

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 757

4
5 By: Senators J. Hendren, Files, Hester

For An Act To Be Entitled

8 AN ACT TO RESTRICT THE ABILITY OF LOCAL GOVERNMENTS
9 AND OTHER ENTITIES TO REGULATE PRIVATE PROPERTY
10 RIGHTS; TO PROTECT PRIVATE PROPERTY RIGHTS; TO CREATE
11 THE PRIVATE PROPERTY PROTECTION ACT; TO REGULATE THE
12 POWER OF EMINENT DOMAIN BY CERTAIN PUBLIC UTILITIES;
13 AND FOR OTHER PURPOSES.

Subtitle

16 TO RESTRICT THE ABILITY OF LOCAL
17 GOVERNMENTS AND OTHER ENTITIES TO
18 REGULATE PRIVATE PROPERTY RIGHTS.

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

23
24 SECTION 1. DO NOT CODIFY. Legislative findings.

25 The General Assembly finds that:

26 (1) From time to time, state and local regulatory programs have
27 the effect of reducing the market value of private property;

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

34 (3) Compensation to the property owner is also fair and
35 appropriate in cases involving regulatory programs that abate a public
36 nuisance when the property owner did not contribute to the public nuisance,



1 did not acquire the property knowing of the public nuisance, or did not
 2 acquire the property under circumstances in which the property owner should
 3 have known about the public nuisance based upon prevailing community
 4 standards; and

5 (4) In order to establish a fair and equitable compensation
 6 system to address these stated public policy concerns and findings, the
 7 General Assembly should establish a compensation system.

8
 9 SECTION 2. Arkansas Code Title 18, Chapter 15, is amended to add an
 10 additional subchapter to read as follows:

11 Subchapter 17 – Private Property Protection Act

12
 13 18-15-1701. Title.

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

16
 17 18-15-1702. Definitions.

18 As used in this subchapter:

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

21 (2)(A) "Regulatory program" means a rule, regulation, law, or
 22 ordinance that affects the fair market value of real property.

23 (B) "Regulatory program" includes without limitation
 24 moratoriums on growth, aesthetic or scenic districts, environmental
 25 districts, overlay districts, green space ordinances, landscape ordinances,
 26 tree ordinances, land use planning programs, and zoning programs.

27
 28 18-15-1703. Inverse condemnation – Application.

29 (a) When implementation of a regulatory program by the state or any of
 30 its political subdivisions operates to reduce by at least ten percent (10%)
 31 the fair market value of real property for the uses permitted at the time the
 32 owner acquires the title or on the effective date of this subchapter,
 33 whichever is later, the property shall be deemed to have been taken for the
 34 use of the public.

35 (b)(1) The owner or user shall have the right to:

36 (A) Either:

1 Officer or regulatory activities of the Arkansas Pollution Control and
2 Ecology Commission, the Arkansas Department of Environmental Quality, the
3 Arkansas Livestock and Poultry Commission, or the State Plant Board under
4 delegated or authorized programs or approved plans under federal law;

5 (3) An eminent domain proceeding to which the Uniform Relocation
6 Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §
7 4601 et seq., as in effect on January 1, 2015, applies; or

8 (4) An eminent domain proceeding undertaken by a municipality
9 under applicable law as in effect on January 1, 2015.

10
11 18-15-1704. Nuisance matters.

12 (a) Compensation is not required under this subchapter if the
13 regulatory program is an exercise of the police power to prevent uses noxious
14 or harmful to the health and safety of the public.

15 (b) A use is a noxious use if it amounts to a public nuisance.

16 (c) Determination by the governmental unit or units involved that a
17 use is a noxious use or poses a demonstrable harm to public health and safety
18 is not binding upon the court.

19
20 18-15-1705. Statute of limitations.

21 (a)(1) The statute of limitations for actions brought under this
22 subchapter is as provided under § 16-56-115.

23 (2) The statute of limitations begins upon the final
24 administrative decision implementing the regulatory program affecting the
25 owner's or user's property.

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

28
29 18-15-1706. Regulatory rollback.

30 (a)(1) If the governmental unit exercising inverse condemnation under
31 this subchapter is unwilling or unable to pay the costs awarded, it may relax
32 the land use planning, zoning, or other regulatory program as it affects the
33 owner's or user's land and all similarly situated land in the jurisdiction in
34 which the regulatory program is in effect to the previous regulatory program.

35 (2) If a governmental unit relaxes a regulatory program under
36 this section, the governmental unit is liable to the owner or user for

1 reasonable and necessary costs of the inverse condemnation action, plus any
2 actual and demonstrable economic losses caused to the owner or user by
3 regulation during the period in which it was in effect.

4 (b) This section does not affect a remedy that is constitutionally
5 required.

6 (c)(1) Notwithstanding other law, the governmental unit subject to an
7 award of compensation for inverse condemnation under this subchapter may
8 elect to relax the land use planning, zoning, or other regulatory program
9 without further public hearings, proceedings, or environmental review.

10 (2) If the governmental unit elects to relax the affected
11 regulatory program, the previous regulatory program shall automatically be in
12 effect.

13
14 18-15-1707. Legal challenges.

15 This subchapter does not preclude a property owner from bringing a
16 legal challenge:

17 (1) To a regulatory program affected by this subchapter if the
18 regulation caused diminution in value of the property for the uses permitted
19 at the time the owner acquired title or the effective date of this
20 subchapter, whichever is later; or

21 (2) Under other law.

22
23 SECTION 3. Arkansas Code Title 23, Chapter 18, Subchapter 1, is
24 amended to add an additional section to read as follows:

25 23-18-108. Eminent domain for transmission lines – Market value.

26 (a) As used in this section, "electric utility" means an electric
27 utility that:

28 (1) Is under the jurisdiction of the Arkansas Public Service
29 Commission;

30 (2) Primarily transmits electricity; and

31 (3) Provides service to fewer than twenty-five thousand (25,000)
32 customers in ten (10) counties in the state.

33 (b) If an electric utility acquires land from a private property owner
34 through eminent domain for purposes of a transmission line, then the electric
35 utility shall compensate the private property owner at three (3) times the
36 market value of the property taken by eminent domain.