

ARKANSAS SENATE
90th General Assembly - Regular Session, 2015
Amendment Form

Subtitle of Senate Bill No. 757

TO RESTRICT THE ABILITY OF LOCAL GOVERNMENTS AND OTHER ENTITIES TO REGULATE
PRIVATE PROPERTY RIGHTS.

Amendment No. 1 to Senate Bill No. 757

Amend Senate Bill No. 757 as originally introduced:

Page 1, line 12, delete "UTILITIES;" and substitute "UTILITIES; TO DECLARE AN EMERGENCY;"

AND

Delete the subtitle in its entirety and substitute:
"TO RESTRICT THE ABILITY OF LOCAL
GOVERNMENTS AND OTHER ENTITIES TO
REGULATE PRIVATE PROPERTY RIGHTS; AND TO
DECLARE AN EMERGENCY."

AND

Page 2, delete line 18, and substitute the following:

"As used in this subchapter:

(1) "Fair market value" means the price a willing buyer would pay a willing seller after considering all factors in the marketplace that influence the price of private real property;

(2) "Governmental unit" means the state and any of its agencies or political subdivisions;

(3) "Owner" means a person with legal or equitable title to affected private real property at the time a taking occurs;"

AND

Page 2, line 19, delete "(1)" and substitute "(4)"

AND

Page 2, line 20, delete "and"

AND



Page 2, line 21, delete "(2)" and substitute "(5)"

AND

Page 2, delete line 26, and substitute the following:

"tree ordinances, land use planning programs, and zoning programs by a governmental unit when the regulatory program is not designed to carry out or protect the adopted plans of a governmental unit that are designed to protect the health, safety, or welfare of the citizens.

(C) "Regulatory program" does not include a moratorium enacted to give a municipality time to adopt or amend plans and ordinances; and

(6) "Territorial jurisdiction" means the territorial jurisdiction of a municipality as described in § 14-56-413."

AND

Page 2, delete lines 28 through 36, and substitute the following:

"18-15-1703. Taking – Application.

(a)(1) An owner of real property asserting a taking under this subchapter shall bring a cause of action in circuit court claiming that the implementation of a regulatory program by a governmental unit has permanently reduced by at least twenty percent (20%) the fair market value of the real property.

(2) The reduction in the fair market value of the real property shall be determined by comparing the fair market value of the real property if the regulatory program is not in effect and the fair market value of the real property determined if the regulatory program is in effect, considering the uses permitted at the time the owner acquired the title or on the effective date of this subchapter, whichever is later.

(3) Upon a preponderance of the evidence, the real property shall be deemed to have been taken for the use of the public.

(b) A jury shall determine the amount of the difference in fair market value.

(c)(1) Upon a finding that real property has been taken for the use of the public, the governmental unit may either:

(A)(i) Pay compensation for the reduction in value caused by the regulatory program.

(ii) If a governmental unit elects to pay compensation to the private real property owner under this subdivision

(c)(1)(A):

(a) The court that rendered the judgment in the suit or the state agency that issued the final order or decision in the case shall withdraw the part of the judgment or final decision or order rescinding the regulatory program; and

(b) The governmental unit shall pay to the owner the damages determined in the judgment or final order by the thirtieth day after the date the judgment is rendered or the final decision or order is issued.

(iii) When more than one (1) governmental unit is involved, the court shall determine the proportion each governmental unit

shall be required to contribute to the compensation; or

(B) Invalidate all or part of the regulatory program.

(2) Compensation is required under this section only when the fair market value of the real property is reduced by at least twenty percent (20%)."

AND

Page 3, delete lines 1 through 27

AND

Page 3, delete lines 34 and 35, and substitute the following:

"(1) An owner of real property if the real property is not the direct subject of the regulatory program;"

AND

Page 4, line 7, delete "or"

AND

Page 4, delete lines 8 through 18, and substitute the following:

"(4) An eminent domain proceeding undertaken by a governmental unit under applicable law;

(5) A lawful forfeiture or seizure of contraband under Arkansas Code, Title 5;

(6) A lawful seizure of property as evidence of a crime or violation of law;

(7) An action, including an action of a governmental unit, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a governmental unit that is reasonably taken to fulfill an obligation mandated by state law;

(8) The discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(9) An action taken to prohibit or restrict a condition or use of private real property if the governmental entity reasonably determines that the condition or use constitutes a public or private nuisance as determined by background principles of nuisance and property law of this state;

(10) An action taken out of a reasonable good faith belief that the action is necessary to prevent an immediate threat to life or property;

(11) A rule, regulation, or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(12) An action taken by a governmental unit:

(A) To regulate construction in an area designated under law as a floodplain;

(B) To regulate onsite sewage facilities;

(C) To prevent waste of or protect rights of owners of interest in groundwater;

(D) To prevent subsidence; or
(E) Under its police power to make laws and regulations
for the benefit of its communities;

(13) The appraisal of property for purposes of ad valorem
taxation;

(14) An action that is taken in response to a threat to public
health and safety that is designed to advance the health and safety purpose;
or

(15) An action by a municipality unless the regulatory program
has effect in the territorial jurisdiction of the municipality, excluding
annexation, and that enacts or enforces a regulatory program that does not
impose identical requirements or restrictions in the entire territorial
jurisdiction of the municipality."

AND

Page 4, delete lines 20 through 22, and substitute the following:

"18-15-1704. Statute of limitations.

(a)(1) A lawsuit under this subchapter shall be filed by the one-
hundred-eightieth day after the date the private real property owner knew or
should have known that the regulatory program restricted or limited the
owner's right in the private real property."

AND

Page 4, delete lines 29 through 36, and substitute the following:

"18-15-1705. Cumulative remedies.

(a) The remedies provided under this chapter are not exclusive and are in
addition to other procedures or remedies provided by law.

(b) A person shall not recover under this chapter and also recover under
another law or in an action at common law for the same economic loss.

18-15-1706. Appeals.

An appeal from the final judgment of the cause of action in § 18-15-
1703 may be taken according to law."

AND

Page 5, delete lines 1 through 21

AND

Page 5, delete lines 31 and 32, and substitute the following:

"(3) Has not been directed or designated to construct an
electric transmission facility by a regional transmission organization."

AND

Immediately following SECTION 3, add an additional section to read as follows:

"SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
General Assembly of the State of Arkansas that some actions by a governmental

unit 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."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hendren

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Secretary