



State of Wisconsin
2005 - 2006 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 675**

May 2, 2006 - Offered by Senator STEPP.

- 1 **AN ACT to create** 895.456 of the statutes; **relating to:** compensation for the
2 reduction in the fair market value of private real property.

Analysis by the Legislative Reference Bureau

This substitute amendment allows an owner of private real property to seek compensation from the state or a political subdivision of the state if the state or a local governmental unit enacts, adopts, or promulgates a statute, rule, ordinance, or plan (land use regulation) that restricts the use of the private real property and reduces its fair value. The amount of the compensation is equal to the sum of the lost fair market value, the amount of unrefunded permit fees, the value of any improvements ordered removed, plus the cost of removing those improvements. The requirement to provide compensation does not apply if the land use regulation protects public health and safety, complies with federal law, or prohibits the sale of pornography.

Under the substitute amendment, an aggrieved private real property owner is generally entitled to compensation if the land use regulation continues to be enforced against the private real property 90 days after the owner sends a written demand for compensation to the state or governmental unit. Instead of paying the owner compensation, the state or governmental unit may modify, remove, or not apply the land use regulation to allow the owner to use the private real property in a manner that was permitted at the time the owner acquired the private real property. If the land use regulation remains in effect 180 days after a written demand for compensation, the owner may bring suit against the state or governmental unit in

the county in which the private real property is located. Finally, if court-ordered compensation is not paid within two years after the order is entered or if the state or governmental unit has not modified or removed or not applied the land use regulation within two years after the owner has made a written demand for compensation, the owner may use or develop the private real property in a manner that was permitted before the land use regulation was enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.456 of the statutes is created to read:

2 **895.456 Compensation for public use of private land. (1)** In this section:

3 (a) “Family member” means a person who is related to another person as a
4 spouse, parent, child, brother, sister, son-in-law, daughter-in-law, father-in-law,
5 mother-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew,
6 stepparent, stepchild, grandparent, or grandchild.

7 (b) “Land use regulation” means any of the following:

8 1. A statute regulating farming, forest practices, or the use of private real
9 property or of any interest in private real property.

10 2. An administrative rule regulating the use of private real property or of any
11 interest in private real property.

12 3. An ordinance, including a zoning ordinance, regulating the use of private
13 real property or of any interest in private real property.

14 4. A town, county, or regional plan that regulates the use of private real
15 property or of any interest in private real property.

16 (c) “Local governmental unit” means a political subdivision of the state, a
17 special purpose district in the state, an agency or corporation of a political
18 subdivision or special purpose district, or a combination or subunit of any of the
19 foregoing.

1 (d) "Nuisance" means a condition that a court has found to be a nuisance under
2 ch. 823, except that a widely accepted or utilized practice by a majority of landowners
3 that are subject to the same ordinances is not a nuisance if that practice is not
4 specifically prohibited by those ordinances.

5 (e) "Private real property" means real property or an interest in real property
6 that is not owned by the United States, the state, a local governmental unit, or a
7 nonprofit organization described in section 501 (c) of the Internal Revenue Code.

8 (f) "Property owner" means the present owner of private real property or of an
9 interest in private real property.

10 **(2)** (a) If, after the effective date of this paragraph [revisor inserts date], the
11 state enacts or promulgates a land use regulation, or requires a local governmental
12 unit to enact, adopt, or enforce a land use regulation, that reduces the fair market
13 value of private real property below its value under the land use regulations
14 previously in effect, the property owner shall be compensated by the state for that
15 reduction.

16 (b) If, after the effective date of this paragraph [revisor inserts date], a local
17 governmental unit enacts or adopts a land use regulation that reduces the fair
18 market value of private real property below its value under the land use regulations
19 previously in effect, the property owner shall be compensated by the local
20 governmental unit for that reduction.

21 (c) The compensation of the property owner under par. (a) or (b) shall equal the
22 sum of the following:

23 1. The amount of the reduction in the fair market value of the private real
24 property.

25 2. The amount of permit fees paid and not refunded.

1 3. The value of any improvements to the private real property that the state
2 or government unit orders removed as part of the enforcement of the land use
3 regulation.

4 4. The reasonable costs of removing those improvements.

5 (c) The property owner shall submit a written demand for compensation or
6 waiver from regulation to the state or local governmental unit. The demand shall
7 include identification of the private real property, a description of the land use
8 regulation, an itemized statement of the amount of compensation requested, and
9 documentation to support the amount of compensation requested. The written
10 demand for compensation must be made within 2 years after the date that the state
11 or local governmental unit enacts, adopts, or promulgates the land use regulation or
12 within 2 years after the property owner submits a land use application that is
13 affected by the land use regulation, whichever is later.

14 **(3)** During the 90 days following receipt of the written demand for
15 compensation or waiver from regulation, the state or local governmental unit may
16 request additional information from the property owner, and may make offers to
17 settle the claim. The compensation requested shall be due if all of the following
18 applies:

19 (a) An applicable land use regulation continues to be enforced against the
20 private real property 90 days after the property owner has made a written demand
21 for compensation or waiver from regulation to the state or local governmental unit
22 that is enforcing the land use regulation.

23 (b) The state or local governmental unit lacked justification to request
24 additional information regarding the claim.

1 **(4)** The state or local governmental unit may adopt procedures for the
2 processing of claims for compensation under sub. (2), but those procedures may not
3 be required as a prerequisite to the filing of a written demand for compensation
4 under sub. (2). The failure of the state or local governmental unit to act on a
5 previously submitted land use application to the state or local governmental unit is
6 not grounds for dismissal or delay of a claim for compensation under sub. (2). The
7 state or local governmental unit may not charge a fee for the submission of a claim
8 under sub. (2).

9 **(5)** (a) In lieu of payment of compensation as the result of a written demand
10 under sub. (2), the state may modify, remove, or not apply all or part of the land use
11 regulation to allow the property owner to use the private real property in a manner
12 that was permitted immediately before the state enacted or promulgated the land
13 use regulation.

14 (b) In lieu of payment of compensation as the result of a written demand under
15 sub. (2), the local governmental unit that enacted or adopted the land use regulation
16 may modify, remove, or not apply all or part of the land use regulation to allow the
17 property owner to use the private real property in a manner that was permitted
18 immediately before the local governmental unit enacted or adopted the land use
19 regulation. The local governmental unit shall record an approved resolution of the
20 modification, removal, or inapplicability of land use regulation with the register of
21 deeds, specifying the address and legal description of the property to which the
22 modification, removal, or inapplicability applies.

23 **(6)** A property owner may bring an action in circuit court where the private real
24 property is located for compensation listed under sub. (2) (b) 1. to 4. resulting from
25 any land use regulation that reduces the value of the private real property if the land

1 use regulation continues to apply to the private real property more than 180 days
2 after the property owner has made a written demand for compensation under sub.
3 (2) and the property owner has not received an offer of compensation or has not
4 accepted the compensation that is offered or has not received a written offer to
5 modify, remove, or waive the applicable land use regulation from any person with
6 proper authority. A property owner bringing an action under this subsection must
7 include in his or her complaint the legal description of the private real property
8 involved, substantiation of the damage done to the private real property, the land use
9 regulation that resulted in the request for compensation, and the date that the land
10 use regulation was enacted, adopted, or promulgated. The property owner may use
11 a comparative sales analysis as a reasonably accurate method to substantiate the
12 damage done to the private real property and the resulting reduction in the fair
13 market value of the private real property. The court, if ordering compensation, shall
14 also order the state or local governmental unit to pay the property owner's
15 reasonable attorney fees, expenses, costs, and disbursements related to the circuit
16 court action.

17 (7) If the state or local governmental unit argues in an action brought under
18 sub. (6) that the land use regulation is necessary to prevent a public nuisance, and
19 the court finds that the private real property was not creating a public nuisance, the
20 court shall, in addition to the other remedies in this section, order the state or local
21 governmental unit to pay the property owner's reasonable attorney fees, expenses,
22 costs, and disbursements related to the court action.

23 (8) If compensation ordered under sub. (6) is not paid within 2 years after the
24 court enters the order, or if the state or local governmental unit has not modified or
25 removed or not applied all or part of the land use regulation as provided under sub.

1 (5) within 2 years after the owner made a written demand for compensation, the
2 private real property owner shall be allowed to use or develop the private real
3 property in a manner that was permitted immediately before the land use regulation
4 was enacted, adopted, or promulgated.

5 (9) Subsection (2) does not apply to a land use regulation that meets any of the
6 following criteria:

7 (a) Regulates or prohibits activities for the protection of public health and
8 safety, including fire and building codes, health and sanitation laws and rules, solid
9 or hazardous waste laws or rules, and pollution control laws and rules.

10 (b) Is required to comply with federal law.

11 (c) Prohibits the possession or sale of pornography.

12 (d) Was enacted, adopted, or promulgated before the date that the property
13 owner acquired the private real property unless the regulation was enacted, adopted,
14 or promulgated after the effective date of this paragraph [revisor inserts date],
15 and after a family member of the property owner, the estate of a family member, or
16 a legal entity owned by a family member, acquired the private real property. A person
17 who acquires private real property from a family member shall record a statement
18 with the register of deeds, specifying that the private real property was transferred
19 from a family member and the address and legal description of the private real
20 property to which the statement applies.

21 (10) The provisions of ss. 16.007, 893.80, and 893.82 do not apply to claims
22 made under this section.

23 (END)