

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1977

4
5 By: Representatives Stewart, Hendren, Laverty, Milum, George, DeLay, Purdom, Sheppard, Simmons, Whorton, Cook, Hunton,
6 Jeffress, Wilkinson, Miller, Fuqua, Rodgers, Thomas, Bush, Northcutt, Bryant, Trammell, Rorie, Ammons, and Wood

For An Act To Be Entitled

"PRIVATE PROPERTY PROTECTION ACT."

Subtitle

"PRIVATE PROPERTY PROTECTION ACT."

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

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

20 SECTION 2. Legislative Findings & Declarations. The legislature finds
21 and declares that:

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

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

30 (C) Compensation to the property owner is also fair and appropriate in
31 cases involving regulatory programs which abate a public nuisance when the
32 property owner neither contributed to the public nuisance nor acquired the
33 property knowing of the public nuisance nor acquired the property in
34 circumstances where the property owner should have known about the nuisance
35 based upon prevailing community standards.

36 (D) In order to establish a fair and equitable compensation system to

1 address these stated public policy concerns and findings, there is hereby
 2 established a compensation system in this act.

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4 SECTION 3. Definitions. As used in this act:

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

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

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13 SECTION 4. Inverse condemnation.

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

20 (B) Compensation Required. The owner or user shall have the right to
 21 require condemnation by and just compensation from the governmental unit, or
 22 units, when more than one governmental unit is involved, imposing the
 23 regulation resulting in decreased value, or to receive compensation for the
 24 reduction in value caused by government action, and in either case to have
 25 such compensation determined by a jury. When more than one governmental unit
 26 is involved, the court shall determine the proportion each unit shall be
 27 required to contribute to the compensation. Compensation is required under
 28 this section only in instances where the fair market value of the property is
 29 reduced by at least twenty percent (20%).

30 (C) Conditional waivers prohibited. Governmental units subject to the
 31 provisions of this act shall not make waiver of the provisions of this act a
 32 condition for approval of the use of real property or the issuance of any
 33 permit or other entitlement. Plaintiffs may accept an approval of use,
 34 permit, or other entitlement granted by the governmental unit without
 35 compromising their rights under this act if:

36 (1) A written reservation of rights is made at the time of

1 acceptance of said authorization, permit, or other entitlement; or

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

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

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

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

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 24 SECTION 6. Statute of Limitations.

25 (A) Injuries to real property. The statute of limitations for actions
 26 brought pursuant to this act shall be that prescribed by Arkansas Code 16-56-
 27 115. The statute of limitations shall begin to run upon the final
 28 administrative decision implementing the regulatory program affecting
 29 plaintiffs property.

30 (B) Implementation defined. A program is implemented with respect to
 31 an owners or users property when actually applied to that property.

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 33 SECTION 7. Regulatory rollback.

34 (A) Conditional relaxation authorized. If the governmental unit of
 35 which inverse condemnation is successfully required under this act is
 36 unwilling or unable to pay the costs awarded, it may instead relax the land

1 use planning, zoning, or other regulatory program as it affects the
 2 plaintiffs land and all similarly situated land in the jurisdiction in which
 3 the regulatory program is in effect to the level of regulation in place as of
 4 the time the owner acquired title or on the effective date of this act, which
 5 ever is later. In such event, the governmental unit shall be liable to the
 6 plaintiff landowner or user for the reasonable and necessary costs of the
 7 inverse condemnation action, plus any actual and demonstrable economic losses
 8 caused the plaintiff by regulation during the period in which it was in
 9 effect.

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

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

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

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 27 SECTION 9. All provisions of this act of a general and permanent nature
 28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 29 Revision Commission shall incorporate the same in the Code.

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 31 SECTION 10. If any provision of this act or the application thereof to
 32 any person or circumstance is held invalid, such invalidity shall not affect
 33 other provisions or applications of the act which can be given effect without
 34 the invalid provision or application, and to this end the provisions of this
 35 act are declared to be severable.

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

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

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