

1 State of Arkansas *As Engrossed: S2/28/13 H3/28/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 367

4

5 By: Senators J. Hendren, Bledsoe, A. Clark, J. Dismang, Hester, Holland, J. Hutchinson, Irvin, B. King,

6 D. Sanders

7 By: Representatives D. Altes, Baine, Ballinger, Barnett, Collins, Cozart, Davis, Deffenbaugh, C. Douglas,

8 D. Douglas, Gossage, Harris, Mayberry, Wren

9

## For An Act To Be Entitled

11 AN ACT TO ADDRESS THE PROTECTION OF PRIVATE PROPERTY;

12 AND FOR OTHER PURPOSES.

13

14

### Subtitle

16 TO ADDRESS THE PROTECTION OF PRIVATE

17 PROPERTY.

18

19

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

21

22 SECTION 1. DO NOT CODIFY. Legislative findings.

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

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

31 (c) 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, acquired the  
34 property knowing of the public nuisance, nor acquired the property under  
35 circumstances in which the property owner should have known about the  
36 nuisance based upon prevailing community standards.



1 (d) 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 2. Arkansas Code Title 18, Chapter 15, is amended to add an  
6 additional subchapter to read as follows:

7 Subchapter 17 - Private Property Protection Act  
8

9 18-15-1701. Title.

10 This subchapter shall be known and may be cited as the "Private  
11 Property Protection Act".  
12

13 18-15-1702. Definitions.

14 As used in this subchapter:

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

17 (2) "Regulatory program" means any rule, regulation, law, or  
18 ordinance that affects the fair market value of real property. Such  
19 regulatory programs include without limitation moratoriums on growth,  
20 aesthetic or scenic districts, environmental districts, overlay districts,  
21 green space ordinances, landscape ordinances, tree ordinances, land use  
22 planning programs, or zoning programs.  
23

24 18-15-1703. Inverse condemnation.

25 (a) Whenever implementation by the state or any of its political  
26 subdivisions of any regulatory program operates to reduce by at least *twenty-*  
27 *five percent (25%)* the fair market value of real property for the uses  
28 permitted at the time the owner acquires the title, or on the effective date  
29 of this act, whichever is later, the property shall be deemed to have been  
30 taken for the use of the public.

31 (b)(1) The owner or user shall have the right to require condemnation  
32 by and adequate compensation from the governmental unit, or units when more  
33 than one (1) governmental unit is involved, imposing the regulation resulting  
34 in decreased value, or to receive compensation for the reduction in value  
35 caused by government action, and in either case to have the compensation  
36 determined by a jury.

1           (2) When more than one (1) governmental unit is involved, the  
2 court shall determine the proportion each unit shall be required to  
3 contribute to the compensation.

4           (3) Compensation is required under this section only in  
5 instances where the fair market value of the property is reduced by at least  
6 twenty-five percent (25%).

7           (c)(1) Governmental units subject to the provisions of this subchapter  
8 shall not make waiver of the provisions of this subchapter a condition for  
9 approval of the use of real property or the issuance of any permit or other  
10 entitlement. Plaintiffs may accept an approval of use, permit, or other  
11 entitlement granted by the governmental unit without compromising their  
12 rights under this subchapter if:

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

15                   (B) By oral statement made before the governmental unit  
16 granting the authorization, permit, or other entitlement at a public meeting  
17 at which the governmental unit renders its decision.

18           (2) The owner or user may make his or her reservation in either  
19 or both forms.

20           (d) When any regulatory program resulting from a zoning ordinance  
21 operates to change a permitted use and the fair market value of the affected  
22 real property is the same or greater than before the effective date of the  
23 implementation of the regulatory program, compensation shall not be paid  
24 under this subchapter.

25           (e) This subchapter does not apply to an owner or user of real  
26 property if the regulatory program does not directly apply to the real  
27 property of the owner or user.

28           (f) This subchapter does not apply to laws or rules within the  
29 jurisdiction of the State Health Officer or regulatory activities of the  
30 Arkansas Pollution Control and Ecology Commission, the Arkansas Department of  
31 Environmental Quality, the Arkansas Livestock and Poultry Commission, or the  
32 State Plant Board under delegated or authorized programs or approved plans  
33 under federal law.

34           (g) This subchapter does not apply to an eminent domain proceeding to  
35 which the Uniform Relocation Assistance and Real Property Acquisition  
36 Policies for Federal and Federally Assisted Programs, 42 U.S.C. § 61, as in

1 effect on January 1, 2013, applies.

2 (h) This subchapter does not apply to an eminent domain proceeding  
3 undertaken by a municipality under applicable law as in effect on January 1,  
4 2013.

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6 18-15-1704. Nuisance matters.

7 (a) Compensation shall not be required under this subchapter if the  
8 regulatory program is an exercise of the police power to prevent uses noxious  
9 or harmful to the health and safety of the public.

10 (b) A use shall be deemed a noxious use if it amounts to a public  
11 nuisance.

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

15 (d) This subchapter does not apply to laws or rules within the  
16 jurisdiction of the State Health Officer.

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18 18-15-1705. Statute of limitations.

19 (a)(1) The statute of limitations for actions brought under this  
20 subchapter is under § 16-56-115.

21 (2) The statute of limitations begins upon the final  
22 administrative decision implementing the regulatory program affecting  
23 plaintiffs' property.

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

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27 18-16-1706. Regulatory rollback.

28 (a)(1) If the governmental unit exercising inverse condemnation under  
29 this subchapter is unwilling or unable to pay the costs awarded, it may relax  
30 the land use planning, zoning, or other regulatory program as it affects the  
31 plaintiff's land and all similarly-situated land in the jurisdiction in which  
32 the regulatory program is in effect to the level of regulation in place as of  
33 the time the owner acquired title or on the effective date of this act,  
34 whichever is later.

35 (2) In this event, the governmental unit is liable to the  
36 plaintiff landowner or user for reasonable and necessary costs of the inverse

1 condemnation action, plus any actual and demonstrable economic losses caused  
2 to the plaintiff by regulation during the period in which it was in effect.

3 (b) This section does not affect any remedy which is constitutionally  
4 required.

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

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

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12 18-15-1707. Legal challenges.

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

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20 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
21 General Assembly of the State of Arkansas that some actions by the state and  
22 its political subdivisions reduce the value of real property; that the  
23 property owners now are not being compensated for that reduction in value;  
24 and that this act is immediately necessary because the inequity needs to be  
25 eliminated as soon as possible. Therefore, an emergency is declared to exist,  
26 and this act being immediately necessary for the preservation of the public  
27 peace, health, and safety shall become effective on:

28 (1) The date of its approval by the Governor;

29 (2) If the bill is neither approved nor vetoed by the Governor,  
30 the expiration of the period of time during which the Governor may veto the  
31 bill; or

32 (3) If the bill is vetoed by the Governor and the veto is  
33 overridden, the date the last house overrides the veto.

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35 */s/J. Hendren*

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