

# House Bill 3134

Sponsored by Representative BARNHART

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates private cause of action against owner of private real property that is subject to modification or waiver of land use regulation pursuant to Ballot Measure 37 (2004) for owner of affected private real property that is reduced in value.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to compensation for exceptions to land use regulation; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 197.**

5 **SECTION 2. (1) As used in this section:**

6 (a) "Affected property" is private real property, or an interest in the private real prop-  
7 erty, that is located within \_\_\_\_\_ of private real property on which a use of property  
8 otherwise restricted by a land use regulation is allowed in lieu of payment of just compen-  
9 sation pursuant to chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)).

10 (b) "Compensation exception" means a use of property that is restricted by a land use  
11 regulation but allowed in lieu of paying just compensation pursuant to chapter 1, Oregon  
12 Laws 2005 (Ballot Measure 37 (2004)).

13 (c) "Land use regulation" has the meaning given that term in chapter 1, Oregon Laws  
14 2005 (Ballot Measure 37 (2004)).

15 (d) "Public entity" has the meaning given that term in chapter 1, Oregon Laws 2005  
16 (Ballot Measure 37 (2004)).

17 (e) "Reduction in the fair market value" means the decrease in fair market value of af-  
18 fected property that is attributable to the effect that a compensation exception has on the  
19 affected property, as of the date the owner of the affected property makes a written demand  
20 for compensation pursuant to this section.

21 (2) Subject to subsection (3) of this section, the owner of private real property shall  
22 compensate an owner of affected property for a reduction in the fair market value of the  
23 affected property if:

24 (a) A particular use of the private real property is limited by an applicable land use reg-  
25 ulation;

26 (b) The governing body of a public entity allows the particular use of the private real  
27 property, in lieu of paying just compensation, by modifying, removing or not applying the  
28 land use regulation pursuant to chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)); and

29 (c) The particular use of private real property allowed pursuant to chapter 1, Oregon  
30 Laws 2005 (Ballot Measure 37 (2004)), has caused a reduction in the fair market value of the

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 affected property, or an ownership interest in the affected property.

2 (3) An owner of affected property who seeks compensation under this section shall make  
3 a written demand for compensation that:

4 (a) Identifies the private real property subject to a compensation exception by street  
5 address and legal description;

6 (b) Identifies the affected property by street address and legal description;

7 (c) Identifies the compensation exception alleged to have caused a reduction in the fair  
8 market value of the affected property;

9 (d) Identifies each person with an ownership interest in the affected property and pro-  
10 vides a mailing address for each person;

11 (e) Is mailed to each owner of record of the affected property;

12 (f) Is mailed to each owner of record of the private real property subject to the com-  
13 pensation exception; and

14 (g) Requests the participation of owners of the private real property subject to the com-  
15 pensation exception in negotiations to settle the compensation issue without litigation.

16 (4) Upon receipt of a written demand satisfying the requirements of subsection (3) of this  
17 section, the owners of record of the private real property subject to the compensation ex-  
18 ception shall contact the owners of record of the affected property to:

19 (a) Arrange for negotiations to settle the compensation issue without litigation; or

20 (b) Refuse to participate in negotiations.

21 (5) Negotiations to settle compensation issues without litigation may:

22 (a) Include mediation, arbitration or another form of alternative dispute resolution  
23 agreed to between the parties to the negotiations; and

24 (b) May continue as long as the parties to the negotiations agree to continue the nego-  
25 tiations.

26 (6) The owner of the affected property has a cause of action and may file in the circuit  
27 court for the county in which the affected property is located a complaint seeking compen-  
28 sation for the reduction in fair market value of the affected property that is due to the  
29 compensation exception if:

30 (a) The request for negotiations pursuant to subsection (3)(g) of this section is refused  
31 by the owners of the private real property subject to the compensation exception; or

32 (b) 180 days after the written demand for compensation under this section is mailed, the  
33 parties to negotiations pursuant to this section have been unsuccessful in resolving the claim  
34 for compensation through negotiations.

35 (7) If a complaint is filed in the circuit court pursuant to this section, the circuit court  
36 at trial or other court on appeal shall award to a prevailing party who is:

37 (a) An owner of affected property, compensation in an amount equal to the reduction in  
38 the fair market value of the affected property, attorney fees and costs and disbursements;  
39 or

40 (b) An owner of private real property that is subject to a compensation exception, at-  
41 torney fees and costs and disbursements if the court finds that the complaint filed is sub-  
42 stantially without basis in law or fact.

43 **SECTION 3.** Section 2 of this 2005 Act applies to a claim for just compensation pursuant  
44 to chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), made before, on or after the ef-  
45 fective date of this 2005 Act.

1        **SECTION 4. This 2005 Act being necessary for the immediate preservation of the public**  
2        **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
3        **on its passage.**

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