

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

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 333

By: Senator J. Hendren

For An Act To Be Entitled

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

Subtitle

TO ADDRESS THE PROTECTION OF PRIVATE
PROPERTY; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

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

(2) When state and local regulatory programs reduce the market value of private property and do not abate through their implementation 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;

(3) Compensation to the property owner is also fair and appropriate in cases involving regulatory programs that abate a public nuisance when the property owner did not contribute to the public nuisance, did not acquire the property knowing of the public nuisance, or did not acquire the property under circumstances in which the property owner should have known about the public nuisance based upon prevailing community standards; and

(4) In order to establish a fair and equitable compensation



system to address these stated public policy concerns and findings, the General Assembly should establish a compensation system.

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)(A) "Regulatory program" means a rule, regulation, law, or ordinance that affects the fair market value of real property.

(B) "Regulatory program" includes without limitation moratoriums on growth, aesthetic or scenic districts, environmental districts, overlay districts, green space ordinances, landscape ordinances, tree ordinances, land use planning programs, and zoning programs.

18-15-1703. Inverse condemnation – Application.

(a) When implementation of a regulatory program by the state or any of its political subdivisions operates to reduce by at least ten percent (10%) 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 subchapter, 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:

(A) Either:

(i) 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

(ii) Receive compensation for the reduction in value

caused by government action; and

(B) 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 when the fair market value of the property is reduced by at least ten percent (10%).

(c)(1)(A) A governmental unit subject to 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 a permit or other entitlement.

(B) An owner or user may accept an approval of use, permit, or other entitlement granted by the governmental unit without compromising his or her rights under this subchapter if:

(i) The owner or user makes a written reservation of rights at the time of acceptance of the authorization, permit, or other entitlement; or

(ii) The owner or user makes an 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 allowed under this subsection.

(d) When a 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:

(1) An owner or user of real property if the regulatory program does not directly apply to the real property of the owner or user;

(2) 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;

(3) An eminent domain proceeding to which the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq., as in effect on January 1, 2015, applies; or

(4) An eminent domain proceeding undertaken by a municipality under applicable law as in effect on January 1, 2015.

18-15-1704. Nuisance matters.

(a) Compensation is not 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 is 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.

18-15-1705. Statute of limitations.

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

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

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

18-15-1706. 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 owner's or user's land and all similarly-situated land in the jurisdiction in which the regulatory program is in effect to the previous regulatory program.

(2) If a governmental unit relaxes a regulatory program under this section, the governmental unit is liable to the owner or user for reasonable and necessary costs of the inverse condemnation action, plus any actual and demonstrable economic losses caused to the owner or user by regulation during the period in which it was in effect.

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

(c)(1) Notwithstanding other law, the governmental unit subject to an award of compensation for inverse condemnation 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 regulatory program shall automatically be in effect.

18-15-1707. Legal challenges.

This subchapter does not preclude a property owner from bringing a legal challenge:

(1) To a regulatory program affected by this subchapter if 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 subchapter, whichever is later; or

(2) Under other law.

SECTION 3. 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.