

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Dawson

A Bill

HOUSE BILL 1104

For An Act To Be Entitled

"ARKANSAS FORESTRY ACTIVITY ACT"

Subtitle

"ARKANSAS FORESTRY ACTIVITY ACT"

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

SECTION 1. Short title. This chapter shall be known and may be cited as the "Arkansas Forestry Activity Act."

SECTION 2. Purpose. The purpose of this chapter is to establish the policy of the State of Arkansas as allowing owners of property classified as forest land and owners of timber, wood and forest products on forest land owned by another to conduct forestry activities, or if the State of Arkansas prohibits or severely limits such forestry activities, to compensate the owners for their loss.

SECTION 3. Declaration of policy. It is declared the policy of the State of Arkansas to conserve, protect and encourage the continued use, development and improvement of forest land within the state for the production of timber, wood and forest products including nongame species. The vital and significant contributions of forestry activities to the economy of the State of Arkansas and the use of land in the state as forest lands are essential factors in providing for the favorable quality of life in the State of Arkansas.

SECTION 4. Definitions. For the purposes of this act, the following words and phrases shall have the meanings ascribed to them in this section:

1 (a) "Act" shall mean the Arkansas Forestry Activity Act.

2 (b) "Forest land" means any land in the state devoted to the growing
3 of trees or the commercial production of timber, wood or forest products
4 including nongame species where the land is classified by the county as
5 forest, agricultural or open land and being used as forest land in the
6 performance of forestry activities.

7 (c) "Forestry activities" means any activity on forest land associated
8 with the reforesting, growing, managing, protecting, and harvesting of
9 timber, wood and forest products including nongame species.

10 (d) "Inverse condemnation" means any action by the State of Arkansas
11 that prohibits or severely limits the right of an owner to conduct forestry
12 activities on forest land. Inverse condemnation shall not include an action
13 by the state that is:

14 (i) A taking as defined in paragraph (k) of this section;

15 (ii) A result of police power to prohibit activities that are
16 noxious in fact or are harmful to the public health and safety; or

17 (iii) An order issued as a result of a violation of state law; or

18 (iv) An action by the Arkansas Game and Fish Commission.

19 (e) "Noxious in fact" means an activity that constitutes a public
20 nuisance under common law.

21 (f) "Owner" means the holder of legal or equitable title to:

22 (i) Forest land or timber, wood or forest products, including
23 the management of nongame species thereon; or

24 (ii) Personal property rights associated with conducting
25 forestry activities on forest land.

26 (g) "Prohibits or severely limits" means to reduce the fair market
27 value of forest land (or any part or parcel thereof) or timber, wood or
28 forest products including nongame species (or any part or parcel thereof) or
29 personal property rights associated with conducting forestry activities on
30 the forest land by more than forty percent (40%) of their value before the
31 action.

32 (h) "Public health and safety" means actions by the State of Arkansas
33 based upon its police powers. Public health and safety actions prohibiting
34 or severely restricting forestry activities shall be:

35 (i) Taken only in response to real and substantial threats to

1 public health and safety;

2 (ii) Designated to significantly advance the health and safety
3 purpose; and

4 (iii) No greater than necessary to achieve the health and safety
5 purpose.

6 (i) "State of Arkansas" or "state" means the State of Arkansas, any
7 county, municipality or any political subdivision thereof.

8 (j) "State law" means any statute, rule, regulation, ordinance,
9 resolution or similar action by the State of Arkansas validly existing and as
10 interpreted on the effective date of this act. State law shall not include:

11 (i) Any judicial or executive interpretation of a state law
12 after the effective date of this act that prohibits or severely limits the
13 conducting of forestry activities that were not prohibited or severely
14 limited before the effective date of this act; or

15 (ii) Any legislative amendment, interpretation or enactment by
16 the state after the effective date of this act that prohibits or severely
17 limits the conducting of forestry activities (except such actions that are
18 the result of police power to prohibit activities that are noxious in fact or
19 are harmful to the public health and safety).

20 (k) "Taking" means any action by the State of Arkansas under the Fifth
21 Amendment to the United States Constitution, the Fourteenth Amendment to the
22 United States Constitution, or Article 2, Section 22 of the Arkansas
23 Constitution where the owner is entitled to just compensation for the fair
24 market value of the owner_s property or some part thereof (or required to
25 forfeit the property in accordance with state forfeiture laws). Taking shall
26 include the formal exercise of the power of eminent domain, the seizure or
27 forfeiture of property for violations of law or as evidence in criminal
28 proceedings or the issuance of orders authorized by statute or issued by a
29 state agency or court of law for violations of state law. Taking shall not
30 include the repealing of any state action that lessens interference with the
31 conduct of forestry activities.

32 (l) "Personal property" means any interest acquired by deed, lease,
33 contract or agreement in standing or severed timber, wood or forest products.

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35 SECTION 5. Inverse condemnation.

1 (1) Right of action: Any action by the State of Arkansas that
2 constitutes an inverse condemnation of forest land, timber, wood or forest
3 products, including nongame species or personal property rights associated
4 with conducting forestry activities, shall give the owner a cause of action
5 for the payment of awards against the entity or entities causing the inverse
6 condemnation, notwithstanding any provision of this act to the contrary. The
7 owner shall have the right to file an inverse condemnation action before the
8 court having jurisdiction over the county in which the forest land is
9 located. A determination that a use is noxious in fact or possesses a
10 demonstrable harm to the public health and safety is not binding upon a court
11 of law and a judicial review of the action shall be de novo.

12 (2) Subsequent repeal or rescission by the state: The entity sued in
13 any inverse condemnation action shall have the right to repeal the action
14 complained of in the suit before a decision becoming final. Such repeal
15 shall entitle the owner to recover its damages arising out of the action
16 before the repeal, and, in the discretion of the court, its costs of
17 litigation (including reasonable attorney and expert witness fees).
18 Subsequent repeal of the action by the state after a decision has become
19 final shall not entitle the state to refuse payment, obtain a return of
20 payment (if made) or result in ownership in the property by the state (absent
21 a taking of one hundred percent (100%) of the property).

22 (3) Payment of awards for inverse condemnation: Payment of awards for
23 inverse condemnation shall be made by the entity or entities as determined by
24 the court. Payment shall not result in ownership in the property by the
25 state (absent a taking of one hundred percent (100%) of the property). If
26 more than one (1) entity is involved, the payment shall be made in the
27 percentage of liability as allocated by the trier of fact in the inverse
28 condemnation action. If any county, municipality, or political subdivision
29 of the state whose actions constitute inverse condemnation as defined in this
30 act are unable to pay the costs awarded, then the action causing the inverse
31 condemnation shall be rescinded within sixty (60) days after the judgment of
32 the court.

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34 SECTION 6. Conditional waivers prohibited. The state shall not make a
35 waiver of the provisions of this act a condition for approval of the use or

1 continued use of real property or the issuance of any permit or other
2 entitlement. The acceptance by an owner of any approval of use, continued
3 use, permit or other entitlement shall not constitute a waiver of the rights
4 of the owner to compensation for inverse condemnation.

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6 SECTION 7. Constitutional requirements and legal challenges. This
7 chapter shall not affect any right or remedy granted an owner under the
8 United States or Arkansas Constitutions or the laws of the United States and
9 the State of Arkansas. Nothing in this chapter shall be construed to
10 preclude an owner from bringing a legal challenge and seeking remedies at law
11 or equity arising out of any action of the State of Arkansas regardless of
12 whether the action constituted a taking, an inverse condemnation, or resulted
13 in a diminution in value of forty percent (40%) or less.

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15 SECTION 8. All provisions of this act of a general and permanent
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
17 Code Revision Commission shall incorporate the same in the Code.

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19 SECTION 9. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 10. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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