

B-Engrossed
House Bill 3474

Ordered by the Senate August 3
Including House Amendments dated June 8 and Senate Amendments
dated August 3

Sponsored by Representative SUMNER

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.

[Prohibits regulation that prohibits or restricts religious use of real property owned by religious organization. Allows reasonable regulation of physical characteristics of authorized uses.]

Allows owner to claim compensation for land use regulation that restricts use of private real property or that reduces fair market value of private real property.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to regulation of use of real property; amending chapter 1, Oregon Laws 2005; and declaring
3 an emergency.

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

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

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

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

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

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

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

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

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

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

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 (e) That are established in ORS 30.930 to 30.947, 527.346, 527.360, 561.685, 561.687, 561.689,
2 561.691, 561.693, 561.695, 570.005 to 570.600, 570.650, 570.700 to 570.710, 596.095, 596.100, 596.105,
3 596.393, 596.990 or 596.995 or section 2 or 4, chapter 390, Oregon Laws 1999, or in adminis-
4 trative rules or statewide plans implementing these statutes; or

5 [(E)] (f) Enacted prior to the date of acquisition of the property by the owner or a family
6 member of the owner who owned the subject property prior to acquisition or inheritance by the
7 owner, whichever occurred first.

8 (4) Just compensation under subsection (1) of this [act shall be] **section is** due the owner of the
9 property if the land use regulation continues to be enforced against the property 180 days after the
10 owner of the property makes written demand for compensation under this section to the public en-
11 tity enacting or enforcing the land use regulation.

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

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

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

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

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

42 (10) Claims made under this section [shall] **must** be paid from funds, if any, specifically allocated
43 by the [legislature] **Legislative Assembly,** city, county[,] or metropolitan service district for pay-
44 ment of claims under this [act] **section.** Notwithstanding the availability of funds under this sub-
45 section, a metropolitan service district, city, county[,] or state agency shall have discretion to use

1 available funds to pay claims or to modify, remove[,] or not apply a land use regulation or land use
2 regulations pursuant to subsection [(6)] **(8)** of this [act] **section**. If a claim has not been paid within
3 two years [from] **after** the date on which it accrues, the owner [shall be] **is** allowed to use the
4 property as permitted at the time the owner acquired the property.

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

6 [(A)] **(a)** "Family member" [shall include] **includes** the wife, husband, son, daughter, mother, fa-
7 ther, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-
8 in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner
9 of the property, an estate of any of the foregoing family members[,] or a legal entity owned by any
10 one or combination of these family members or the owner of the property.

11 [(B)] **(b)** "Land use regulation" [shall include] **includes**:

12 [(i)] **(A)** Any statute regulating the use of land or **of** any interest therein;

13 [(ii)] **(B)** Administrative rules and goals of the Land Conservation and Development Commission;

14 [(iii)] **(C)** Local government comprehensive plans, zoning ordinances, land division ordinances[,]
15 and transportation ordinances;

16 [(iv)] **(D)** Metropolitan service district regional framework plans, functional plans, planning
17 goals and objectives; and

18 [(v)] **(E)** Statutes and administrative rules regulating farming and forest practices.

19 [(C)] **(c)** "Owner" is the present owner of the property[,] or **of** any interest therein.

20 [(D)] **(d)** "Public entity" [shall include] **includes** the state, a metropolitan service district, a
21 city[, or] **and** a county.

22 (12) The remedy created by this [act] **section** is in addition to any other remedy under the
23 Oregon or United States [Constitutions] **Constitution**, and is not intended to modify or replace any
24 other remedy.

25 (13) If any portion or portions of this [act] **section** are declared invalid by a court of competent
26 jurisdiction, the remaining portions of this [act] **section** shall remain in full force and effect.

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

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