

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representatives Stewart and Hendren

A Bill

HOUSE BILL 1726

For An Act To Be Entitled "PRIVATE PROPERTY PROTECTION ACT"

Subtitle

"PRIVATE PROPERTY PROTECTION ACT"

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

15 SECTION 1. Short Title. This act shall be known and may be cited as
16 the Private Property Protection Act.

18 SECTION 2. Legislative Findings & Declarations. The legislature finds
19 and declares that:

20 (A) From time to time state and local regulatory programs have the
21 effect of reducing the market value of private property.

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

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

34 (D) In order to establish a fair and equitable compensation system to
35 address these stated public policy concerns and findings, there is hereby
36 established a compensation system in this act.

1 SECTION 3. Inverse condemnation.

2 (A) Regulatory takings. Whenever implementation by the state or any of
3 its political subdivisions of any regulatory program operates to reduce by at
4 least ten percent (10%) the fair market value of real property for the uses
5 permitted at the time the owner acquired the title, or on the effective date
6 of this act, whichever is later, the property shall be deemed to have been
7 taken for the use of the public. Such regulatory programs include, but are
8 not limited to, no growth/moratoriums, esthetic/scenic, environmental, overlay
9 districts, green space/landscape/tree ordinances, land use planning or zoning
10 programs.

11 (B) Compensation Required. The owner or user shall have the right to
12 require condemnation by and just compensation from the governmental unit, or
13 units, when more than one governmental unit is involved, imposing the
14 regulation resulting in decreased value, or to receive compensation for the
15 reduction in value caused by government action, and in either case to have
16 such compensation determined by a jury. When more than one governmental unit
17 is involved, the court shall determine the proportion each unit shall be
18 required to contribute to the compensation. *Compensation is required under*
19 *this section only in instances where the fair market value of the property is*
20 *reduced by at least ten percent (10%).*

21 (C) Conditional waivers prohibited. Governmental units subject to the
22 provisions of this Act shall not make waiver of the provisions of this Act a
23 condition for approval of the use of real property or the issuance of any
24 permit or other entitlement. Plaintiffs may accept an approval of use,
25 permit, or other entitlement granted by the governmental unit without
26 compromising their rights under this Act if:

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

29 (2) By oral statement made before the governmental unit granting
30 the authorization, permit, or other entitlement at a public meeting at which
31 the governmental unit renders its decision.

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

34
35 SECTION 4. No compensation shall be required by virtue of this Act if
36 the regulatory program is an exercise of the police power to prevent uses

1 noxious in fact or demonstrable harm to the health and safety of the public.
2 A use shall be deemed a noxious use if, and only if, it amounts to a public
3 nuisance in fact. Determination by the governmental unit or units involved
4 that a use is a noxious use or poses a demonstrable harm to public health and
5 safety shall not be binding upon the court. Review of the governmental unit
6 or units' determination shall be de novo.

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8 SECTION 5. Statute of Limitations.

9 (A) Injuries to real property. The statute of limitations for actions
10 brought pursuant to this Act shall be that prescribed by Arkansas Code 16-56-
11 115. The statute of limitations shall begin to run upon the final
12 administrative decision implementing the regulatory program affecting
13 plaintiffs' property.

14 (B) Implementation defined. A program is implemented with respect to
15 an owner's or user's property when actually applied to that property.

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17 SECTION 6. Regulatory rollback.

18 (A) Conditional relaxation authorized. If the governmental unit of
19 which inverse condemnation is successfully required under this Act is
20 unwilling or unable to pay the costs awarded, it may instead relax the land
21 use planning, zoning, or other regulatory program as it affects the
22 plaintiff's land and all similarly situated land in the jurisdiction in which
23 the regulatory program is in effect to the level of regulation in place as of
24 the time the owner acquired title or on the effective date of this act, which
25 ever is later. In such event, the governmental unit shall be liable to the
26 plaintiff landowner or user for the reasonable and necessary costs of the
27 inverse condemnation action, plus any actual and demonstrable economic losses
28 caused the plaintiff by regulation during the period in which it was in
29 effect.

30 (B) Constitutional requirements. This section shall not be deemed to
31 affect any remedy which is constitutionally required.

32 (C) Relaxation procedure. Notwithstanding any other provision of law,
33 the governmental unit or units subject to an award of compensation under this
34 Act may elect to relax the land use planning, zoning, or other regulatory
35 program without further public hearings, proceedings, or environmental review.
36 If the governmental unit or units elect to so relax the affected regulatory

1 program, the previously effective program shall automatically be in effect.
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3 SECTION 7. Legal challenges. Nothing in this Act shall be construed to
4 preclude property owners from bringing legal challenges to regulatory programs
5 affected by this Act in instances where the regulation caused diminution in
6 value of the property for the uses permitted at the time the owner acquired
7 title, or the effective date of this act, whichever is later, nor shall it be
8 construed to preclude property owners from bringing legal challenges to
9 regulatory programs affected by this Act based on other provisions of law.
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11 SECTION 8. All provisions of this act of a general and permanent nature
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
13 Revision Commission shall incorporate the same in the Code.
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15 SECTION 9. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.
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21 SECTION 10. All laws and parts of laws in conflict with this act are
22 hereby repealed.
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24 SECTION 11. *It is hereby found and determined by the General Assembly*
25 *that some actions by the state and its political subdivisions reduce the value*
26 *of real property; that the property owners are not now being compensated for*
27 *that reduction in value; and that this act so provides and should go into*
28 *effect immediately in order to eliminate the inequity as soon as possible.*
29 *Therefore, an emergency is hereby declared to exist and this act being*
30 *necessary for the immediate preservation of the public peace, health and*
31 *safety shall be in full force and effect from and after its passage and*
32 *approval.*

33 /s/Rep. Stewart, et al
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