

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3474

By COMMITTEE ON RULES

August 3

1 In line 2 of the printed A-engrossed bill, after “property” insert “; amending chapter 1, Oregon
2 Laws 2005; and declaring an emergency”.

3 Delete lines 4 through 24 and insert:

4 “**SECTION 1.** Chapter 1, Oregon Laws 2005, is amended to read:

5 “**SECTION 1.** *[The following provisions are]* **Section 2, chapter 1, Oregon Laws 2005, is added**
6 to and made a part of ORS chapter 197.[.]

7 “**SECTION 2.** (1) If a public entity enacts or enforces a new land use regulation or enforces a
8 land use regulation enacted prior to *[the effective date of this amendment]* **December 2, 2004**, that
9 restricts the use of private real property or **of** any interest therein and has the effect of reducing
10 the fair market value of the property[,] or **of** any interest therein, then the owner of the property
11 shall be paid just compensation.

12 “(2) Just compensation *[shall be]* **is** equal to the reduction in the fair market value of the af-
13 fected property interest resulting from enactment or enforcement of the land use regulation as of
14 the date the owner makes written demand for compensation under this *[act]* **section**.

15 “(3) Subsection (1) of this *[act shall]* **section does** not apply to land use regulations:

16 “[*(A)*] **(a)** Restricting or prohibiting activities commonly and historically recognized as public
17 nuisances under common law. This subsection shall be construed narrowly in favor of a finding of
18 compensation under this *[act]* **section**;

19 “[*(B)*] **(b)** Restricting or prohibiting activities for the protection of public health and safety, such
20 as fire and building codes, health and sanitation regulations, solid or hazardous waste
21 regulations[,] and pollution control regulations;

22 “[*(C)*] **(c)** To the extent the land use regulation is required to comply with federal law;

23 “[*(D)*] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography
24 or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter
25 rights provided by the Oregon or United States *[Constitutions]* **Constitution**;

26 “**(e) That are established in ORS 30.930 to 30.947, 527.346, 527.360, 561.685, 561.687, 561.689,**
27 **561.691, 561.693, 561.695, 570.005 to 570.600, 570.650, 570.700 to 570.710, 596.095, 596.100, 596.105,**
28 **596.393, 596.990 or 596.995 or section 2 or 4, chapter 390, Oregon Laws 1999, or in adminis-**
29 **trative rules or statewide plans implementing these statutes; or**

30 “[*(E)*] **(f)** Enacted prior to the date of acquisition of the property by the owner or a family
31 member of the owner who owned the subject property prior to acquisition or inheritance by the
32 owner, whichever occurred first.

33 “(4) Just compensation under subsection (1) of this *[act shall be]* **section is** due the owner of the
34 property if the land use regulation continues to be enforced against the property 180 days after the
35 owner of the property makes written demand for compensation under this section to the public en-

1 tity enacting or enforcing the land use regulation.

2 “(5) For claims arising from land use regulations enacted prior to [*the effective date of this act,*]
3 **December 2, 2004, the owner of the property shall make a** written demand for compensation
4 under subsection (4) [*shall be made*] **of this section** within two years [*of the effective date of this*
5 *act*] **after December 2, 2004,** or the date the public entity applies the land use regulation as an
6 approval [*criteria*] **criterion** to an application submitted by the owner of the property, whichever is
7 later. For claims arising from land use regulations enacted [*after the effective date of this act,*] **on**
8 **or after December 2, 2004, the owner of the property shall make a** written demand for com-
9 pensation under subsection (4) [*shall be made*] **of this section** within two years [*of*] **after** the
10 enactment of the land use regulation, or the date the owner of the property submits a land use ap-
11 plication in which the land use regulation is an approval [*criteria*] **criterion**, whichever is later.

12 “(6) If a land use regulation continues to apply to the subject property more than 180 days after
13 the present owner of the property has made written demand for compensation under this [*act*] **sec-**
14 **tion,** the present owner of the property[,] or **of** any interest therein[, *shall have*] **has** a cause of
15 action for compensation under this [*act*] **section** in the circuit court **for the county** in which the
16 real property is located, and the present owner of the real property shall be entitled to reasonable
17 attorney fees, expenses, costs[,] and other disbursements reasonably incurred to collect the com-
18 pensation.

19 “(7) A metropolitan service district, city, [*or*] county[,] or state agency may adopt or apply pro-
20 cedures for the processing of claims under this [*act*] **section,** but in no event shall these procedures
21 act as a prerequisite to the filing of a compensation claim under subsection (6) of this [*act*]
22 **section,** nor shall the failure of an owner of property to file an application for a land use permit
23 with the local government serve as grounds for dismissal, abatement[,] or delay of a compensation
24 claim under subsection (6) of this [*act*] **section.**

25 “(8) Notwithstanding any other state statute or the availability of funds under subsection (10)
26 of this [*act*] **section,** in lieu of payment of just compensation under this [*act*] **section,** the governing
27 body responsible for enacting the land use regulation may modify, remove[,] or not [*to*] apply the
28 land use regulation or land use regulations to allow the owner to use the property for a use per-
29 mitted at the time the owner acquired the property.

30 “(9) A decision by a governing body under this [*act shall*] **section is** not [*be considered*] a land
31 use decision as defined in ORS 197.015 [(10)].

32 “(10) Claims made under this section [*shall*] **must** be paid from funds, if any, specifically allo-
33 cated by the [*legislature*] **Legislative Assembly,** city, county[,] or metropolitan service district for
34 payment of claims under this [*act*] **section.** Notwithstanding the availability of funds under this
35 subsection, a metropolitan service district, city, county[,] or state agency shall have discretion to
36 use available funds to pay claims or to modify, remove[,] or not apply a land use regulation or land
37 use regulations pursuant to subsection [(6)] **(8)** of this [*act*] **section.** If a claim has not been paid
38 within two years [*from*] **after** the date on which it accrues, the owner [*shall be*] **is** allowed to use
39 the property as permitted at the time the owner acquired the property.

40 “(11) [*Definitions - for purposes of*] **As used in** this section:

41 “[*A*] (a) ‘Family member’ [*shall include*] **includes** the wife, husband, son, daughter, mother, fa-
42 ther, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-
43 in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner
44 of the property, an estate of any of the foregoing family members[,] or a legal entity owned by any
45 one or combination of these family members or the owner of the property.

1 “[(B)] (b) ‘Land use regulation’ [shall include] **includes**:
2 “[(i)] (A) Any statute regulating the use of land or **of** any interest therein;
3 “[(ii)] (B) Administrative rules and goals of the Land Conservation and Development Commis-
4 sion;
5 “[(iii)] (C) Local government comprehensive plans, zoning ordinances, land division
6 ordinances[,] and transportation ordinances;
7 “[(iv)] (D) Metropolitan service district regional framework plans, functional plans, planning
8 goals and objectives; and
9 “[(v)] (E) Statutes and administrative rules regulating farming and forest practices.
10 “[(C)] (c) ‘Owner’ is the present owner of the property[,] or **of** any interest therein.
11 “[(D)] (d) ‘Public entity’ [shall include] **includes** the state, a metropolitan service district, a
12 city[, or] **and** a county.
13 “(12) The remedy created by this [act] **section** is in addition to any other remedy under the
14 Oregon or United States [Constitutions] **Constitution**, and is not intended to modify or replace any
15 other remedy.
16 “(13) If any portion or portions of this [act] **section** are declared invalid by a court of competent
17 jurisdiction, the remaining portions of this [act] **section** shall remain in full force and effect.
18 “**SECTION 2. This 2005 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
20 **on its passage.”**
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