

Senate Bill 509

Sponsored by Senator L GEORGE

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**.

Permits public bodies that own real property to file claims for compensation for land use regulations.

A BILL FOR AN ACT

1
2 Relating to claims for compensation for land use regulations; creating new provisions; and amending
3 ORS 197.352.

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

5 **SECTION 1.** ORS 197.352 is amended to read:

6 197.352. [*The following provisions are added to and made a part of ORS chapter 197:*]

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

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

14 (3) Subsection (1) of this section shall not apply to land use regulations:

15 (A) Restricting or prohibiting activities commonly and historically recognized as public nui-
16 sances under common law. This subsection shall be construed narrowly in favor of a finding of
17 compensation under this section;

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

21 (C) To the extent the land use regulation is required to comply with federal law;

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

25 (E) Enacted prior to the date of acquisition of the property by the owner or a family member
26 of the owner who owned the subject property prior to acquisition or inheritance by the owner,
27 whichever occurred first.

28 (4) Just compensation under subsection (1) of this section shall be due the owner of the property
29 if the land use regulation continues to be enforced against the property 180 days after the owner
30 of the property makes written demand for compensation under this section to the public entity en-
31 acting or enforcing the land use regulation.

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 (5) For claims arising from land use regulations enacted prior to December 2, 2004, written de-
2 mand for compensation under subsection (4) shall be made within two years of December 2, 2004,
3 or the date the public entity applies the land use regulation as an approval criteria to an application
4 submitted by the owner of the property, whichever is later. For claims arising from land use regu-
5 lations enacted after December 2, 2004, written demand for compensation under subsection (4) shall
6 be made within two years of the enactment of the land use regulation, or the date the owner of the
7 property submits a land use application in which the land use regulation is an approval criteria,
8 whichever is later.

9 (6) If a land use regulation continues to apply to the subject property more than 180 days after
10 the present owner of the property has made written demand for compensation under this section, the
11 present owner of the property, or any interest therein, shall have a cause of action for compensation
12 under this section in the circuit court in which the real property is located, and the present owner
13 of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other dis-
14 bursements reasonably incurred to collect the compensation.

15 (7) A metropolitan service district, city, or county, or state agency may adopt or apply proce-
16 dures for the processing of claims under this section, but in no event shall these procedures act as
17 a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall
18 the failure of an owner of property to file an application for a land use permit with the local gov-
19 ernment serve as grounds for dismissal, abatement, or delay of a compensation claim under sub-
20 section (6) of this section.

21 (8) Notwithstanding any other state statute or the availability of funds under subsection (10) of
22 this section, in lieu of payment of just compensation under this section, the governing body respon-
23 sible for enacting the land use regulation may modify, remove, or not to apply the land use regu-
24 lation or land use regulations to allow the owner to use the property for a use permitted at the time
25 the owner acquired the property.

26 (9) A decision by a governing body under this section shall not be considered a land use decision
27 as defined in ORS 197.015 (11).

28 (10) Claims made under this section shall be paid from funds, if any, specifically allocated by the
29 legislature, city, county, or metropolitan service district for payment of claims under this section.
30 Notwithstanding the availability of funds under this subsection, a metropolitan service district, city,
31 county, or state agency shall have discretion to use available funds to pay claims or to modify, re-
32 move, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this
33 section. If a claim has not been paid within two years from the date on which it accrues, the owner
34 shall be allowed to use the property as permitted at the time the owner acquired the property.

35 (11) Definitions - for purposes of this section:

36 (A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother,
37 brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt,
38 uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property,
39 an estate of any of the foregoing family members, or a legal entity owned by any one or combination
40 of these family members or the owner of the property.

41 (B) "Land use regulation" shall include:

42 (i) Any statute regulating the use of land or any interest therein;

43 (ii) Administrative rules and goals of the Land Conservation and Development Commission;

44 (iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and
45 transportation ordinances;

1 (iv) Metropolitan service district regional framework plans, functional plans, planning goals and
2 objectives; and

3 (v) Statutes and administrative rules regulating farming and forest practices.

4 (C) "Owner" is the present owner of the property, or any interest therein.

5 (D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

6 (12) The remedy created by this section is in addition to any other remedy under the Oregon
7 or United States Constitutions, and is not intended to modify or replace any other remedy.

8 (13) If any portion or portions of this section are declared invalid by a court of competent ju-
9 risdiction, the remaining portions of this section shall remain in full force and effect.

10 **SECTION 2. ORS 197.352 is added to and made a part of ORS chapter 197.**

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