

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

A Bill

HOUSE BILL 2343

4
5 By: Representative Pritchard
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7

For An Act To Be Entitled

8
9 PRIVATE PROPERTY PROTECTION ACT.

Subtitle

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11 PRIVATE PROPERTY PROTECTION ACT.
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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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20 SECTION 2. Legislative findings and declarations. The Legislature
21 finds and declares that:

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

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

30 (3) 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 (4) 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 affects the fair market value of real property. Such regulatory
9 programs include, but are not limited to, no growth/moratoriums,
10 esthetic/scenic, environmental, overlay districts, green space/landscape/tree
11 ordinances, land use planning or zoning programs.

12
13 SECTION 4. Inverse condemnation.

14 (a) Regulatory takings. Whenever implementation by the state or any
15 of its political subdivisions of any regulatory program operates to reduce by
16 at least twenty percent (20%) the fair market value of real property for the
17 uses permitted at the time the owner acquired the title, or on the effective
18 date of this act, whichever is later, the property shall be deemed to have
19 been 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 (1) 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 (1) governmental
26 unit 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 or her reservation in either
6 or 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
10 effective date of the implementation of the regulatory program, no
11 compensation shall be 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 owner's or user's 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 plaintiff's 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,
5 whichever is later. In such event, the governmental unit shall be liable to
6 the 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
16 review. If the governmental unit or units elect to so relax the affected
17 regulatory program, the previously effective program shall automatically be
18 in effect.

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

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29 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly that some actions by the state and its political
31 subdivisions reduce the value of real property; that the property owners are
32 not now being compensated for that reduction in value; and that this act so
33 provides and should go into effect immediately in order to eliminate the
34 inequity as soon as possible. Therefore, an emergency is declared to exist
35 and this act being immediately necessary for the preservation of the public
36 peace, health and safety shall become effective on the date of its approval

1 by the Governor. If the bill is neither approved nor vetoed by the Governor,
2 it shall become effective on the expiration of the period of time during
3 which the Governor may veto the bill. If the bill is vetoed by the Governor
4 and the veto is overridden, it shall become effective on the date the last
5 house overrides the veto.

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