

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1495

BY: REESE

AS INTRODUCED

AN ACT RELATING TO PROPERTY; ENACTING THE PRIVATE  
PROPERTY PROTECTION ACT; MAKING CERTAIN PROPERTY  
DEEMED TO HAVE BEEN TAKEN FOR PUBLIC USE;  
SPECIFYING CERTAIN RIGHTS; PROVIDING FOR  
COMPENSATION; PROHIBITING CERTAIN WAVERS;  
CLARIFYING NOXIOUS USES; CLARIFYING STATUTE OF  
LIMITATIONS USE; PROVIDING FOR EFFECT OF ACT;  
PROVIDING FOR LIABILITY; PROVIDING EXCEPTIONS;  
AUTHORIZING ROLLED BACKS; PROVIDING FOR  
CONSTRUCTION OF ACT; MAKING CERTAIN REQUIREMENTS OF  
STATE AND ANY POLITICAL SUBDIVISIONS; PROVIDING FOR  
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 1101 of Title 60, unless there  
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Private  
Property Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Whenever implementation by this state or any of its political subdivisions of any regulatory program operates to reduce the fair market value of real property to less than fifty percent (50%) of its fair market value for the uses permitted at the time the owner acquired the title, or September 1, 1991, whichever is later, the property shall be deemed to have been taken for the use of the public. Such regulatory programs include, but are not limited to, land use planning or zoning programs.

B. The owner or user shall have the right to require condemnation by and just compensation from the governmental unit, or units, when more than one governmental unit is involved, imposing the regulation resulting in decreased value, or to receive compensation for the reduction in value caused by government action, and in either case to have such compensation determined by a jury. When more than one governmental unit is involved, the court shall determine the proportion each unit shall be required to contribute to the compensation.

C. The compensation shall be for the full value of the interest taken or for the full amount of the decrease in fair market value and shall not be limited to the amount by which the decrease in fair market value exceeds fifty percent (50%).

D. Governmental units subject to the provisions of the Private Property Protection Act shall not make waiver of the provisions of the Private Property Protection Act a condition for approval of the use of real property or the issuance of any permit or other entitlement. Plaintiffs may accept an approval of use, permit, or other entitlement granted by the governmental unit without compromising their rights under this act if:

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

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1103 of Title 60, unless there is created a duplication in numbering, reads as follows:

No compensation shall be required by virtue of the Private Property Protection Act if the regulatory program is an exercise of the police power to prevent uses noxious in fact or demonstrable harm to the health and safety of the public. A use shall be deemed a noxious use if, and only if, it amounts to a public nuisance in fact. Determination by the governmental unit or units involved that a use is a noxious use or poses a demonstrable harm to public health and safety shall not be binding upon the court. Review of the governmental unit or units' determination shall be de novo.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1104 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The statute of limitations for actions brought pursuant to the Private Property Protection Act shall be the statute of limitations for ordinary actions brought for injuries to real property. The statute of limitations shall begin to run upon the final administrative decision implementing the regulatory program affecting plaintiffs' property. This statute of limitations for any claim which may be brought pursuant to any other provision of the Private Property Protection Act.

B. A program is implemented with respect to an owner's or user's property when actually applied to that property unless the

enactment of the program by itself operates to reduce the fair market value of real property, or any legally recognized interest therein, to less than fifty percent (50%) of its fair market value for the uses permitted at the time the owner acquired title, or September 1, 1991, whichever is later, without further governmental action and the program contains no provision allowing for relief from the program's operation.

C. The Private Property Protection Act shall apply not only to new regulatory programs, but also to the application of regulatory programs in effect at the time of the Private Property Protection Act, including, but not limited to, land use law or zoning laws and regulations to the owner's property.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If the governmental unit of which inverse condemnation is successfully required under Section 2 of this act is unwilling or unable to pay the costs awarded, it may instead relax the land use planning, zoning, or other regulatory program as it affects the plaintiff's land and all similarly situated land in the jurisdiction in which the regulatory program is in effect to the level of regulation in place as of the time the owner acquired title or September 1, 1991, whichever is later. In such event, the governmental unit shall be liable to the plaintiff landowner or user for the reasonable and necessary costs of the inverse condemnation action, plus any actual and demonstrable economic losses caused the plaintiff by the regulation during the period in which it was in effect.

B. This section shall not be deemed to affect any remedy which is constitutionally required.

C. Notwithstanding any other provision of law, the governmental unit or units subject to an award of compensation under the Private

Property Protection Act may elect to relax the land use planning, zoning, or other regulatory program without further public hearings, proceedings, or environmental review required. If the governmental unit or units elect to so relax the affected regulatory program, the previously effective program shall automatically be in effect.

D. Any permit, authorization, or other entitlement granted under a program rolled back pursuant to this section shall continue to be valid, notwithstanding any provision of law in the program reinstated by the rollback.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1106 of Title 60, unless there is created a duplication in numbering, reads as follows:

The Private Property Protection Act shall not be construed to preclude property owners from bringing legal challenges to regulatory programs affected by the Private Property Protection Act in instances where the regulatorily caused diminution in value of the property or the use thereof does not exceed fifty percent (50%) of fair market value for the uses permitted at the time the owner acquired title, or September 1, 1991, whichever is later, nor shall it be construed to preclude property owners from bringing legal challenges to regulatory programs affected by the Private Property Protection Act based on other provisions of law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1107 of Title 60, unless there is created a duplication in numbering, reads as follows:

Whenever, after September 1, 1991, the state or any of its political subdivisions imposes, changes, or implements any land use planning, zoning, or other regulatory program in such a way as to reduce the previous fair market value of a taxpayer's property, the listers of a municipality shall, on or before the ensuing April 1, adjust the taxpayer's grand list downward by an amount equal to the

difference between the fair market value of the property under the new regulatory program, and the previous fair market value.

SECTION 8. This act shall become effective September 1, 1991.

43-1-5900

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