State Private Property Protection Acts

*The Impact of State Legislation on Local Control*

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Types of Legislation
New Cause of Action with Flexible Standard
States with Flexible Standard

[Map showing states in orange: Idaho, Oregon, Colorado, Kansas, North Carolina, Florida]
Florida - Bert J Harris Act
FL Statute § 70.001 - Bert J Harris Act

1) Applicable when “laws, regulations, and ordinances…inordinately burden, restrict, or limit private property rights without amounting to a taking”
   • “Separate and distinct cause of action from the law of takings”
   • “Provides for relief, or payment of compensation, when law, regulation, or ordinance…unfairly affects real property.”

2) “When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner…is entitled to relief”

3) Only applied prospectively from enactment in 1995
Oregon Measures 37 & 49

Measure 49 fixes the flaws of Measure 37
Oregon Measure 37

1) Applied both to new and existing land use regulations
   - "If…restricts the use of private real property of any interest therein and has the effect of reducing the fair market value of the property…then the owner of the property shall be paid just compensation"

2) Very limited exceptions:
   - Restrictions which prohibit commonly and historically recognized public nuisances
   - Regulations such as building and fire codes which protect public health and safety
Oregon Measure 49

1) “If a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations”

2) Same exceptions:
   - Restrictions which prohibit commonly and historically recognized public nuisances
   - Regulations such as building and fire codes which protect public health and safety
States with % Diminution Standard
Texas Private Real Property Rights Preservation Act
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Defines “taking” as:

a) A Constitutional taking; or

b) “A governmental action that:

1) affects an owner’s real property...in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the governmental action; and

2) “is the producing cause of a reduction of at least 25% in the market value of the affected private real property” determined by comparing the market value of the property with and without the governmental action.
Impact Assessment
States with Impact Assessment
Example Impact Assessment Language

North Dakota Code § 28-32-09. Takings assessment
1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property which:

   a. Assesses the likelihood that the proposed rule may result in a taking.

   b. Clearly and specifically identify the purpose of the proposed rule.

   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals.

   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

   e. Identify the source of payment within the budget for any ordered compensation.

   f. Certify that the benefits of the proposed rule exceed the estimated compensation.
Eminent Domain Restrictions

Don’t look at it as a mugging, Think of it as me exerting eminent domain on your wallet
Eminent Domain Restrictions
The Effect

• State legislation has had an impact on local government authority

• “Chilling Effect”

• Impact varies widely from state to state
Impact on Local Regulatory Authority

- High Impact
- Some Impact
- No Impact