

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

HOUSE BILL 1726

4 By: Representatives Stewart, Hendren, Allen, Ammons, Angel, Baker, Bryant,
5 Bush, Calhoun, Cash, Dawson, Delay, Fletcher, George, Hall, G. Hendrix,
6 Hinshaw, Horn, Hunton, Johnson, Kidd, Laverty, Molinaro, Mullenix, Pappas,
7 Purdom, Rorie, Sheppard, Simmons, Simon, Thomas, Wallis, Watts, Whorton,
8 Wilkinson, Willems, Wyrick, and Young

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For An Act To Be Entitled

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"PRIVATE PROPERTY PROTECTION ACT"

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Subtitle

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"PRIVATE PROPERTY PROTECTION ACT"

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

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19 SECTION 1. Short Title. This act shall be known and may be cited as
20 the Private Property Protection Act.

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22 SECTION 2. Legislative Findings & Declarations. The legislature finds
23 and declares that:

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

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

32 (C) Compensation to the property owner is also fair and appropriate in
33 cases involving regulatory programs which abate a public nuisance when the
34 property owner neither contributed to the public nuisance nor acquired the
35 property knowing of the public nuisance nor acquired the property in

1 circumstances where the property owner should have known about the nuisance
2 based upon prevailing community standards.

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

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7 *SECTION 3. Definitions. As used in this act:*

8 (a) *Real property means real property, the use of which is directly*
9 *controlled or regulated by a regulatory program.*

10 (b) *Regulatory program means any rule, regulation, law or ordinance*
11 *that effects the fair market value of real property. Such regulatory*
12 *programs include, but are not limited to, no growth/moratoriums,*
13 *esthetic/scenic, environmental, overlay districts, green space/landscape/tree*
14 *ordinances, land use planning or zoning programs.*

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16 *SECTION 4. Inverse condemnation.*

17 (A) *Regulatory takings. Whenever implementation by the state or any*
18 *of its political subdivisions of any regulatory program operates to reduce by*
19 *at least ten percent (10%) the fair market value of real property for the*
20 *uses permitted at the time the owner acquired the title, or on the effective*
21 *date of this act, whichever is later, the property shall be deemed to have*
22 *been taken for the use of the public.*

23 (B) *Compensation Required. The owner or user shall have the right to*
24 *require condemnation by and just compensation from the governmental unit, or*
25 *units, when more than one governmental unit is involved, imposing the*
26 *regulation resulting in decreased value, or to receive compensation for the*
27 *reduction in value caused by government action, and in either case to have*
28 *such compensation determined by a jury. When more than one governmental unit*
29 *is involved, the court shall determine the proportion each unit shall be*
30 *required to contribute to the compensation. Compensation is required under*
31 *this section only in instances where the fair market value of the property is*
32 *reduced by at least ten percent (10%).*

33 (C) *Conditional waivers prohibited. Governmental units subject to the*
34 *provisions of this Act shall not make waiver of the provisions of this Act a*
35 *condition for approval of the use of real property or the issuance of any*

1 permit or other entitlement. Plaintiffs may accept an approval of use,
2 permit, or other entitlement granted by the governmental unit without
3 compromising their rights under this Act if:

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

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

9 (3) The owner or user may make his/her reservation in either or
10 both forms.

11 (D) *Increase in value. When any regulatory program resulting from a*
12 *zoning ordinance operates to change a permitted use and the fair market value*
13 *of the affected real property is the same or greater than before the*
14 *effective date of the implementation of the regulatory program, no*
15 *compensation shall be paid under this act.*

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17 SECTION 5. No compensation shall be required by virtue of this Act if
18 the regulatory program is an exercise of the police power to prevent uses
19 noxious in fact or demonstrable harm to the health and safety of the public.
20 A use shall be deemed a noxious use if, and only if, it amounts to a public
21 nuisance in fact. Determination by the governmental unit or units involved
22 that a use is a noxious use or poses a demonstrable harm to public health and
23 safety shall not be binding upon the court. Review of the governmental unit
24 or units_ determination shall be de novo. *The provisions of this act shall*
25 *not apply to laws or rules within the jurisdiction of the State Health*
26 *Officer.*

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28 SECTION 6. Statute of Limitations.

29 (A) Injuries to real property. The statute of limitations for actions
30 brought pursuant to this Act shall be that prescribed by Arkansas Code 16-56-
31 115. The statute of limitations shall begin to run upon the final
32 administrative decision implementing the regulatory program affecting
33 plaintiffs_ property.

34 (B) Implementation defined. A program is implemented with respect to
35 an owner_s or user_s property when actually applied to that property.

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2 SECTION 7. Regulatory rollback.

3 (A) Conditional relaxation authorized. If the governmental unit of
4 which inverse condemnation is successfully required under this Act is
5 unwilling or unable to pay the costs awarded, it may instead relax the land
6 use planning, zoning, or other regulatory program as it affects the
7 plaintiff_s land and all similarly situated land in the jurisdiction in which
8 the regulatory program is in effect to the level of regulation in place as of
9 the time the owner acquired title or on the effective date of this act, which
10 ever is later. In such event, the governmental unit shall be liable to the
11 plaintiff landowner or user for the reasonable and necessary costs of the
12 inverse condemnation action, plus any actual and demonstrable economic losses
13 caused the plaintiff by regulation during the period in which it was in
14 effect.

15 (B) Constitutional requirements. This section shall not be deemed to
16 affect any remedy which is constitutionally required.

17 (C) Relaxation procedure. Notwithstanding any other provision of law,
18 the governmental unit or units subject to an award of compensation under this
19 Act may elect to relax the land use planning, zoning, or other regulatory
20 program without further public hearings, proceedings, or environmental
21 review. If the governmental unit or units elect to so relax the affected
22 regulatory program, the previously effective program shall automatically be
23 in effect.

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25 SECTION 8. Legal challenges. Nothing in this Act shall be construed
26 to preclude property owners from bringing legal challenges to regulatory
27 programs affected by this Act in instances where the regulation caused
28 diminution in value of the property for the uses permitted at the time the
29 owner acquired title, or the effective date of this act, whichever is later,
30 nor shall it be construed to preclude property owners from bringing legal
31 challenges to regulatory programs affected by this Act based on other
32 provisions of law.

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34 SECTION 9. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

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3 SECTION 10. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

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9 SECTION 11. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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12 SECTION 12. *It is hereby found and determined by the General Assembly*
13 *that some actions by the state and its political subdivisions reduce the*
14 *value of real property; that the property owners are not now being*
15 *compensated for that reduction in value; and that this act so provides and*
16 *should go into effect immediately in order to eliminate the inequity as soon*
17 *as possible. Therefore, an emergency is hereby declared to exist and this*
18 *act being necessary for the immediate preservation of the public peace,*
19 *health and safety shall be in full force and effect from and after its*
20 *passage and approval.*

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/s/Rep. Stewart, et al

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