

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
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As Engrossed: S2/28/13 H3/28/13
A Bill

SENATE BILL 367

By: Senators J. Hendren, Bledsoe, A. Clark, J. Dismang, Hester, Holland, J. Hutchinson, Irvin, B. King,
D. Sanders

By: Representatives D. Altes, Baine, Ballinger, Barnett, Collins, Cozart, Davis, Deffenbaugh, C. Douglas,
D. Douglas, Gossage, Harris, Mayberry, Wren

For An Act To Be Entitled

AN ACT TO ADDRESS THE PROTECTION OF PRIVATE PROPERTY;
AND FOR OTHER PURPOSES.

Subtitle

TO ADDRESS THE PROTECTION OF PRIVATE
PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings.

(a) From time to time, state and local regulatory programs have the effect of reducing the market value of private property.

(b) When state and local regulatory programs reduce the market value of private property and do not through their implementation abate a public nuisance affecting the public health, safety, morals or general welfare, it is fair and appropriate that the state or the locality compensate the property owner for the loss in market value of the property caused by the implementation of the regulatory program.

(c) Compensation to the property owner is also fair and appropriate in cases involving regulatory programs which abate a public nuisance when the property owner neither contributed to the public nuisance, acquired the property knowing of the public nuisance, nor acquired the property under circumstances in which the property owner should have known about the nuisance based upon prevailing community standards.



(d) In order to establish a fair and equitable compensation system to address these stated public policy concerns and findings, there is hereby established a compensation system in this act.

SECTION 2. Arkansas Code Title 18, Chapter 15, is amended to add an additional subchapter to read as follows:

Subchapter 17 - Private Property Protection Act

18-15-1701. Title.

This subchapter shall be known and may be cited as the "Private Property Protection Act".

18-15-1702. Definitions.

As used in this subchapter:

(1) "Real property" means real property, the use of which is directly controlled or regulated by a regulatory program; and

(2) "Regulatory program" means any rule, regulation, law, or ordinance that affects the fair market value of real property. Such regulatory programs include without limitation moratoriums on growth, aesthetic or scenic districts, environmental districts, overlay districts, green space ordinances, landscape ordinances, tree ordinances, land use planning programs, or zoning programs.

18-15-1703. Inverse condemnation.

(a) Whenever implementation by the state or any of its political subdivisions of any regulatory program operates to reduce by at least *twenty-five percent (25%)* the fair market value of real property for the uses permitted at the time the owner acquires the title, or on the effective date of this act, whichever is later, the property shall be deemed to have been taken for the use of the public.

(b)(1) The owner or user shall have the right to require condemnation by and adequate compensation from the governmental unit, or units when more than one (1) governmental unit is involved, imposing the regulation resulting in decreased value, or to receive compensation for the reduction in value caused by government action, and in either case to have the compensation determined by a jury.

(2) When more than one (1) governmental unit is involved, the court shall determine the proportion each unit shall be required to contribute to the compensation.

(3) Compensation is required under this section only in instances where the fair market value of the property is reduced by at least twenty-five percent (25%).

(c)(1) Governmental units subject to the provisions of this subchapter shall not make waiver of the provisions of this subchapter a condition for approval of the use of real property or the issuance of any permit or other entitlement. Plaintiffs may accept an approval of use, permit, or other entitlement granted by the governmental unit without compromising their rights under this subchapter if:

(A) A written reservation of rights is made at the time of acceptance of the authorization, permit, or other entitlement; or

(B) By oral statement made before the governmental unit granting the authorization, permit, or other entitlement at a public meeting at which the governmental unit renders its decision.

(2) The owner or user may make his or her reservation in either or both forms.

(d) When any regulatory program resulting from a zoning ordinance operates to change a permitted use and the fair market value of the affected real property is the same or greater than before the effective date of the implementation of the regulatory program, compensation shall not be paid under this subchapter.

(e) This subchapter does not apply to an owner or user of real property if the regulatory program does not directly apply to the real property of the owner or user.

(f) This subchapter does not apply to laws or rules within the jurisdiction of the State Health Officer or regulatory activities of the Arkansas Pollution Control and Ecology Commission, the Arkansas Department of Environmental Quality, the Arkansas Livestock and Poultry Commission, or the State Plant Board under delegated or authorized programs or approved plans under federal law.

(g) This subchapter does not apply to an eminent domain proceeding to which the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. § 61, as in

effect on January 1, 2013, applies.

(h) This subchapter does not apply to an eminent domain proceeding undertaken by a municipality under applicable law as in effect on January 1, 2013.

18-15-1704. Nuisance matters.

(a) Compensation shall not be required under this subchapter if the regulatory program is an exercise of the police power to prevent uses noxious or harmful to the health and safety of the public.

(b) A use shall be deemed a noxious use if it amounts to a public nuisance.

(c) Determination by the governmental unit or units involved that a use is a noxious use or poses a demonstrable harm to public health and safety is not binding upon the court.

(d) This subchapter does not apply to laws or rules within the jurisdiction of the State Health Officer.

18-15-1705. Statute of limitations.

(a)(1) The statute of limitations for actions brought under this subchapter is under § 16-56-115.

(2) The statute of limitations begins upon the final administrative decision implementing the regulatory program affecting plaintiffs' property.

(b) A program is implemented with respect to an owner's or user's property when actually applied to that property.

18-16-1706. Regulatory rollback.

(a)(1) If the governmental unit exercising inverse condemnation under this subchapter is unwilling or unable to pay the costs awarded, it may relax the land use planning, zoning, or other regulatory program as it affects the plaintiff's land and all similarly-situated land in the jurisdiction in which the regulatory program is in effect to the level of regulation in place as of the time the owner acquired title or on the effective date of this act, whichever is later.

(2) In this event, the governmental unit is liable to the plaintiff landowner or user for reasonable and necessary costs of the inverse

condemnation action, plus any actual and demonstrable economic losses caused to the plaintiff by regulation during the period in which it was in effect.

(b) This section does not affect any remedy which is constitutionally required.

(c)(1) Notwithstanding other law, the governmental unit subject to an award of compensation under this subchapter may elect to relax the land use planning, zoning, or other regulatory program without further public hearings, proceedings, or environmental review.

(2) If the governmental unit elects to relax the affected regulatory program, the previous program shall automatically be in effect.

18-15-1707. Legal challenges.

Nothing in this subchapter precludes property owners from bringing legal challenges to regulatory programs affected by this subchapter in instances in which the regulation caused diminution in value of the property for the uses permitted at the time the owner acquired title, or the effective date of this act, whichever is later, nor shall it preclude property owners from bringing legal challenges to regulatory programs under other law.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that some actions by the state and its political subdivisions reduce the value of real property; that the property owners now are not being compensated for that reduction in value; and that this act is immediately necessary because the inequity needs to be eliminated as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/J. Hendren