

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 931

Short Title: Private Property Protection.

(Public)

Sponsors: Representatives Kimsey; Anderson, Balmer, Bowie, Brawley, Brown, Brubaker, Buchanan, Chapin, Creech, Culp, Grady, Grimmer, Howard, Justus, Ligon, Loflin, McLawhorn, Mercer, Pope, Privette, and Smith.

Referred to: Judiciary I.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE GOVERNMENTAL COMPENSATIONS FOR PROPERTY RIGHTS INFRINGEMENT, TO ESTABLISH INVERSE CONDEMNATION PROCEDURES, AND TO PROVIDE FOR REGULATORY ROLLBACK PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"CHAPTER 47D.

"PRIVATE PROPERTY PROTECTION.

"§ 47D-1. Short title.

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

"§ 47D-2. Inverse condemnation.

(a) Regulatory takings. – Whenever implementation by the State or any of its political subdivisions of any regulatory program operates to reduce the fair market value of real property to less than seventy-five percent (75%) of its fair market value for the uses permitted at the time the owner acquired the title, or January 1, 1992, whichever is later, the property shall be deemed to have been taken for the use of the public. Such regulatory programs include land-use planning or zoning programs.

(b) Compensation required. – The owner or user shall have the right to require condemnation by, and just compensation from, the governmental unit or units imposing the regulation resulting in decreased value, or to receive compensation for the reduction

1 in value caused by government action, and in either case to have compensation
2 determined by a jury. When more than one governmental unit is involved, the court
3 shall determine the proportion each unit shall be required to contribute to the
4 compensation.

5 (c) Fair market value. – The compensation shall be for the full value of the
6 interest taken or for the full amount of the decrease in fair market value and shall not be
7 limited to the amount by which the decrease in fair market value exceeds seventy-five
8 percent (75%).

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

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

16 (2) An oral statement is made before the governmental unit granting the
17 authorization, permit, or other entitlement at a public meeting at which
18 the governmental unit renders its decision.

19 **"§ 47D-3. Exceptions.**

20 No compensation shall be required under this act if the regulatory program is an
21 exercise of the police power to prevent uses noxious in fact to, or which pose a
22 demonstrable harm to, the health and safety of the public. A use shall be deemed a
23 noxious use if and only if it amounts to a public nuisance in fact. Determination by the
24 governmental unit or units involved that a use is a noxious use or poses a demonstrable
25 harm to public health and safety shall not be binding on the court. Review of such a
26 determination by the governmental unit or units shall be **de novo**.

27 **"§ 47D-4. Statute of limitations.**

28 (a) Injuries to property. – The statute of limitations for actions brought pursuant
29 to this section shall be the statute of limitations for ordinary actions brought for injuries
30 to real property. The statute of limitations shall begin to run upon the final
31 administrative decision implementing the regulatory program affecting the plaintiff's
32 property. This statute of limitations applies to any claim which may be brought
33 pursuant to any other provision of law.

34 (b) Implementation defined. – A program is implemented with respect to an
35 owner's or user's property when actually applied to that property unless the enactment of
36 the program by itself operates to reduce the fair market value of real property, or any
37 legally recognized interest therein, to less than seventy-five percent (75%) of its fair
38 market value for the uses permitted at the time the owner acquired title, or January 1,
39 1992, whichever is later, without further governmental action and the program contains
40 no provision allowing for relief from the program's operation.

41 (c) Regulatory application. – The act shall apply not only to new regulatory
42 programs, but also to the application of regulatory programs in effect at the time of this
43 act, including land use or zoning laws and regulations to the owners' property.

44 **"§ 47D-5. Regulatory rollback.**

1 (a) Conditional relaxation authorized. – If the governmental unit of which
2 inverse condemnation is successfully required under G.S. 47D-2 is unwilling or unable
3 to pay the costs awarded, it may instead relax the land use planning, zoning, or other
4 regulatory program as it affects the plaintiff's land and all similarly situated land in the
5 jurisdiction in which the regulatory program is in effect to the level of regulation in
6 place as of the time the owner acquired title or January 1, 1992, whichever is later. In
7 such event, the governmental unit shall be liable to the plaintiff landowner or user for
8 the reasonable and necessary costs of the inverse condemnation action, plus any actual
9 and demonstrable economic losses caused the plaintiff by the regulation during the
10 period in which it was in effect.

11 (b) Constitutional requirements. – This section shall not be deemed to affect any
12 remedy which is constitutionally required.

13 (c) Relaxation procedure. – Notwithstanding any other provision of law, the
14 governmental unit or units subject to an award of compensation under this act may elect
15 to relax the land use planning, zoning, or other regulatory program without further
16 public hearings, proceedings, or environmental review required. If the governmental
17 unit or units elects to so relax the affected regulatory program, the previously effective
18 program shall automatically be in effect.

19 (d) Continuance of entitlement. – Any permit, authorization, or other entitlement
20 granted under a program rolled back pursuant to this section shall continue to be valid,
21 notwithstanding any provision of law in the program reinstated by the rollback.

22 **"§ 47D-6. Legal challenges.**

23 Nothing in this act shall be construed to preclude property owners from bringing
24 legal challenges to regulatory programs affected by this act in instances where the
25 regulation causes diminution in the value of the property or the use of the property in an
26 amount not exceeding seventy-five percent (75%) of the fair market value for the uses
27 permitted at the time the owner acquired title, or January 1, 1992, whichever is later, nor
28 shall it be construed to preclude property owners from bringing legal challenges to
29 regulatory programs affected by this act based on other provisions of law.

30 **"§ 47D-7. Tax adjustment.**

31 Whenever, after January 1, 1992, the State or any of its political subdivisions
32 impose, change, or implement any land-use planning, zoning, or other regulatory
33 program in such a way as to reduce the previous fair market value of a taxpayer's
34 property, the listers of a municipality shall, on or before the ensuing April 1, adjust the
35 taxpayer's grand list downward by an amount equal to the difference between the fair
36 market value of the property under the new regulatory program, and the previous fair
37 market value."

38 Sec. 2. The provisions of this act are severable, and if any provision of this
39 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
40 other provisions of the act which can be given effect without the invalid provision.

41 Sec. 3. This act becomes effective January 1, 1992, and applies to actions by
42 governmental units occurring on or after that date.