

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

As Engrossed: S3/5/97

A Bill

SENATE BILL 448

4
5 By: Senator Scott

For An Act To Be Entitled

9 "AN ACT PERTAINING TO STATE ACTION AFFECTING FORESTRY
10 LANDS; AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT PERTAINING TO STATE ACTION
14 AFFECTING FORESTRY LANDS; AND FOR OTHER
15 PURPOSES."

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

19 SECTION 1. It is declared the policy of the State of Arkansas to
20 conserve, protect and encourage the continued use, development and improvement
21 of forest land within this state for the production of timber, wood and forest
22 products. The vital and significant contributions of forestry activities to
23 the economy of the State of Arkansas and the use of land in this state as
24 forest lands are essential factors in providing for the favorable quality of
25 life in the State of Arkansas. Therefore, it is determined and declared that
26 activities related to forest land are within the public interest.

28 SECTION 2. For purposes of this act:

29 (1) "Forest activities" means any activity on forest land associated
30 with the reforestation, growing, managing, protecting, and harvesting of timber,
31 wood, and forest products.

32 (2) "Forest land" means any land in the state devoted to the growing of
33 trees or the commercial production of timber, wood, or forest products that is
34 located outside the corporate limits of any municipality.

35 (3) "Owner" means a person owning an interest in forest land at the time
36 the state action becomes effective as to the forest land in which the owner

1 owns an interest.

2 (4) "Prohibits or limits" means an existent reduction of twenty percent
3 (20%) or more of the fair market value of forest land, or any portion thereof,
4 or property rights thereto associated with conducting forestry activities on
5 forest land before the state action as determined by comparing the market
6 value of the property as if the state action is not in effect and the market
7 value of the property determined as if the state action is in effect.

8 (5) "State action" means annexation of territory by this state or the
9 issuance of a rule, regulation, policy, or guideline promulgated for or by
10 this state, or an order or other legally binding directive having the force of
11 law or capable of being enforced by government which prohibits or limits the
12 right of an owner to conduct forestry activities on forestry land, or an
13 action that imposes a physical inversion or requires a dedication or exaction
14 of private real property. State action does not mean the following:

15 (A) A formal exercise of the power of eminent domain.

16 (B) A result of police power to prohibit activities that are harmful
17 to the public safety and health.

18 (C) An order issued as a result of a violation of law.

19 (D) The adoption, enactment, repeal, or amendment of a statute or
20 resolution by the General Assembly.

21 (E) A state action directed or mandated by an order of a court of
22 competent jurisdiction.

23 (F) Law enforcement activity involving the seizure or forfeiture of
24 private forest land for a violation of law or as evidence in a criminal
25 proceeding.

26 (G) Action taken to enforce a mortgage or other valid security
27 device.

28 (H) A rule or proclamation adopted for the purpose of regulating
29 water safety, hunting, fishing, or control of nonindigenous or exotic aquatic
30 resources.

31 (I) The acquisition by purchase or donation of conservation easements
32 by any agency of this State.

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34 SECTION 3. (a) The state shall prepare a written assessment of any
35 proposed state action prior to taking any proposed action that will likely
36 result in a diminution in value of forest land.

1 (b) The written assessment shall include written analyses and
2 conclusions concerning:

3 (1) A clear and specific identification of the state action and the
4 purpose of the state action.

5 (2) Whether the state action would constitute a physical invasion or
6 occupation of forest land.

7 (3) The length of time that the state action would interfere with
8 the use of forest land.

9 (4) Whether the state action would result in a diminution in value
10 as to the affected forest land and, if so, the extent thereof.

11 (5) The extent to which the state action would interfere with the
12 potential for forestry development of the property of owners.

13 (6) Whether the proposed state action restricts or prohibits a use
14 which is already prohibited by existing law.

15 (7) Alternatives to the proposed action that would lessen or
16 eliminate any adverse impact on forest land.

17 (8) An estimate of the cost to the state entity if the entity is
18 required to compensate one or more forest landowners.

19 (9) The identity of the source of payment within the entity's budget
20 or otherwise for any compensation that may be ordered.

21 (c) If there is an immediate threat to health and safety that
22 constitutes an emergency, requires immediate state action, and prohibits the
23 timely production of the assessment required in this act, then the assessment
24 shall be made at the earliest possible time after the state action is
25 completed.

26 (d) After preparing the assessment, the state shall deliver copies to
27 the Governor, the Forestry Commissioner and any affected landowners.

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29 SECTION 4. (a) An owner of forest land shall have the right to file a
30 claim with the Arkansas Claims Commission as provided under Arkansas Code §21-
31 9-201 et seq. and §19-10-201 et seq. for damages resulting from the state
32 action which prohibits or limits an owner's ability to conduct forestry
33 activities on forest land in which the owner has an interest.

34 (b) Upon a determination that a state action caused a diminution in
35 value of forest land resulting in prohibition or limit of use in violation of
36 this act, the owner shall recover a sum equal to the diminution in value of

1 the property from the date of the taking and retain title thereto.

2 (c) The Arkansas Claims Commission in issuing any final order pursuant
3 to this act may award costs, including reasonable attorney and expert witness
4 fees, to the prevailing party.

5 (d) A subsequent repeal or rescission by the state shall not preclude
6 the owner of the right to recover damages resulting from such action and in
7 the discretion of the Arkansas Claims Commission, reasonable attorney and
8 expert witness fees.

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10 SECTION 5. Nothing in this act shall restrict any other remedy or right
11 that any person or class of persons may have under any other provision of law.

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13 SECTION 6. All provisions of this act of a general and permanent nature
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
15 Revision Commission shall incorporate the same in the Code.

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17 SECTION 7. If any provision of this act or the application thereof to
18 any person or circumstance is held invalid, such invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provision or application, and to this end the provisions of this
21 act are declared to be severable.

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23 SECTION 8. All laws and parts of laws in conflict with this act are
24 hereby repealed.

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/s/Scott

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