux. Interpretation of the application of the bill would involve case by case analysis. An attorney would be needed for this analysis.
- 11. DHES would need to collect information to determine loss of use of property as a result of governmental action and the value of remaining unaffected property. A researcher would be needed for this activity.
- 12. The bill would give rise to new challenges to agency actions on procedural and substantive grounds. Litigation over statutory and constitutional standards would occur.

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DAVID LEWIS, BUDGET DIRECTOR DATE Office of Budget and Program Planning

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Fiscal Note for HB0570, third reading

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- 13. It is not possible to calculate the number of assessments that would have to be conducted. It is unclear whether an assessment under Section 4 would be done prior to, or after, a conclusion that an agency action is a "governmental action". The agency would perhaps conduct 100 assessments per year because of the unclarity of existing law, the relationship of this bill to existing law, and in order to avoid litigation.
- 14. Each assessment would take 2-8 days depending on complexity. Assessments would be conducted by an attorney, a researcher or contracted help such as an appraisal on an as-needed basis. On a straight hourly basis two attorneys could be involved in conducting assessments full-time.
- 15. DHES does not have present legal or technical staff available to conduct the work required in this bill.
- 16. At a minimum and on a trial basis, the agency would hire two attorneys who would be needed to conduct assessments, to determine applicability of the bill to agency actions and to engage in litigation relating to takings and damaging concerning the agency.
- 17. One researcher and one clerical person would be needed to gather, analyze information, process and maintain information.
- 18. Bach attorney would be a mid-level grade 17, Attorney Specialist II. The personal services costs would be \$15.185 per hour x 2088 hours = \$31,706.28 x 2 (attorneys) = \$63,412.56 x \$1.23 (benefits) = \$77,997.
- 19. The research specialist would be a grade 14. The personal services costs would be \$11.68/hour x 2,088 hours \$24,387.84 x \$1.23 (benefits) = \$29,997.
- 20. The administrative support person would be a Grade 10. The personal services costs would be \$8.37/hour x 2,088 hours = \$17,491.18 x \$1.23 (benefits) = \$21,514.
- 21. Total costs personal services would be \$129,508 x 11.18% (overhead costs) = Total cost \$143,987.
- 22. The cost of contracted services are estimated to be \$90,000 per year. (30 reviews per year at a cost of \$3,000 each)
- 23. The cost of phone and rent would be \$8,104 in FY94 and \$7,704 for the 4.00 FTE's.

Department of State Lands (DSL):

- 24. The assessments and criteria of sections 4 and 5 are required only for actions taken under the police power that affect the use of private real property. These requirements do not apply to actions taken in the use, management, or development of real property owned by the State of Montana.
- 25. The Reclamation Division of DSL does not have the existing staff to complete these assessments.
- 26. Programmatic assessments will need to be prepared for the adoption of a new rule as required by section 4.
- 27. In section 4(5) "an estimate of the extent to which the proposed action imposes a cost . . . " means a financial cost estimate. These estimates will need to be performed by individuals with expertise in appraising/economics.
- 28. Section 4 does not apply to existing administrative rules and new or existing permits.
- 29. Pursuant to section 5(4) the submission of an assessment is only required if an assessment prepared pursuant to section 4.
- 30. Pursuant to section 5, the Reclamation Division will need to make a written finding that any conditions imposed on the issuance of the permit or authorization must substantially further the purpose of permitting or permission process was designed to achieve and must be expressly authorized by law. Pursuant to section 5, DSL estimates that approximately 750 actions per year will require a written finding of compliance.
- 31. Each appraiser/economist position can perform 375 assessments per year and can collectively perform the estimates required by section 4(5). Therefore, 2 appraiser/economist positions will be required (750 assessments/375 = 2 FTE).
- 32. Any unanticipated costs to DSL will need to be addressed through a budget amendment.

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Fiscal Note Request, <u>HB0570, third reading</u> Form BD-15 page 3 (continued)

Department of Natural Resources and Conservation (DNRC):

- 33. Virtually every action taken by the Department of Natural Resources and Conservation in the ordinary course of business could qualify as a governmental action under HB0570, and, therefore, an assessment of impact may be required on many department activities.
- 34. DNRC currently conducts assessments of one kind or another on most actions it takes. The property rights assessment could be rolled into these other assessments in most instances.
- 35. Performing property rights assessments in conjunction with other assessments may cause some delay and, thus, some increased cost.
- 36. Initial guidelines for property rights assessments would need to be developed at either the departmental or state level.

Department of Justice:

- 37. Other state government agencies will be consulting with the Attorney General's Office in seeking guidelines in establishing this bill. It is assumed that the current staff will handle these new duties.
- 38. State agencies will experience increased litigation as a result of this bill, which will require an additional attorney position in the Agency Legal Services Bureau, a proprietary funded entity.

Department of Transportation:

- 39. That "governmental action as defined in section 3, means a statute, rule, regulation, licensing requirement, or permitting requirement that if imposed by a government entity will result in a constitutional taking or damaging of private property.
- 40. That a "constitutional" taking or damaging is one which obligates the government to pay just compensation.
- 41. That the assessment required by section 4 is only required when a governmental action is proposed which will result in a "constitutional" taking or damaging of real property.

FISCAL IMPACT:

Department of Fish, Wildlife and Parks:

<u>Expenditures:</u>	<u>FY94</u>	<u>FY95</u>
Personal Services (0.20 grade 17 attorney)	7,900	7,900
Operating Expenses	2,000	2,000
	9,900	9,900

Net Impact: Additional costs to the Department of Fish, Wildlife and Parks of \$9,900 per year.

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partment of Health and Environmental Sciences:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
penditures:						
Е	0	4.00	4.00	0	4.00	4.00
rsonnel Services	0	129,508	129,508	0	129,508	129,508
erating Expenses	<u>o</u>	<u>113,386</u>	<u>113,386</u>	<u>0</u>	<u>112,986</u>	<u>112,986</u>
tal	0	242,894	242,894	0	242,494	242,494

t Impact: Projected DHBS of \$242,894 in FY94 and \$242,494 in FY95 will require a general fund appropriation.

partment of State Lands:

penditures:

Approxima	tely 2 FTE	X \$43,000	=	\$ 86,000/Year
(salaries,	benefits,	operating	expenses)	
0.5 FTE	X \$25,000		=	\$ 12,500/year
				\$ 98,500/year

<u>t Impact:</u> The expenditures will continue on an annual basis requiring general funding.

partment of Natural Resources and Conservation: Many actions the department currently takes already require some type of chnical assessment, property rights assessments could be included in these minimizing the need for additional FTEs. nbining the assessments would create additional workload for existing staff.

3 to the necessity to draft initial guidelines and the overall additional workload, an additional 0.5 to 1.0 FTE may be sessary at DNRC.

partment of Commerce: No fiscal impact.

'ironmental Quality Council: Impacts could range from none to extensive costs.

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Fiscal Note Request, <u>HB0570, third reading</u> Form BD-15 page 5 (continued)

Department of Justice:

		FY '94			FY '95	
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
FTE	12.5	1.0	13.5	12.5	1.0	13.5
Personal Services	488,900	529,100	40,200	490,200	530,400	40,200
Operating	76,900	79,900	3,000	78,300	81,300	3,000
Bquipment	7,000	12,000	5,000	7,000	<u> </u>	0
Total	572,800	621,000	48,200	575,500	618,700	43,200
<u>Revenue:</u> Proprietary	572,800	621,000	48,200	575,500	618,700	43,200
Net Impact:	0	0	0	0	0	0

Department of Transportation: None.

Department of Administration: No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The amendments placed on the bill removed any fiscal impact on local governments.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: It is anticipated that the above outlined expenditures for the departments will continue on an annual basis.

TECHNICAL NOTES:

- The present language (3rd reading as amended) does not effectively exclude from the scope of the bill actions taken on state-owned land. See State Dept. of Highways v. Feenan, 231 Mont. 255, 752 P2d 912 (1988); McCone County v. James 198 Mont 430, 646 P2d 1209 (1982).
- Section 4(5) is difficult to interpret. It is not clear whether this estimate is to be in terms of a dollar figure or only a narrative describing the nature and magnitude of economic impacts on property owners resulting from a proposed action.
- 3. Section 5(1) is not consistent with language used by the supreme court of Montana and the United States and appears to expand the law relating to taking of private property. The words "substantially further" should be amended to read "substantially relates to" in <u>McElwain v. County of Flathead</u> 248 Mont 232 at 235, 811 P2d 1267 (1990).
- 4. Section 5(1) could be read to prohibit imposition of permit conditions to implement recommendations contained in environmental impact statements (EIS).

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for <u>HB0570, third reading with HAC Amendments</u>

<u>DESCRIPTION OF PROPOSED LEGISLATION</u>: An act requiring an assessment of governmental actions that affect the use of private property; requiring an assessment of the constitutional implications of government actions; requiring private property assessments to be submitted to the governor and the legislature.

ASSUMPTIONS:

Legislative Council:

- 1. The Office of Budget and Program Planning would establish a system for receiving, assigning, and tracking requests for private property impact assessments on legislative bills.
- 2. The Legislative Council bill drafting process would incorporate a system to identify which bills might require private property impact assessments on bills.
- 3. All work done on private property impact assessments for legislative bills would be absorbed within current operations by displacement of other work.
- 4. Costs for printing copies of assessments cannot be estimated, but is not anticipated to be extensive.

Department of Fish, Wildlife and Parks:

- 5. Existing legislation will not be affected by this bill.
- 6. Additional assessments will need to be made before any rule making can be finalized. This will require additional staff time. The additional work will be absorbed by current budgets.

Department of Health and Environmental Sciences (DHES):

- 7. HB0570 as amended on March 16, 1993, applies to rulemaking.
- 8. DHES issues an average of 26 rule sets per year.
- 9. The number of assessments needed, i.e., in those cases where a governmental entity will be undertaking a governmental action would be limited.
- 10. No legal or technical staff is available in the DHES to conduct an assessment. To conduct the periodic legal research that would be needed and to handle litigation matters that might arise, a 0.50 FTE attorney would be used. Approximately 0.50 FTE research person would be needed to gather information to conduct assessments and to maintain information.
- 11. The attorney 0.50 FTE would be a mid-level, grade 17. The personal services costs would be \$15.185 per hour x 1044 hours = \$16,547.40 x 1.23 (benefits) = \$20,353.
- 12. The researcher 0.50 FTE would be a grade 14. The personal services costs would be \$11.68 per hour x 1,044 hours = \$12,194 x 1.23 (benefits) = \$14,999.
- 13. The cost of telephone and miscellaneous operations would be \$1,500 in FY94 and FY95 and indirect costs would be \$3,599 in both FY94 and FY95.

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5-20-93 and.

DAVID LEWIS, BUDGET DIRECTOR DATE Office of Budget and Program Planning

JEINIAS 3-20-93

LARRY HAL GRINDE, PRIMARY SPONSOR DATE

Fiscal Note for HB0570, third reading amended

HB 570-#3

Department of Transportation (DOT):

- 14. That "governmental action" is defined as "The enactment of a statute or the adoption of a rule by a government entity that has a reasonable possibility of resulting in a constitutional taking of private property".
- 5. DOT will not be adopting a rule if the rule has the "reasonable possibility of resulting in a constitutional taking of private property".
- 16. Section 4 only requires an assessment to be prepared if there is a governmental action as defined in #1 above. Department of State Lands (DSL):
- 17. The assessments and criteria of section 4 is required only for actions taken under the police power that affect the use of private real property. These requirements do not apply to actions taken in the use, management, or development of real property owned by the State of Montana.
- 18. The Reclamation Division, Department of State Lands, does not have the existing staff to complete these assessments.
- 19. Programmatic assessments will need to be prepared for the adoption of a new rules as required by section 4.
- 20. Section 4 does not apply to existing administrative rules.
- 21. The Reclamation Division has approximately two rulemaking exercises per year.
- 22. The analyses required could be completed by existing staff.
- 23. Any unanticipated costs to DSL will need to be addressed through a budget amendment.

Department of Natural Resources and Conservation (DNRC):

- 24. DNRC legal staff would be required to draft initial guidelines for assessments of the impact of rules adoption and review private property assessments prepared by staff members.
- 25. The process for preparing assessments of the private property impacts of proposed legislation would be similar to the current process for preparation of fiscal notes.

FISCAL IMPACT:

Legislative Council: Cannot readily be estimated.

Department of Fish, Wildlife and Parks: No fiscal impact.

Department of Administration: No fiscal impact.

Department of Justice: No fiscal impact.

(continued on next page)

HB 570-#3

-Fiscal Note Request, <u>HB0570, third reading, HAC amendments</u> Form BD-15 page 3 (continued)

Department of Health and Environmental Sciences:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	<u>Current Law</u>	Proposed Law	<u>Difference</u>
<u>Expenditures:</u>						
FTB	0	1.00	1.00	0	1.00	1.00
Personnel Services	0	35,352	35,352	0	35,352	35,352
Operating Expenses	<u>0</u>	<u>5,099</u>	<u>5,099</u>	<u>o</u>	<u>5,099</u>	5,099
Total	0	40,451	40,451	0	40,451	40,451
Funding:						
General Fund	0	40,451	40,451	0	40,451	40,451

Net Impact: General fund expenditures of \$40,451 in each year of the biennium.

Department of Transportation: No fiscal impact.

Department of State Lands: No fiscal impact.

Department of Natural Resources and Conservation:

Because many actions DNRC currently takes already require some type of technical assessment, property rights assessments could be included in these minimizing the need for additional FTE. Combining the assessments would create additional workload for existing staff.

Due to the necessity to draft initial guidelines and the overall additional workload, an additional 0.25 FTE may be necessary at DNRC.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed House Appropriation Committee amendments dated March 16, 1993, appear to diminish or delete the applicability of HB570 to local governments.

TECHNICAL NOTES:

- 1. Legislative rules will need to be adopted to implement internal assessment processes.
- 2. If internal rules require actions by legislative staff that are not anticipated and cannot be absorbed within current operations, including hiring additional staff, a supplemental appropriation will be recommended.

HB 570-#3

53rd Legislature

RE-REFERRED AND HB 0570/04 Approved by committee on appropriations As Amended

1

1	HOUSE BILL NO. 570
2	INTRODUCED BY GRINDE, BECK, SWYSGOOD, TASH, GRIMES, NATHE,
3	MESAROS, HOCKETT, HERTEL, J. RICE, CLARK, L. NELSON, LARSON,
4	ANDERSON, SCHWINDEN, BACHINI, REA, GROSFIELD, MERCER,
5	BIRD, REHBEIN
6	
7	A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN ASSESSMENT
8	OF GOVERNMENTAL ACTIONS THAT AFFECT THE USE OF PRIVATE
9	PROPERTY; REQUIRING AN ASSESSMENT OF THE CONSTITUTIONAL
10	IMPLICATIONS OF GOVERNMENT ACTIONS; REQUIRING PRIVATE
11	PROPERTY ASSESSMENTS TO BE SUBMITTED TO THE GOVERNOR AND THE
12	LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE."
13	
14	STATEMENT OF INTENT
15	IT IS THE INTENT OF THE LEGISLATURE THAT GOVERNMENT
16	ENTITIES PREPARE ASSESSMENTS OF GOVERNMENT ACTIONS THAT
17	AFFECT PRIVATE PROPERTY INTERESTS. THE ASSESSMENTS MUST USE
18	TESTS AND GUIDELINES ESTABLISHED BY THE SUPREME COURT OF THE
19	UNITED STATES AND THE SUPREME COURT OF THE STATE OF MONTANA
20	WHEN THE ASSESSMENTS ANALYZE CONSTITUTIONAL PRINCIPLES.
21	IT IS NOT THE INTENT OF THE LEGISLATURE TO EXPAND THE
22	LAW RELATING TO THE TAKING OR-DAMAGING OF PRIVATE PROPERTY,
23	AS CONTAINED IN OPINIONS OF THE SUPREME COURT OF THE UNITED
24	STATES AND THE SUPREME COURT OF THE STATE OF MONTANA, BY THE
25	STATE OR-A-BOCAL-GOVERNMENT.



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

NEW SECTION. Section 1. Short title. {Sections 1
 through 6 5] may be cited as the "Montana Private Property
 Assessment Act".

NEW SECTION. Section 2. Policy -- purpose. (1) It is 6 7 the policy of this state that a person may not be deprived 8 of the use of private property without due process of law 9 and that private property may not be taken by governmental 10 action without just compensation being made. The legislature intends that [sections 1 through 6 5] implement Article II, 11 section 29, of the Montana constitution in a manner that 12 13 protects private property owners, the interests of the 14 general public, and the fiscal health of the state.

15 (2) The purposes of [sections 1 through 6 5] are to require the assessment of governmental actions that affect 16 the use and value of private property, to require an 17 assessment of the effect of governmental actions on 18 19 constitutionally protected private property interests, and to avoid any unnecessary burdens on the public treasury. It 20 is not the purpose of [sections 1 through 6 5] to reduce the 21 22 scope of private property protections provided in the United States constitution or the Montana constitution. [Sections 1 23 through 6 5] do not preclude private property owners from 24 25 challenging governmental actions in a court of competent

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SECOND READING SECOND PRINTING

1	jurisdiction or from seeking compensation or other available
2	relief from governmental actions that affect private
3	property rights. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE
4	CONSTRUED TO IMPAIR A PROPERTY OWNER'S RIGHT TO APPEAR IN
5	COURT ON AN EMINENT DOMAIN OR INVERSE CONDEMNATION CLAIM.
6	NEW SECTION. Section 3. Definitions. As used in
7	[sections 1 through 6 5], the following definitions apply:
8	<pre>(1)"Bamaging"-means-depriving-a-propertyownerofa</pre>
9	portionofthe-property-or-a-portion-of-the-economic-value
10	of-the-property. BAMAGING-IS-FURTHER-ESTABLISHED-THROUGH-THE
11	INTERPRETATIONS-OF-THE-SUPREME-COURT-OF-MONTANA-
12	<pre>(1) (a) "Governmental action" or "action" means</pre>
13	ENACTMENT OF a statute, OR ADOPTION OF A rule, regulation,
14	licensing-requirement;-orpermittingrequirementthatif
15	imposed by a government entity,-will-or-may result THAT HAS
16	A REASONABLE POSSIBILITY OF RESULTING in a CONSTITUTIONAL
17	taking or-damaging of private property.
18	(b) The term does not include:
19	(i) the formal exercise of the power of eminent domain
20	in accordance with law;
21	(ii) the discontinuance of governmental programs other
22	than law enforcement protection;
23	(iii) the reduction of governmental interference with
24	the use of private property by the repeal or amendment of
25	rules or statutes;

HB	057	0/04
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1	(iv) the seizure or forfeiture of private property for a
2	violation of criminal law or as evidence in a criminal
3	proceeding, as provided by statute;
4	(v) actions that abate a nuisance to the extent that
5	the restricted conduct constitutes a nuisance under the law
6	in-effect-on-July-17-1993; or
7	(Vi)-countyy-cityy-or-town-variancesorprocessesfor
8	variancesconcerninglocalregulationsordinancesor
9	zoningr <u>7</u>
10	<u>{∀</u> ii}(VI) STATUTES, RULES, REGULATIONS, LICENSE
11	REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO BUILDING
12	CONSTRUCTION STANDARDS, FIRE SAFETY STANDARDS, AND LIFE
13	SAFETY STANDARDS;
14	{♥###}(VII) PROFESSIONAL AND OCCUPATIONAL LICENSE
15	REQUIREMENTS, GAMBLING LICENSES, AND LIQUOR LICENSES;
16	<pre> tix;(VIII) STATUTES, RULES, REGULATIONS, LICENSE </pre>
17	REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO DRIVER'S
18	LICENSES, MOTOR VEHICLE REGISTRATIONS, AND DEALER LICENSES
19	UNDER TITLE 61, CHAPTER 4; OR
20	<u>{*</u> ;(IX) ACTIONS BY THE DEPARTMENT OF PUBLIC SERVICE
21	REGULATION IN THE EXERCISE OF ITS REGULATORY AUTHORITY OVER
22	RATES AND CHARGES OF RAILROADS, MOTOR CARRIERS, AND PUBLIC
23	UTILITIES.
24	(3) (a) "Government entity" means the legislature or
25	an officer or agency of the state that is authorized by law

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1	to adopt rules. The term DOES NOT includes INCLUDE political	1
2	subdivisions of the state.	2
3	(b) The term does not include the judicial branch of	3
4	state government.	4
5	<pre>t4;(3) "Private property" means any REAL property</pre>	5
6	interest in this state that is protected by either:	6
7	(a) the fifth amendment to the United States	7
8	constitution; or	8
9	(b) Article II, section 29, of the Montana	9
10	constitution.	10
11	<pre>t5;(4) "Property owner" means a nongovernment entity</pre>	11
12	owning an interest in <u>PRIVATE</u> property.	12
13	<pre>(6)(5) "State agency" means an officer or agency of the</pre>	13
14	executive branch of state government.	14
15	(7)<u>(6)</u> "Taking" means a-governmental-action depriving a	15
16	property owner of either ownership of the private property	16
17	or a portion of or all of the economic value of the private	17
18	property that is compensable under the fifth amendment to	18
19	the United States constitution and under Article II, section	19
20	29, of the Montana constitution. TAKING IS FURTHER	20
21	ESTABLISHED THROUGH THE INTERPRETATIONS OF THE SUPREME COURT	21
22	OF THE UNITED STATES AND THE SUPREME COURT OF MONTANA.	22
23	NEW SECTION. Section 4. Assessment of impact on	23
24	private property general directions. (++) THE ASSESSMENT	24
24 25	DESCRIBED IN THIS SECTION MAY BE PREPARED FOR THE ENACTMENT	25
40		
	-5- НВ 570	

1	OF A STATUTE ONLY AFTER A REQUEST BY THE PRESIDING OFFICER
2	OF THE HOUSE IN WHICH THE LEGISLATION IS INTRODUCED. THE
3	PRESIDING OFFICER MAY DETERMINE THE NEED FOR THE ASSESSMENT
4	BASED UPON A RECOMMENDATION BY LEGISLATIVE STAFF INDICATING
5	WHETHER AN ASSESSMENT APPEARS TO BE REQUIRED. THE ASSESSMENT
6	MUST BE PREPARED BY THE APPROPRIATE STATE AGENCY. Before
7	taking a governmental action, a government entity shall
8	prepare a written assessment that includes an analysis of at
9	least the following elements:
10	<pre>fa;(1) a description of the governmental action, its</pre>
11	purpose, and aplanforimplementationofthe-action,
12	including any specific public health or safety risk the
13	action is designed to prevent, mitigate, or remedy;
14	(b)(2) the impact that the governmental action has on
15	private property rights, including a description of how the
16	action affects the use orvalue of private property and
17	whether-a-taking- <u>OR-DAMAGING</u> -will-result;
18	<pre>(e)(3) an identification of private property interests</pre>
19	affected or-potentially-affected by the governmental action;
20	d, (4) alternatives to the proposed governmental action
21	that may:
22	<pre>(i) fulfill a government entity's legal obligations;</pre>
23	(ii)(B) reduce the effect on the private property
24	owner; and
25	(iii)(C) reduce the risk of a <u>CONSTITUTIONAL</u> taking <u>OR</u>
	-6- НВ 570

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HB 570

NEW SECTION. Section 5. Governmental actions -- state 17 18 agency procedure. (+)-In-addition-to-the-assessment-required 19 in-fsection-417-a-state-agency-shall-adhere-to-the-following 20 criteria-in-implementing-or-enforcing-governmental-actions: 21 ta)--When-a-governmental-action--requires--a--permit--or 22 other-permission-for-a-specific-use-of-private-property7-any 23 conditions---imposed--on--the--issuance--of--the--permit--or 24 authorization-must-substantially-further-the--purposes--that the-permitting-or-permission-process-was-designed-to-achieve 25

 BASED ON TESTS AND PRINCIPLES ESTABLISHED BY THE UNITED

 12
 STATES SUPREME COURT AND THE MONTANA SUPREME COURT.

 13
 (?)--For--legislation-introduced-before-the-legislature7

 14
 the-agency-responsible-for-doing-an-analysis--for--a--fiscal

 15
 note--for--the--legislation--shall--prepare--the--assessment

 16
 required-by-subsection-(1);

6 (f)(5) an-evaluation-<u>ESTIMATE-</u>of-the-extent-to-which
 7 the-proposed-action-imposes-costs--on--property--owners--not
 8 borne--by--other-citizens-of-the-state-or-locality WHETHER A
 9 GOVERNMENTAL ACTION HAS A REASONABLE POSSIBILITY OF
 10 RESULTING IN A CONSTITUTIONAL TAKING OF PRIVATE PROPERTY
 11 BASED ON TESTS AND PRINCIPLES ESTABLISHED BY THE UNITED

2 (c)(5)--an-estimate-of-financial-cost-to-the--government
3 entity-for-compensation-and-the-source-of-payment-within-the
4 government--entity's--budget--if--a-constitutional-taking-OR

BAMAGING-would-result;-and

5

1 <u>BAMAGING</u> of private property; <u>AND</u>
2 (e)<u>(5)</u>--an-estimate-of-financial-cost-to-the--government

1 and-must-be-expressly-authorized-by-law-2 tbj--The--state--agency--shall--ensure-that-restrictions 3 imposed-on-the-use-of-private-property-are-proportionate--to the--extent--the-use-contributes-to-any-harm-the-restriction 4 5 is-designed-to-preventy-mitigatey-or-remedy-6 tc+tB}--The-state-agency-shall-estimatey-to--the--extent 7 possibley--the--potential--cost--to--the--state--if--a-court 8 determines-that-the-governmental-action-constitutes-a-taking 9 OR-BAMAGING-10 f2f(1) If there is an immediate threat to public health or safety that requires an immediate response by a state 11 12 agency GOVERNMENT ENTITY, the criteria ASSESSMENT required by subsection-{1} [SECTIONS 1 THROUGH 4 AND THIS SECTION], 13 14 IF APPLICABLE, may be met when the response is completed. 15 (3)--The-state-agency-shall-ensure-a-diligent-and-speedy 16 resolution--of--any-procedures-that-are-part-of-a-process-of 17 seeking--a--permit--or--other--permission--to--use---private 18 property: 19 (4)(2) Before a state agency implements a governmental action that has an impact on the use or--walue of private 20 21 property, the state agency shall submit a copy of the 22 assessment required by {section-4} [SECTIONS 1 THROUGH 4 AND 23 THIS SECTION) to the governor, the private property owner, 24 IF IDENTIFIABLE, and: 25 (a) if the legislature is in session, to the senate

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1	finance and claims committee and the house appropriations
2	committee; or
3	(b) if the legislature is not in session, to the
4	legislative finance committee.
5	NEW-SECTIONSection-6Causeofaction(1)An
6	aggrievedpropertyownerhas-a-cause-of-action-against-a
7	government-entity-that-actsinviolationof{sections1
8	through6+Aproperty-owner-who-proves-that-the-property
9	owner-has-been-damaged-by-a-violation-of-fsections-l-through
10	6}-is-entitled-to-compensatory-damages7-a-writofmandamus
11	orprohibitiony-or-any-other-appropriate-legal-or-equitable
12	relief.
13	(2)The-government-entity-has-the-burdenofproofon
14	anyaffirmative-defense-it-may-raise;-including-the-defense
15	that-the-action-complained-of-is-not-s-governmental-action-
16	{3}{Bections-1-through-6}maynotbeconstruedto
17	infringeorimpairapropertyowner'sright-to-proceed
18	judicially-undereminentdomainorinversecondemnation
19	taws.
20	NEW SECTION. Section 6. Effective date. [This act] is

21 effective July 1, 1993.

-End-

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53rd Legislature

HB 0570/02

1

APPROVED BY COMMITTEE ON JUDICIARY

1	HOUSE BILL NO. 570
2	INTRODUCED BY GRINDE, BECK, SWYSGOOD, TASH, GRIMES, NATHE,
3	MESAROS, HOCKETT, HERTEL, J. RICE, CLARK, L. NELSON, LARSON,
4	ANDERSON, SCHWINDEN, BACHINI, REA, GROSFIELD, MERCER,
5	BIRD, REHBEIN
6	
7	A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN ASSESSMENT
8	OF GOVERNMENTAL ACTIONS THAT AFFECT THE USE OF PRIVATE
9	PROPERTY; REQUIRING AN ASSESSMENT OF THE CONSTITUTIONAL
10	IMPLICATIONS OF GOVERNMENT ACTIONS; REQUIRING PRIVATE
11	PROPERTY ASSESSMENTS TO BE SUBMITTED TO THE GOVERNOR AND THE
12	LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE."
13	
14	STATEMENT OF INTENT
15	IT IS THE INTENT OF THE LEGISLATURE THAT GOVERNMENT
16	ENTITIES PREPARE ASSESSMENTS OF GOVERNMENT ACTIONS THAT
17	AFFECT PRIVATE PROPERTY INTERESTS. THE ASSESSMENTS MUST USE
18	TESTS AND GUIDELINES ESTABLISHED BY THE SUPREME COURT OF THE
19	UNITED STATES AND THE SUPREME COURT OF THE STATE OF MONTANA
20	WHEN THE ASSESSMENTS ANALYZE CONSTITUTIONAL PRINCIPLES.
21	IT IS NOT THE INTENT OF THE LEGISLATURE TO EXPAND THE
22	LAW RELATING TO THE TAKING OR DAMAGING OF PRIVATE PROPERTY,
23	AS CONTAINED IN OPINIONS OF THE SUPREME COURT OF THE UNITED
24	STATES AND THE SUPREME COURT OF THE STATE OF MONTANA, BY THE
25	STATE OR A LOCAL GOVERNMENT.

a Legislative Council

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

3 <u>NEW SECTION.</u> Section 1. Short title. [Sections 1
4 through 6 5] may be cited as the "Montana Private Property
5 Assessment Act".

NEW SECTION. Section 2. Policy -- purpose. (1) It is 6 the policy of this state that a person may not be deprived 7 of the use of private property without due process of law 8 9 and that private property may not be taken by governmental 10 action without just compensation being made. The legislature 11 intends that [sections 1 through 6 5] implement Article II, section 29, of the Montana constitution in a manner that 12 13 protects private property owners, the interests of the 14 general public, and the fiscal health of the state.

15 (2) The purposes of [sections 1 through 6 5] are to 16 require the assessment of governmental actions that affect 17 the use and value of private property, to require an assessment of the effect of governmental actions on 18 constitutionally protected private property interests, and 19 to avoid any unnecessary burdens on the public treasury. It 20 21 is not the purpose of [sections 1 through 6 5] to reduce the 22 scope of private property protections provided in the United States constitution or the Montana constitution. [Sections 1 23 through 6 5] do not preclude private property owners from 24 25 challenging governmental actions in a court of competent

-2-

HB 570 SECOND READING

1	jurisdiction or from seeking compensation or other available	1	р
2	relief from governmental actions that affect private	2	
3	property rights. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE	3	t
4	CONSTRUED TO IMPAIR A PROPERTY OWNER'S RIGHT TO APPEAR IN	4	i
5	COURT ON AN EMINENT DOMAIN OR INVERSE CONDEMNATION CLAIM.	5	
6	NEW SECTION. Section 3. Definitions. As used in	б	v
7	[sections 1 through 6 5], the following definitions apply:	7	Z
8	(1) "Damaging" means depriving a property owner of a	8	
9	portion of the property or a portion of the economic value	9	R
10	of the property.	10	ē
11	(2) (a) "Governmental action" or "action" means a	11	<u>s</u>
12	statute, rule, regulation, licensing requirement, or	12	
13	permitting requirement that if imposed by a government	13	R
14	entity, will ormay result in a taking or damaging of	14	
15	private property.	15	A
16	(b) The term does not include:	16	<u>v</u>
17	(i) the formal exercise of the power of eminent domain	17	<u>c</u>
18	in accordance with law;	18	
19	(ii) the discontinuance of governmental programs other	19	R
20	than law enforcement protection;	20	R
21	(iii) the reduction of governmental interference with	21	U
22	the use of private property by the repeal or amendment of	22	
23	rules or statutes;	23	a
24	(iv) the seizure or forfeiture of private property for a	24	a
25	violation of criminal law or as evidence in a criminal	25	8

proceeding, as provided by statute;
(v) actions that abate a nuisance to the extent that
the restricted conduct constitutes a nuisance under the law
in effect on July 1, 1993; or
(vi) county, city, or town variances or processes for
variances concerning local regulations, ordinances, or
zoning+ <u>;</u>
(VII) STATUTES, RULES, REGULATIONS, LICENSE
REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO BUILDING
CONSTRUCTION STANDARDS, FIRE SAFETY STANDARDS, AND LIFE
SAFETY STANDARDS;
(VIII) PROFESSIONAL AND OCCUPATIONAL LICENSE
REQUIREMENTS, GAMBLING LICENSES, AND LIQUOR LICENSES;
(IX) STATUTES, RULES, REGULATIONS, LICENSE REQUIREMENTS,
AND PERMIT REQUIREMENTS RELATING TO DRIVER'S LICENSES, MOTOR
VEHICLE REGISTRATIONS, AND DEALER LICENSES UNDER TITLE 61,
CHAPTER 4; OR
(X) ACTIONS BY THE DEPARTMENT OF PUBLIC SERVICE
REGULATION IN THE EXERCISE OF ITS REGULATORY AUTHORITY OVER
RATES AND CHARGES OF RAILROADS, MOTOR CARRIERS, AND PUBLIC
UTILITIES.
(3) (a) "Government entity" means the legislature or an
officer or agency of the state that is authorized by law to

A adopt rules. The term includes political subdivisions of the state.

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.

(b) The term does not include the judicial branch of
 state government.

3 (4) "Private property" means any property interest in
 4 this state that is protected by either:

5 (a) the fifth amendment to the United States6 constitution; or

7 (b) Article II, section 29, of the Montana 8 constitution.

9 (5) "Property owner" means a nongovernment entity10 owning an interest in property.

11 (6) "State agency" means an officer or agency of the 12 executive branch of state government.

13 (7) "Taking" means a governmental action depriving a
14 property owner of either ownership of the private property
15 or a portion of or all of the economic value of the private
16 property that is compensable under the fifth amendment to
17 the United States constitution and under Article II, section
18 29, of the Montana constitution.

19 <u>NEW SECTION.</u> Section 4. Assessment of impact on 20 private property -- general directions. (1) Before taking a 21 governmental action, a government entity shall prepare a 22 written assessment that includes an analysis of at least the 23 following elements:

24 (a)(1) a description of the governmental action, its
 25 purpose, and a plan for implementation of the action,

1 including any specific public health or safety risk the 2 action is designed to prevent, mitigate, or remedy;

3 (b)(2) the impact that the governmental action has on
4 private property rights, including a description of how the
5 action affects the use or--value of private property and
6 whether a taking <u>OR DAMAGING</u> will result;

7 (c)(3) an identification of private property interests 8 affected or-potentially-affected by the governmental action; 9 (d)(4) alternatives to the proposed governmental action 10 that may:

11 (±)(A) fulfill a government entity's legal obligations; 12 (±±)(B) reduce the effect on the private property 13 owner; and

14 (iii)(C) reduce the risk of a taking <u>OR DAMAGING</u> of 15 private property;

16 tet(5) an estimate of financial cost to the government 17 entity for compensation and the source of payment within the 18 government entity's budget if a constitutional taking <u>OR</u> 19 <u>DAMAGING</u> would result; and

20 (f)(6) an evaluation ESTIMATE of the extent to which 21 the proposed action imposes costs on property owners not 22 borne by other citizens of the state or locality.

23 (2)--Por--legislation-introduced-before-the-legislature;
 24 the-agency-responsible-for-doing-an-analysis--for--a--fiscal
 25 note--for--the--legislation--shall--prepare--the--assessment

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HB 570

1 required-by-subsection-fly-

NEW SECTION. Section 5. Governmental actions -- state
agency procedure. (1) In addition to the assessment required
in [section 4], a state agency shall adhere to the following
criteria in implementing or enforcing governmental actions:

6 (a) When a governmental action requires a permit or 7 other permission for a specific use of private property, any 8 conditions imposed on the issuance of the permit or 9 authorization must substantially further the purposes that 10 the permitting or permission process was designed to achieve 11 and must be expressly authorized by law.

12 (b)--The--state--agency--shall-ensure-that-restrictions 13 imposed-on-the-use-of-private-property-are-proportionate--to 14 the--extent--the-use-contributes-to-any-harm-the-restriction 15 is-designed-to-preventy-mitigatey-or-remedy-

16 (c)(B) The state agency shall estimate, to the extent 17 possible, the potential cost to the state if a court 18 determines that the governmental action constitutes a taking 19 OR DAMAGING.

20 (2) If there is an immediate threat to public health or
21 safety that requires an immediate response by a state
22 agency, the criteria required by subsection (1) may be met
23 when the response is completed.

(3) The state agency shall ensure a diligent and speedyresolution of any procedures that are part of a process of

seeking a permit or other permission to use private
 property.

3 (4) Before a state agency implements a governmental 4 action that has an impact on the use er-value of private 5 property, the state agency shall submit a copy of the 6 assessment required by [section 4] to the governor, the 7 private property owner, IF IDENTIFIABLE, and:

8 (a) if the legislature is in session, to the senate
9 finance and claims committee and the house appropriations
10 committee; or

11 (b) if the legislature is not in session, to the 12 legislative finance committee.

NEW-SBCTION---Section-6.-Cause---of---action----(1)--An--13 14 aggrieved-property-owner-has-a-cause--of--action--against--a government--entity--that--acts--in--violation-of-fsections-1 15 through-6]--A-property-owner-who-proves--that--the--property 16 17 owner-has-been-damaged-by-a-violation-of-{sections-l-through 18 6]--is--entitled-to-compensatory-damages,-a-writ-of-mandamus 19 or-prohibitiony-or-any-other-appropriate-legal-or--equitable 20 relief.

21 (2)--The--government--entity--has-the-burden-of-proof-on any-affirmative-defense-it-may-raiser-including-the--defense that-the-action-complained-of-is-not-a-governmental-action (3)--(Sections--1--through--6]--may--not-be-construed-to infringe-or-impair--a--property--owner's--right--to--proceed

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1 judicially--under--eminent--domain--or--inverse-condemnation

- 2 ławs-
- 3 NEW SECTION. Section 6. Effective date. [This act] is
- 4 effective July 1, 1993.

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-End-

1 HOUSE BILL NO. 570 1 2 INTRODUCED BY GRINDE, BECK, SWYSGOOD, TASH, GRIMES, NATHE, 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: MESAROS, HOCKETT, HERTEL, J. RICE, CLARK, L. NELSON, LARSON, 3 3 NEW SECTION. Section 1. short title. [Sections 1] ANDERSON, SCHWINDEN, BACHINI, REA, GROSFIELD, MERCER, ۵ 4 through 6 5] may be cited as the "Montana Private Property 5 BIRD, REHBEIN 5 Assessment Act". 6 6 NEW SECTION. Section 2. Policy -- purpose. (1) It is A BILL FOR AN ACT ENTITLED: "AN ACT REOUIRING AN ASSESSMENT 7 7 the policy of this state that a person may not be deprived OF GOVERNMENTAL ACTIONS THAT AFFECT THE USE OF PRIVATE 8 8 of the use of private property without due process of law PROPERTY: REQUIRING AN ASSESSMENT OF THE CONSTITUTIONAL 9 9 and that private property may not be taken by governmental IMPLICATIONS OF GOVERNMENT ACTIONS: 10 REQUIRING PRIVATE action without just compensation being made. The legislature 10 11 PROPERTY ASSESSMENTS TO BE SUBMITTED TO THE GOVERNOR AND THE intends that [sections 1 through 6 5] implement Article II, 11 LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE." 12 section 29, of the Montana constitution in a manner that 12 13 protects private property owners, the interests of the 13 14 STATEMENT OF INTENT 14 general public, and the fiscal health of the state. 15 IT IS THE INTENT OF THE LEGISLATURE THAT GOVERNMENT 15 (2) The purposes of [sections 1 through 6 5] are to 16 ENTITIES PREPARE ASSESSMENTS OF GOVERNMENT ACTIONS THAT 16 require the assessment of governmental actions that affect 17 AFFECT PRIVATE PROPERTY INTERESTS. THE ASSESSMENTS MUST USE 17 the use and value of private property, to require an 18 TESTS AND GUIDELINES ESTABLISHED BY THE SUPREME COURT OF THE assessment of the effect of governmental actions on 18 UNITED STATES AND THE SUPREME COURT OF THE STATE OF MONTANA 19 19 constitutionally protected private property interests, and 20 WHEN THE ASSESSMENTS ANALYZE CONSTITUTIONAL PRINCIPLES. 20 to avoid any unnecessary burdens on the public treasury. It 21 IT IS NOT THE INTENT OF THE LEGISLATURE TO EXPAND THE is not the purpose of (sections 1 through 6 5) to reduce the 21 22 LAW RELATING TO THE TAKING OR DAMAGING OF PRIVATE PROPERTY. 22 scope of private property protections provided in the United 23 AS CONTAINED IN OPINIONS OF THE SUPREME COURT OF THE UNITED States constitution or the Montana constitution. [Sections 1 23 STATES AND THE SUPREME COURT OF THE STATE OF MONTANA, BY THE 24 24 through 6 5] do not preclude private property owners from 25 STATE OR A LOCAL GOVERNMENT. 25 challenging governmental actions in a court of competent



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1	jurisdiction or from seeking compensation or other available	1
2	relief from governmental actions that affect private	2
3	property rights. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE	3
4	CONSTRUED TO IMPAIR A PROPERTY OWNER'S RIGHT TO APPEAR IN	4
5	COURT ON AN EMINENT DOMAIN OR INVERSE CONDEMNATION CLAIM.	5
6	NEW SECTION. Section 3. Definitions. As used in	6
7	[sections 1 through 6 5], the following definitions apply:	7
8	(1) "Damaging" means depriving a property owner of a	8
9	portion of the property or a portion of the economic value	9
10	of the property. DAMAGING IS FURTHER ESTABLISHED THROUGH THE	10
11	INTERPRETATIONS OF THE SUPREME COURT OF MONTANA.	11
12	(2) (a) "Governmental action" or "action" means a	12
13	statute, rule, regulation, licensing requirement, or	13
14	permitting requirement that if imposed by a government	14
15	entity, will or-may result in a CONSTITUTIONAL taking or	15
16	damaging of private property.	16
17	(b) The term does not include:	17
18	(i) the formal exercise of the power of eminent domain	18
19	in accordance with law;	19
20	(ii) the discontinuance of governmental programs other	20
21	than law enforcement protection;	21
22	(iii) the reduction of governmental interference with	22
23	the use of private property by the repeal or amendment of	23
24	rules or statutes;	24
25	(iv) the seizure or forfeiture of private property for a	25

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1	violation of criminal law or as evidence in a criminal
2	proceeding, as provided by statute;
3	(v) actions that abate a nuisance to the extent that
4	the restricted conduct constitutes a nuisance under the law
5	in effect on July 1, 1993; or
6	(vi) county, city, or town variances or processes for
7	variances concerning local regulations, ordinances, or
8	zoning .
9	(VII) STATUTES, RULES, REGULATIONS, LICENSE
10	REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO BUILDING
11	CONSTRUCTION STANDARDS, FIRE SAFETY STANDARDS, AND LIFE
12	SAFETY STANDARDS;
13	(VIII) PROFESSIONAL AND OCCUPATIONAL LICENSE
14	REQUIREMENTS, GAMBLING LICENSES, AND LIQUOR LICENSES;
15	(IX) STATUTES, RULES, REGULATIONS, LICENSE REQUIREMENTS,
16	AND PERMIT REQUIREMENTS RELATING TO DRIVER'S LICENSES, MOTOR
17	VEHICLE REGISTRATIONS, AND DEALER LICENSES UNDER TITLE 61,
18	CHAPTER 4; OR
19	(X) ACTIONS BY THE DEPARTMENT OF PUBLIC SERVICE
20	REGULATION IN THE EXERCISE OF ITS REGULATORY AUTHORITY OVER
21	RATES AND CHARGES OF RAILROADS, MOTOR CARRIERS, AND PUBLIC
22	UTILITIES.
23	(3) (a) "Government entity" means the legislature or an
24	officer or agency of the state that is authorized by law to
25	adopt rules. The term <u>DOES NOT includes INCLUDE</u> political

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1	subdivisions of the state.	1	following elements:
2	(b) The term does not include the judicial branch of	2	<pre>{a}(1) a description of the governmental action, its</pre>
3	state government.	3	purpose, and a plan for implementation of the action,
4	(4) "Private property" means any <u>REAL</u> property interest	4	including any specific public health or safety risk the
5	in this state that is protected by either:	5	action is designed to prevent, mitigate, or remedy;
6	(a) the fifth amendment to the United States	6	(b) the impact that the governmental action has on
7	constitution; or	7	private property rights, including a description of how the
8	(b) Article II, section 29, of the Montana	8	action affects the use orvalue of private property and
9	constitution.	9	whether-a-taking- <u>OR-BAMAGING</u> -will-result;
10	(5) "Property owner" means a nongovernment entity	10	<pre>(c)(3) an identification of private property interests</pre>
11	owning an interest in property.	11	affected or-potentially-affected by the governmental action;
12	(6) "State agency" means an officer or agency of the	12	<pre> fd;(4) alternatives to the proposed governmental action </pre>
13	executive branch of state government.	13	that may:
14	(7) "Taking" means a governmental action depriving a	14	<pre>tit(A) fulfill a government entity's legal obligations;</pre>
15	property owner of either ownership of the private property	15	(ii)(B) reduce the effect on the private property
16	or a portion of or all of the economic value of the private	16	owner; and
17	property that is compensable under the fifth amendment to	17	<pre>tiit(C) reduce the risk of a CONSTITUTIONAL taking OR</pre>
18	the United States constitution and under Article II, section	18	DAMAGING of private property; AND
19	29, of the Montana constitution. <u>TAKING IS FURTHER</u>	19	(c)<u>t5</u>]anestimate-of-financial-cost-to-the-government
20	ESTABLISHED THROUGH THE INTERPRETATIONS OF THE SUPREME COURT	20	entity-for-compensation-and-the-source-of-payment-within-the
21	OF THE UNITED STATES AND THE SUPREME COURT OF MONTANA.	21	government-entity ¹ s-budget-ifaconstitutionaltaking <u>OR</u>
22	NEW SECTION. Section 4. Assessment of impact on	22	BAMAGING-would-result;-and
23	private property general directions. (1) Before taking a	23	ff) <u>(6)(5)</u> an evaluation <u>ESTIMATE</u> of the extent to which
24	governmental action, a government entity shall prepare a	24	the proposed action imposes costs on property owners not
25	written assessment that includes an analysis of at least the	25	borne by other citizens of the state or locality.
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t2t--Por-legislation-introduced-before-the--legislature;
 the--agency-responsible--for-doing-an-analysis-for-a-fiscal
 note--for--the--legislation--shall--prepare--the--assessment
 required-by-subsection-tlt;

5 NEW SECTION. Section 5. Governmental actions -- state 6 agency procedure. (1) In addition to the assessment required 7 in [section 4], a state agency shall adhere to the following criteria in implementing or enforcing governmental actions: 8 9 ta; When a governmental action requires a permit or 10 other permission for a specific use of private property, any 11 conditions imposed on the issuance of the permit or 12 authorization must substantially further the purposes that 13 the permitting or permission process was designed to achieve 14 and must be expressly authorized by law.

15 (b)--The-state-agency--shall--ensure--that--restrictions 16 imposed--on-the-use-of-private-property-are-proportionate-to 17 the-extent-the-use-contributes-to-any-harm--the--restriction 18 is-designed-to-preventy-mitigatey-or-remedy-

19 (c)<u>(B)</u>--The--state--agency-shall-estimater-to-the-extent 20 possibler-the--potential--cost--to--the--state--if--a--court 21 determines-that-the-governmental-action-constitutes-a-taking 22 <u>OR-BAMAGING.</u>

23 (2) If there is an immediate threat to public health or
24 safety that requires an immediate response by a state
25 agency, the criteria required by subsection (1) may be met

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1 when the response is completed.

2 (3) The state agency shall ensure a diligent and speedy
3 resolution of any procedures that are part of a process of
4 seeking a permit or other permission to use private
5 property.

6 (4) Before a state agency implements a governmental 7 action that has an impact on the use or--value of private 8 property, the state agency shall submit a copy of the 9 assessment required by [section 4] to the governor, the 10 private property owner, <u>IF IDENTIFIABLE</u>, and:

(a) if the legislature is in session, to the senate
 finance and claims committee and the house appropriations
 committee; or

14 (b) if the legislature is not in session, to the15 legislative finance committee.

16 NEW-SECTION---Section-6--Cause--of---action----(1)---An--17 aggrieved--property--owner--has--a-cause-of-action-against-a 18 government-entity-that-acts--in--violation--of--{sections--1 19 through--6]--A--property-owner-who-proves-that-the-property 20 owner-has-been-damaged-by-a-violation-of-factions-l-through 21 61-is-entitled-to-compensatory-damages7-a-writ--of--mandamus 22 or--prohibitiony-or-any-other-appropriate-legal-or-equitable 23 relief-24 f2)--The-government-entity-has-the-burden--of--proof--on

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1	that-the-action-complained-of-is-not-a-governmental-action-
2	{3}{Bections-l-through-6}maynotbeconstruedto
3	infringeorimpairapropertyowner'sright-to-proceed
4	judicially-undereminentdomainorinversecondemnation
5	ławat

6 <u>NEW SECTION.</u> Section 6. Effective date. [This act] is
7 effective July 1, 1993.

-End-

53rd Legislature

1 HOUSE BILL NO. 570 1 INTRODUCED BY GRINDE, BECK, SWYSGOOD, TASH, GRIMES, NATHE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 2 2 MESAROS, HOCKETT, HERTEL, J. RICE, CLARK, L. NELSON, LARSON, 3 NEW SECTION. Section 1. Short title. [Sections 1] 3 ANDERSON, SCHWINDEN, BACHINI, REA, GROSFIELD, MERCER, 4 through 6 5] may be cited as the "Montana Private Property 4 BIRD, REHBEIN 5 Assessment Act". 5 6 6 NEW SECTION. Section 2. Policy -- purpose. (1) It is A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN ASSESSMENT 7 7 the policy of this state that a person may not be deprived OF GOVERNMENTAL ACTIONS THAT AFFECT THE USE OF PRIVATE 8 8 of the use of private property without due process of law PROPERTY; REQUIRING AN ASSESSMENT OF THE CONSTITUTIONAL 9 9 and that private property may not be taken by governmental IMPLICATIONS OF GOVERNMENT ACTIONS; REQUIRING PRIVATE 10 10 action without just compensation being made. The legislature PROPERTY ASSESSMENTS TO BE SUBMITTED TO THE GOVERNOR AND THE 11 11 intends that [sections 1 through 6 5] implement Article II, LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE." 12 12 section 29, of the Montana constitution in a manner that 13 13 protects private property owners, the interests of the STATEMENT OF INTENT 14 14 general public, and the fiscal health of the state. IT IS THE INTENT OF THE LEGISLATURE THAT GOVERNMENT 15 15 (2) The purposes of [sections 1 through 6 5] are to ENTITIES PREPARE ASSESSMENTS OF GOVERNMENT ACTIONS THAT 16 16 require the assessment of governmental actions that affect AFFECT PRIVATE PROPERTY INTERESTS. THE ASSESSMENTS MUST USE 17 17 the use and value of private property, to require an TESTS AND GUIDELINES ESTABLISHED BY THE SUPREME COURT OF THE 18 18 assessment of the effect of governmental actions on UNITED STATES AND THE SUPREME COURT OF THE STATE OF MONTANA 19 19 constitutionally protected private property interests, and WHEN THE ASSESSMENTS ANALYZE CONSTITUTIONAL PRINCIPLES. 20 20 to avoid any unnecessary burdens on the public treasury. It IT IS NOT THE INTENT OF THE LEGISLATURE TO EXPAND THE 21 21 is not the purpose of [sections 1 through 6 5] to reduce the LAW RELATING TO THE TAKING OR-DAMAGING OF PRIVATE PROPERTY, 22 scope of private property protections provided in the United 22 AS CONTAINED IN OPINIONS OF THE SUPREME COURT OF THE UNITED 23 23 States constitution or the Montana constitution. [Sections 1 STATES AND THE SUPREME COURT OF THE STATE OF MONTANA, BY THE 24 24 through 6 5] do not preclude private property owners from STATE OR-A-LOCAL-GOVERNMENT. 25 25 challenging governmental actions in a court of competent



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jurisdiction or from seeking compensation or other available 1 relief from governmental actions that affect private 2 property rights. NOTHING IN [SECTIONS 1 THROUGH 5] MAY BE 3 CONSTRUED TO IMPAIR A PROPERTY OWNER'S RIGHT TO APPEAR IN 4 COURT ON AN EMINENT DOMAIN OR INVERSE CONDEMNATION CLAIM. 5 6 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 6 5], the following definitions apply: 7 8 (1)-- Bamaging -- means-depriving-a-property--owner--of--a 9 portion--of--the-property-or-a-portion-of-the-economic-value of-the-property: DANAGING-IS-FURTHER-BSTABLISHED-THROUGH-THE 10 INTERPRETATIONS-OF-THE-SUPREME-COURT-OF-MONTANA+ 11 (2)(1) (a) "Governmental action" or "action" 12 means 13 ENACTMENT OF a statuter OR ADOPTION OF A ruler-regulation; 14 licensing-requirementy-or--permitting--requirement--that--if 15 imposed by a government entity-will-or-may result THAT HAS 16 A REASONABLE POSSIBILITY OF RESULTING in a CONSTITUTIONAL 17 taking or-damaging of private property. 18 (b) The term does not include: (i) the formal exercise of the power of eminent domain 19 in accordance with law; 20 (ii) the discontinuance of governmental programs other 21 22 than law enforcement protection; 23 (iii) the reduction of governmental interference with the use of private property by the repeal or amendment of 24 25 rules or statutes;

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1	(iv) the seizure or forfeiture of private property for a
2	violation of criminal law or as evidence in a criminal
3	proceeding, as provided by statute;
4	(v) actions that abate a nuisance to the extent that
5	the restricted conduct constitutes a nuisance under the law
6	in-effect-on-July-ly-1993; or
7	{vi}-county-city-or-town-variancesorprocessesfor
8	variancesconcerninglocalregulationsyordinancesyor
9	soningr <u>7</u>
10	<u>{VII} STATUTES, RULES, REGULATIONS, LICENSE</u>
11	REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO BUILDING
12	CONSTRUCTION STANDARDS, FIRE SAFETY STANDARDS, AND LIFE
13	SAPETY STANDARDS;
14	(VII) PROFESSIONAL AND OCCUPATIONAL LICENSE
15	REQUIREMENTS, GANBLING LICENSES, AND LIQUOR LICENSES;
16	<u><u><u>†</u><u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u><u></u></u></u></u>
17	REQUIREMENTS, AND PERMIT REQUIREMENTS RELATING TO DRIVER'S
18	LICENSES, MOTOR VEHICLE REGISTRATIONS, AND DEALER LICENSES
19	UNDER TITLE 61, CHAPTER 4; OR
20	<u>†X†(IX)</u> ACTIONS BY THE DEPARTMENT OF PUBLIC SERVICE
21	REGULATION IN THE EXERCISE OF ITS REGULATORY AUTHORITY OVER
22	RATES AND CHARGES OF RAILROADS, NOTOR CARRIERS, AND PUBLIC
23	OTILITIES.
24	(3)[2] (a) "Government entity" means the legislature or
25	an officer or agency of the state that is authorized by law

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to adopt rules. The term <u>DOES NOT</u> includes <u>INCLUDE</u> political
 subdivisions of the state.

3 (b) The term does not include the judicial branch of
4 state government.

5 (4)(3) "Private property" means any <u>REAL</u> property
6 interest in this state that is protected by either:

7 (a) the fifth amendment to the United States 8 constitution; OF

9 (b) Article II, section 29, of the Montana 10 constitution.

11 (5)(4) "Property owner" means a nongovernment entity
12 owning an interest in <u>PRIVATE</u> property.

13 (6)(5) "State agency" means an officer or agency of the
 14 executive branch of state government.

(7)(6) "Taking" means a-governmental-action depriving a 15 property owner of either ownership of the private property 16 or a portion of or all of the economic value of the private 17 property that is compensable under the fifth amendment to 18 the United States constitution and under Article II, section 19 TAKING IS FURTHER 29, of the Montana constitution. 20 ESTABLISHED THROUGH THE INTERPRETATIONS OF THE SUPREME COURT 21 OF THE UNITED STATES AND THE SUPREME COURT OF MONTANA. 22

<u>NEW SECTION.</u> Section 4. Assessment of impact on
 private property -- general directions. (1) <u>THE ASSESSMENT</u>
 DESCRIBED IN THIS SECTION MAY BE PREPARED FOR THE ENACTMENT

1 OF A STATUTE ONLY AFTER A REQUEST BY THE PRESIDING OFFICER 2 OF THE HOUSE IN WHICH THE LEGISLATION IS INTRODUCED. THE 3 PRESIDING OFFICER MAY DETERMINE THE NEED FOR THE ASSESSMENT BASED UPON A RECOMMENDATION BY LEGISLATIVE STAFF INDICATING 4 5 WHETHER AN ASSESSMENT APPEARS TO BE REQUIRED. THE ASSESSMENT 6 MUST BE PREPARED BY THE APPROPRIATE STATE AGENCY. Before 7 taking a governmental action, a government entity shall 8 prepare a written assessment that includes an analysis of at least the following elements: 9

10 ts;(1) a description of the governmental action, its 11 purpose, and a--plan--for--implementation--of--the-action, 12 including any specific public health or safety risk the 13 action is designed to prevent, mitigate, or remedy;

14 (b)(2) the impact that the governmental action has on 15 private property rights, including a description of how the 16 action affects the use or--value of private property and 17 whether-a-taking-OR-DAMAGING-will-result;

18 te;(3) an identification of private property interests 19 affected or-potentially-affected by the governmental action; 20 td;(4) alternatives to the proposed governmental action 21 that may: 22 ti;(A) fulfill a government entity's legal obligations;

23 (±±+)(B) reduce the effect on the private property 24 owner; and

25 {iii)(C) reduce the risk of a CONSTITUTIONAL taking OR

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DAMAGING of private property; AND 1 te)(5)--an-estimate-of-financial-cost-to-the--government 2 3 entity-for-compensation-and-the-source-of-payment-within-the government--entityis--budget--if--e-constitutional-taking-OR 4 BAMAGING-would-result;-and 5 (f)(5) an-evaluation-ESTIMATE-of-the-extent-to-which 6 the-proposed-action-imposes-costa--on--property--owners--not 7 borne--by--other-citizens-of-the-state-or-locality WHETHER A 8 9 GOVERNMENTAL ACTION HAS A REASONABLE POSSIBILITY OF 10 RESULTING IN A CONSTITUTIONAL TAKING OF PRIVATE PROPERTY 11 BASED ON TESTS AND PRINCIPLES ESTABLISHED BY THE UNITED 12 STATES SUPREME COURT AND THE MONTANA SUPREME COURT. 13 +2)--Por--legislation-introduced-before-the-legislature, 14 the-agency-responsible-for-doing-an-analysis--for--a--fiscal 15 note--for--the--legislation--shall--prepare--the--assessment 16 required-by-subsection-(1)+ 17 NEW SECTION. Section 5. Governmental actions -- state agency procedure. fit-In-addition-to-the-assessment-required 18 19 in-fsection-4ly-a-state-acency-shall-adhere-to-the-following 20 criteria-in-implementing-or-enforcing-governmental-actions-+ 21 fat--When-a-governmental-action--reguires--a--permit--or 22 other-permission-for-a-specific-use-of-private-property,-any conditions---imposed--on--the--issuance--of--the--permit--or 23 24 authorisation-must-substantially-further-the--purposes--that the-permitting-or-permission-process-was-designed-to-achieve 25

1 and-must-be-expressly-authorized-by-law-2 (b)--The--state--agency--shall--ensure-that-restrictions 3 imposed-on-the-use-of-private-property-are-proportionate--to the--extent--the-use-contributes-to-any-harm-the-restriction 4 5 is-designed-to-preventy-mitigatey-or-remedy. 6 tcjtBj--The-state-agency-shall-estimater-to--the--extent 7 possibley--the--potential--cost--to--the--state--if--a-court 8 determines-that-the-governmental-action-constitutes-a-taking 9 OR-BAMAGING. 10 (2)(1) If there is an immediate threat to public health 11 or safety that requires an immediate response by a state 12 agency GOVERNMENT ENTITY, the criteria ASSESSMENT required 13 by subsection-(1) [SECTIONS 1 THROUGH 4 AND THIS SECTION], 14 IF APPLICABLE, may be met when the response is completed. 15 (3)--The-state-agency-shall-ensure-a-diligent-and-speady 16 resolution--of--any-procedures-that-are-part-of-a-process-of 17 seeking--a--permit--or--other--permission--to--use---private 18 property: 19 (4)(2) Before a state agency implements a governmental 20 action that has an impact on the use or--value of private

21 property, the state agency shall submit a copy of the 22 assessment required by {section-4} [SECTIONS 1 THROUGH 4 AND 23 THIS SECTION} to the governor, the private property owner, 24 IF IDENTIFIABLE, and:

25 (a) if the legislature is in session, to the senate

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2 committee: or 3 (b) if the legislature is not in session, to the legislative finance committee. 4 5 6 aggrieved -- property -- owner -- has -- a-cause-of-action-against-a 7 government-entity-that-acts--in--violation--of--faections--1 8 through--61---A--property-owner-who-proves-that-the-property 9 owner-has-been-damaged-by-a-violation-of-{sections-l-through 10 6}-is-entitled-to-compensatory-damages7~a-writ--of--mandamus 11 or--prohibitiony-or-any-other-appropriate-legal-or-equitable 12 relief-13 +2}--The-government-entity-has-the-burden--of--proof--on 14 any--affirmative-defense-it-may-raise7-including-the-defense 15 that-the-action-complained-of-is-not-a-governmental-action-16 (3)--{Bections-l-through-6}--may--not--be--construed--to 17 infringe--or--impair--e--property--owneris--right-to-proceed judicially-under--eminent--domain--or--inverse--condemnation 18 19 lawst 20 NEW SECTION. Section 6. Effective date. [This act] is

finance and claims committee and the house appropriations

21 effective July 1, 1993.

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