

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 866
Committee Substitute Favorable 6/13/95

Short Title: Restore Private Prop. Rights/Funds.

(Public)

Sponsors:

Referred to:

April 12, 1995

A BILL TO BE ENTITLED

AN ACT PROVIDING A CAUSE OF ACTION TO AN OWNER WHEN THE STATE OR A LOCAL POLITICAL SUBDIVISION OF THE STATE RESTRICTS, LIMITS, OR OTHERWISE INFRINGES A RIGHT TO REAL PROPERTY THAT WOULD EXIST IN THE ABSENCE OF GOVERNMENT REGULATION, PROVIDING THAT PRIOR TO THE FILING OF A ZONING PETITION THE PERSON FILING THE PETITION SHALL NOTIFY THE OWNER BY CERTIFIED MAIL, AND APPROPRIATING FUNDS TO THE DEPARTMENT OF JUSTICE FOR NUISANCE LAW RESEARCH AND TECHNICAL ASSISTANCE.

The General Assembly of North Carolina enacts:

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

"CHAPTER 40B.

"PRIVATE PROPERTY RIGHTS RESTORATION ACT.

"§ 40B-1. Short title.

This Chapter may be cited as the Private Property Rights Restoration Act.

"§ 40B-2. Cause of action.

(a) An owner of real property shall have a cause of action against the State or a local political subdivision of the State if:

1 (1) The application of a land-use regulation, ruling, statute, ordinance, or
2 dedication, or the baseless or arbitrary denial of a permit, license, or
3 authorization, restricts, limits, or infringes a right to said real property
4 that would otherwise exist in the absence of the application or denial;
5 and

6 (2) The application or denial described in subdivision (1) of this subsection
7 would result in a nonnegligible reduction in the fair market value of the
8 affected portion of real property.

9 (b) Notwithstanding the provisions of subdivision (2) of subsection (a) of this
10 section, a prima facie case against the State or a political subdivision of the State shall be
11 established if the government action described in subdivision (a)(1) of this section results
12 in a temporary or permanent diminution of fair market value of the affected portion of
13 real property in an amount equal to the lesser of (i) ten percent (10%) or more, or (ii) five
14 thousand dollars (\$5,000) or more.

15 **"§ 40B-3. Applicability; limitation period.**

16 (a) This Chapter shall apply to the application of any statute, regulation, or
17 ordinance to real property, if such application occurred or occurs after October 1, 1985.

18 (b) The statute of limitation for actions brought under this Chapter shall be seven
19 years from the application of any statute, regulation, or ordinance of the State or a local
20 political subdivision of the State to any affected property under this Chapter, except that
21 in a case in which damages by regulation occurred prior to October 1, 1995, the statute of
22 limitation shall be March 31, 1996.

23 **"§ 40B-4. Recovery by owner; interest on compensation.**

24 (a) In any action filed pursuant to this Chapter, the owner of property regulated
25 after October 1, 1995, may elect to recover:

26 (1) A sum equal to the diminution in the fair market value of the portion of
27 the property affected by the application of a statute, regulation, or
28 ordinance as described in G.S. 40B-1 and retain title;

29 (2) The fair market value of the affected portion of the regulated property
30 prior to the government action and relinquish title to the portion of the
31 property regulated; or

32 (3) Voidance of the regulation as to the property and payment of interest on
33 the full amount the property was diminished in value for the period the
34 regulation was in effect.

35 (b) In any action filed pursuant to this Chapter, the owner of property regulated
36 prior to October 1, 1995, and after October 1, 1985, may elect to recover by voidance of
37 the application of the statute, regulation, or ordinance as to the property. If the statute,
38 regulation, or ordinance was applied unlawfully or without due process, the owner may
39 also elect to recover compounded interest on the amount of the property's diminution of
40 value for the time period beginning with the date of the application of the regulation and
41 ending on the date the regulating entity tenders payment. In the case of a pre-October
42 1995 regulation, the government will not be liable for double damages as provided for in
43 G.S. 40B-7.

"§ 40B-5. Jurisdiction; compensation request proceeding.

(a) An owner may apply for compensation from the State or a local political subdivision of the State for regulation of the owner's property as described in G.S. 40B-2(a). If the owner's claim for compensation is denied by the regulating entity or if the regulating entity provides less compensation than the amount claimed or fails to act on the claim within 90 days of submission, the owner may seek compensation by filing a civil action in the superior court of the county in which the affected real property lies. In the alternative, the property owner and the regulating entity may engage in a binding arbitration proceeding.

(b) In any civil action for compensation pursuant to this Chapter, the owner upon demand shall have the right to a jury trial.

(c) If more than one regulating entity may be liable for payment of compensation, the court award shall determine the amount of compensation to be paid by each regulating entity.

(d) Compensation shall include compounded interest calculated from the date of the devaluation of the property by the application of the regulation until the date the regulating entity tenders payment.

"§ 40B-6. Constitutional or statutory rights not restricted.

The provisions of this Chapter are in addition to and not in lieu of compensation required under the North Carolina Constitution or the Constitution of the United States. Nothing in this Chapter shall limit any right or remedy which any person or class of persons may have under the Constitution of the United States or the North Carolina Constitution.

"§ 40B-7. Provision for double damages.

(a) If the challenged statute, regulation, or ordinance is applied to the property damaged thereby without due process of law or due local procedure, the governmental entity responsible shall be liable for damages double the actual damage provided in G.S. 40B-4.

(b) Upon the affected owner's presenting a prima facie showing that the regulation, statute, or ordinance was applied without due and lawful procedures, the burden is upon the regulating entity to rebut the presumption of illegality by clear and convincing evidence.

(c) Upon an establishment of a prima facie case of governmental violation of due process in applying the regulation, the subject regulation or statute shall be declared void and the affected property owner awarded double damages.

"§ 40B-8. Award of costs; attorneys' fees.

(a) Reasonable attorneys' fees and all reasonable expenses, including appraisal fees, at trial and on appeal, shall be awarded to the property owner if the amount of compensation assessed by the verdict exceeds the regulating entity's provision for compensation.

(b) All awards of judgment for plaintiff, including recovery for damages and costs of litigation, shall be paid out of funds of the government entity responsible for applying the statute, regulation, or ordinance effecting the diminution in the fair market value of

1 the affected portion of the real property. Payment shall not be made from a judgment
2 fund.

3 **"§ 40B-9. Public nuisance exception.**

4 (a) No compensation shall be required by this Chapter if (i) the owner's use or
5 proposed use of the property amounts to a public nuisance as commonly understood and
6 defined by common law or statutory law but shall be limited to those uses whose
7 prohibition inheres in the title to the property, and (ii) the challenged regulation was
8 applied due process.

9 (b) To bar an award of damages under this section, the State or the local political
10 subdivision of the State applying the challenged statute, regulation, or ordinance shall
11 have the burden of proof to establish that the use or proposed use of the property is a
12 public nuisance, as defined in subsection (a) of this section.

13 **"§ 40B-10. Requirement of notice to owner prior to regulation by zoning.**

14 Notwithstanding the provisions of Article 18 of Chapter 153A of the General Statutes
15 or Article 16 of Chapter 160A of the General Statutes, before any person, including the
16 State or a local political subdivision of the State, files a zoning petition against the
17 property of another person, at least 45 days prior to the filing date, the filing party shall
18 notify the affected owner by certified mail of the person's intention to file the petition and
19 enclose in the notice a copy of the petition."

20 Sec. 2. There is appropriated from the General Fund to the Department of
21 Justice the sum of ten thousand dollars (\$10,000) for the 1995-96 fiscal year to
22 supplement the Department's research and consultation capacity in the field of nuisance
23 law and to allow the Department to assist more fully State and local governmental entities
24 in applying principles of nuisance law and due process of law in the regulation of
25 properties by those entities.

26 Sec. 3. Section 2 of this act becomes effective July 1, 1995, and the remainder
27 of this act becomes effective October 1, 1995.