

1 State of Arkansas As Engrossed: S3/17/15 H3/24/15
2 90th General Assembly **A Bill**
3 Regular Session, 2015

SENATE BILL 757

4
5 By: Senators J. Hendren, Files, Hester
6

7 **For An Act To Be Entitled**

8 AN ACT TO RESTRICT THE ABILITY OF LOCAL GOVERNMENTS
9 AND OTHER ENTITIES TO REGULATE PRIVATE PROPERTY
10 RIGHTS; TO PROTECT PRIVATE PROPERTY RIGHTS; TO CREATE
11 THE PRIVATE PROPERTY PROTECTION ACT; TO REGULATE THE
12 POWER OF EMINENT DOMAIN BY CERTAIN PUBLIC UTILITIES;
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
14

15
16 **Subtitle**

17 TO RESTRICT THE ABILITY OF LOCAL
18 GOVERNMENTS AND OTHER ENTITIES TO
19 REGULATE PRIVATE PROPERTY RIGHTS; AND TO
20 DECLARE AN EMERGENCY.
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22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. DO NOT CODIFY. Legislative findings.

26 The General Assembly finds that:

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

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

35 (3) Compensation to the property owner is also fair and
36 appropriate in cases involving regulatory programs that abate a public



1 nuisance when the property owner did not contribute to the public nuisance,
2 did not acquire the property knowing of the public nuisance, or did not
3 acquire the property under circumstances in which the property owner should
4 have known about the public nuisance based upon prevailing community
5 standards; and

6 (4) In order to establish a fair and equitable compensation
7 system to address these stated public policy concerns and findings, the
8 General Assembly should establish a compensation system.

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

12 Subchapter 17 – Private Property Protection Act

13
14 18-15-1701. Title.

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

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18 18-15-1702. Definitions.

19 As used in this subchapter:

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

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

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

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

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

31 (B) "Regulatory program" includes without limitation
32 moratoriums on growth, aesthetic or scenic districts, environmental
33 districts, overlay districts, green space ordinances, landscape ordinances,
34 tree ordinances, land use planning programs, and zoning programs by a
35 governmental unit when the regulatory program is not designed to carry out or
36 protect the adopted plans of a governmental unit that are designed to protect

1 the health, safety, or welfare of the citizens.

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

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

7
8 18-15-1703. Taking – Application.

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

14 (2) The reduction in the fair market value of the real property
15 shall be determined by comparing the fair market value of the real property
16 as if the regulatory program is not in effect and the fair market value of
17 the real property determined as if the regulatory program is in effect.

18 (3) To assert that a taking has occurred, the regulatory program
19 must have been implemented at the time the owner acquired title or after the
20 effective date of this subchapter, whichever is later.

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

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

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

27 (A) Pay compensation for the reduction in fair market
28 value caused by the regulatory program; or

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

30 (2) Compensation is required under this section only when the
31 fair market value of the real property is reduced by at least twenty percent
32 (20%).

33 (3) If a governmental unit elects to pay compensation to the
34 private real property owner under subdivision (c)(1)(A) of this section:

35 (A) The court that rendered the judgment in the lawsuit or
36 the state agency that issued the final order or decision in the case shall

1 withdraw the part of the judgment or final decision or order rescinding the
2 regulatory program;

3 (B) The governmental unit shall pay to the owner the
4 damages determined in the judgment or final order by the thirtieth day after
5 the date the judgment is rendered or the final decision or order is issued;
6 and

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

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

15 (e) This subchapter does not apply to:

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

18 (2) Laws or rules within the jurisdiction of the State Health
19 Officer or regulatory activities of the Arkansas Pollution Control and
20 Ecology Commission, the Arkansas Department of Environmental Quality, the
21 Arkansas Livestock and Poultry Commission, the Arkansas Public Service
22 Commission, or the State Plant Board under delegated or authorized programs
23 or approved plans under federal law;

24 (3) An eminent domain proceeding to which the Uniform Relocation
25 Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §
26 4601 et seq., as in effect on January 1, 2015, applies;

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

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

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

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

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

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

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

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

14 (12) An action taken by a governmental unit:

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

17 (B) To regulate onsite sewage facilities;

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

20 (D) To prevent subsidence; or

21 (E) Under its police power to make laws and regulations
22 for the benefit of its communities;

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

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

27 or

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

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34 18-15-1704. Statute of limitations.

35 (a)(1) A lawsuit under this subchapter shall be filed by the one-
36 hundred-eightieth day after the date the private real property owner knew or

1 should have known that the regulatory program restricted or limited the
2 owner's right in the private real property.

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

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

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9 18-15-1705. Cumulative remedies.

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

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

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15 18-15-1706. Appeals.

16 An appeal from the final judgment of the cause of action in § 18-15-
17 1703 may be taken according to law.

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19 SECTION 3. Arkansas Code Title 23, Chapter 18, Subchapter 1, is
20 amended to add an additional section to read as follows:

21 23-18-108. Eminent domain for transmission lines – Market value.

22 (a) As used in this section, "electric utility" means an electric
23 utility that:

24 (1) Is not a municipally owned utility system;

25 (2) Is under the jurisdiction of the Arkansas Public Service
26 Commission;

27 (3) Primarily transmits electricity and does not generate or
28 distribute electricity; and

29 (4) Has not been directed or designated to construct an electric
30 transmission facility by a regional transmission organization.

31 (b) If an electric utility acquires land from a private property owner
32 through eminent domain for purposes of a transmission line, then the electric
33 utility shall compensate the private property owner at three (3) times the
34 market value of the property taken by eminent domain.

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36 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the

1 General Assembly of the State of Arkansas that some actions by a governmental
2 unit reduce the value of real property; that the property owners now are not
3 being compensated for that reduction in value; and that this act is
4 immediately necessary because the inequity needs to be eliminated as soon as
5 possible. Therefore, an emergency is declared to exist, and this act being
6 immediately necessary for the preservation of the public peace, health, and
7 safety shall become effective on:

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

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

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

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15 /s/J. Hendren
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