

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H2/9/99*  
**A Bill**

HOUSE BILL 1230

5 By: Representative Hendren  
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7

### For An Act To Be Entitled

"THE PRIVATE PROPERTY PROTECTION ACT; AND FOR OTHER  
PURPOSES."

### Subtitle

"THE PRIVATE PROPERTY PROTECTION ACT."

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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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18 SECTION 1. Short Title. This act shall be known and may be cited as  
19 the Private Property Protection Act.  
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21 SECTION 2. Legislative Findings & Declarations. The legislature finds  
22 and declares that:

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

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

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

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

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

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

8       (2) "Regulatory program" means any rule, regulation, law or ordinance  
9 that effects the fair market value of real property. Such regulatory programs  
10 include, but are not limited to, no growth/moratoriums, esthetic/scenic,  
11 environmental, overlay districts, green space/landscape/tree ordinances, land  
12 use planning or zoning programs, provided, no program of the Arkansas State  
13 Highway Commission nor of the Arkansas State Highway and Transportation  
14 Department shall be considered or construed to be a regulatory program if such  
15 program is necessary for the receipt of federal aid funds from the United  
16 States Department of Transportation.

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18       SECTION 4. Inverse condemnation.

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

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

36       (c) Conditional waivers prohibited. Governmental units subject to the

1 provisions of this act shall not make waiver of the provisions of this act a  
2 condition for approval of the use of real property or the issuance of any  
3 permit or other entitlement. Plaintiffs may accept an approval of use,  
4 permit, or other entitlement granted by the governmental unit without  
5 compromising their rights under this act if:

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

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

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

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

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19 SECTION 5. No compensation shall be required by virtue of this act if  
20 the regulatory program is an exercise of the police power to prevent uses  
21 noxious in fact or demonstrable harm to the health and safety of the public.  
22 A use shall be deemed a noxious use if, and only if, it amounts to a public  
23 nuisance in fact. Determination by the governmental unit or units involved  
24 that a use is a noxious use or poses a demonstrable harm to public health and  
25 safety shall not be binding upon the court. Review of the governmental unit  
26 or units' determination shall be de novo. The provisions of this act shall  
27 not apply to laws or rules within the jurisdiction of the State Health  
28 Officer. The Arkansas Department of Pollution Control and Ecology, or the  
29 Arkansas Department of Environmental Quality, and the Arkansas Pollution  
30 Control and Ecology Commission shall be exempt from the provisions of this act  
31 while in performance of their statutory duty to protect the environment and  
32 the health and general welfare of the people of the State of Arkansas.

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34 SECTION 6. Statute of Limitations.

35 (a) Injuries to real property. The statute of limitations for actions  
36 brought pursuant to this act shall be that prescribed by Arkansas Code 16-56-

1 115. The statute of limitations shall begin to run upon the final  
2 administrative decision implementing the regulatory program affecting  
3 plaintiffs' property.

4 (b) Implementation defined. A program is implemented with respect to  
5 an owner's or user's property when actually applied to that property.

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7 SECTION 7. Regulatory rollback.

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

20 (b) Constitutional requirements. This section shall not be deemed to  
21 affect any remedy, which is constitutionally required.

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

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

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

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

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

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14 SECTION 12. EMERGENCY CLAUSE. It is hereby found and determined by the  
15 Eighty-second General Assembly that some actions by the state and its  
16 political subdivisions reduce the value of real property; that the property  
17 owners are not now being compensated for that reduction in value; and that  
18 this act so provides and should go into effect immediately in order to  
19 eliminate the inequity as soon as possible. Therefore, an emergency is  
20 declared to exist and this act being immediately necessary for the  
21 preservation of the public peace, health and safety shall become effective on  
22 the date of its approval by the Governor. If the bill is neither approved nor  
23 vetoed by the Governor, it shall become effective on the expiration of the  
24 period of time during which the Governor may veto the bill. If the bill is  
25 vetoed by the Governor and the veto is overridden, it shall become effective  
26 on the date the last house overrides the veto.

27 /s/ Hendren  
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