

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/21/01

A Bill

HOUSE BILL 2305

5 By: Representative Minton
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE TITLE 18, CHAPTER
10 11 TO ADD A SUBCHAPTER 6 TO ESTABLISH A PRIVATE
11 PROPERTY PROTECTION ACT TO REQUIRE THE STATE AND
12 ITS POLITICAL SUBDIVISIONS TO COMPENSATE OWNERS
13 OF REAL PROPERTY FOR REGULATORY PROGRAMS WHICH
14 REDUCE PROPERTY VALUES; TO DECLARE AN EMERGENCY;
15 AND FOR OTHER PURPOSES.

Subtitle

17 TO ESTABLISH A PRIVATE PROPERTY
18 PROTECTION ACT TO REQUIRE THE STATE AND
19 ITS POLITICAL SUBDIVISIONS TO COMPENSATE
20 OWNERS OF REAL PROPERTY FOR EXCESSIVE
21 REGULATIONS.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 18, Chapter 11, is amended to add an
28 additional subchapter to read as follows:

29 SUBCHAPTER 6 -- PRIVATE PROPERTY PROTECTION ACT

30 18-11-601. Title.

31 This subchapter shall be known and may be cited as the "Private Property
32 Protection Act".

33
34 18-11-602. Legislative findings and declarations.

35 The Arkansas General Assembly finds and declares that:

36 (1) From time to time state and local regulatory programs have the

1 effect of reducing the market value of private property.

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

8 (3) Compensation to the property owner is also fair and appropriate in
9 cases involving regulatory programs which abate a public nuisance when the
10 property owner neither contributed to the public nuisance nor acquired the
11 property knowing of the public nuisance, nor acquired the property in
12 circumstances where the property owner should have known about the nuisance
13 based upon prevailing community standards.

14 (4) In order to establish a fair and equitable compensation system to
15 address these stated public policy concerns and findings, there is hereby
16 established a compensation system in this subchapter.

17
18 18-11-603. Definitions.

19 As used in this subchapter, unless the context otherwise requires:

20 (1) "Real property" means real property, the use of which is directly
21 controlled or regulated by a regulatory program;

22 (2)(A) "Regulatory program" means any rule, regulation, law or
23 ordinance that affects the fair market value of real property. Regulatory
24 programs include, but are not limited to, no growth moratoriums, esthetic-
25 scenic, environmental, overlay districts, green space, or landscape and tree
26 ordinances;

27 (B) However, no program of the State Highway Commission nor of
28 the Arkansas State Highway and Transportation Department shall be considered
29 or construed to be a regulatory program if such program is necessary for the
30 receipt of federal aid funds from the United States Department of
31 Transportation.

32
33 18-11-604. Inverse condemnation.

34 (a) If implementation by the state or any of its political subdivisions
35 of any regulatory program operates to reduce by at least twenty percent (20%)
36 the fair market value of real property for the uses permitted at the time the

1 owner acquired the title, or on the effective date of this subchapter,
2 whichever is later, the property shall be deemed to have been taken for the
3 use of the public.

4 (b)(1)(A) The owner of the property which suffered the regulatory
5 taking shall have the right to require condemnation by and just compensation
6 from the governmental unit, or units, when more than one governmental unit is
7 involved, imposing the regulation resulting in decreased value, or to receive
8 compensation for the reduction in value caused by government action, and in
9 either case to have such compensation determined by a jury.

10 (B) When more than one governmental unit is involved, the
11 court shall determine the proportion each unit shall be required to contribute
12 to the compensation.

13 (2) Compensation is required under this section only in instances
14 where the fair market value of the property is reduced by at least twenty
15 percent (20%).

16 (c)(1) Governmental units subject to the provisions of this subchapter
17 shall not make waiver of the provisions of this subchapter a condition for
18 approval of the use of real property or the issuance of any permit or other
19 entitlement.

20 (2) Owners may accept an approval of use, permit, or other
21 entitlement granted by the governmental unit without compromising their rights
22 under this subchapter if:

23 (A) A written reservation of rights is made at the time of
24 acceptance of the authorization, permit, or other entitlement;

25 (B) By oral statement made before the governmental unit
26 granting the authorization, permit, or other entitlement at a public meeting
27 at which the governmental unit renders its decision;

28 (C) The owner or user may make a reservation in either or
29 both forms.

30 (d) If any regulatory program resulting from a zoning ordinance
31 operates to change a permitted use and the fair market value of the affected
32 real property is the same or greater than before the effective date of the
33 implementation of the regulatory program, no compensation shall be paid under
34 this subchapter.

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36 18-11-605. Exercise of police powers - Law not applicable.

1 (a) Compensation shall not be required by virtue of this subchapter if
2 the regulatory program is an exercise of the police power to prevent uses
3 noxious in fact or demonstrable harm to the health and safety of the public. A
4 use shall be deemed a noxious use if, and only if, it amounts to a public
5 nuisance in fact. Determination by the governmental unit or units involved
6 that a use is a noxious use or poses a demonstrable harm to public health and
7 safety shall not be binding upon the court. Review of the governmental unit
8 or units' determination shall be de novo.

9 (b)(1) The provisions of this subchapter shall not apply to laws or
10 rules within the jurisdiction of the State Board of Health.

11 (2) The Arkansas Department of Environmental Quality and the
12 Arkansas Pollution Control and Ecology Commission shall be exempt from the
13 provisions of this subchapter while in performance of their statutory duty to
14 protect the environment and the health and general welfare of the people of
15 the State of Arkansas.

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17 18-11-606. Statute of Limitations.

18 (a) The statute of limitations for actions brought pursuant to this
19 subchapter shall be that prescribed by § 16-56-115. The statute of
20 limitations shall begin to run upon the final administrative decision
21 implementing the regulatory program affecting plaintiffs' property.

22 (b) A program is implemented with respect to an owner's or user's
23 property when actually applied to that property.

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25 18-11-607. Regulatory rollback.

26 (a) If the governmental unit of which inverse condemnation is
27 successfully required under this subchapter is unwilling or unable to pay the
28 costs awarded, it may instead relax the land use planning, zoning, or other
29 regulatory program as it affects the plaintiff's land and all similarly
30 situated land in the jurisdiction in which the regulatory program is in effect
31 to the level of regulation in place as of the time the owner acquired title or
32 on the effective date of this subchapter, whichever is later. In such event,
33 the governmental unit shall be liable to the plaintiff landowner or user for
34 the reasonable and necessary costs of the inverse condemnation action, plus
35 any actual and demonstrable economic losses caused the plaintiff by regulation
36 during the period in which it was in effect.

1 (b) This section shall not be deemed to affect any remedy, which is
2 constitutionally required.

3 (c) Notwithstanding any other provision of law, the governmental unit or
4 units subject to an award of compensation under this subchapter may elect to
5 relax the land use planning, zoning, or other regulatory program without
6 further public hearings, proceedings, or environmental review. If the
7 governmental unit or units elect to relax the affected regulatory program, the
8 previously effective program shall automatically be in effect.

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10 18-11-608. Legal challenges.

11 Nothing in this subchapter shall be construed to preclude property
12 owners from bringing legal challenges to regulatory programs affected by this
13 subchapter in instances where the regulation caused diminution in value of the
14 property for the uses permitted at the time the owner acquired title, or the
15 effective date of this subchapter, whichever is later, nor shall it be
16 construed to preclude property owners from bringing legal challenges to
17 regulatory programs affected by this subchapter based on other provisions of
18 law.

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20 SECTION 2. Emergency Clause. It is found and determined by the Eighty-
21 third General Assembly of the State of Arkansas that some actions by the state
22 and its political subdivisions reduce the value of real property; that the
23 property owners are not now being compensated for that reduction in value; and
24 that this act so provides and should go into effect immediately in order to
25 eliminate the inequity as soon as possible. Therefore an emergency is
26 declared to exist and this act being immediately necessary for the
27 preservation of the public peace, health and safety shall become effective on
28 the date of its approval by the Governor. If the bill is neither approved nor
29 vetoed by the Governor, it shall become effective on the expiration of the
30 period of time during which the Governor may veto the bill. If the bill is
31 vetoed by the Governor and the veto is overridden, it shall become effective
32 on the date the last house overrides the veto.

33 */s/ Minton*
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