



2007 ASSEMBLY BILL 805

February 13, 2008 - Introduced by Representatives M. WILLIAMS, ALBERS, MUSSER, LEMAHIEU, OWENS, TOWNSEND, MURSAU, GUNDERSON, GRONEMUS and WOOD, cosponsored by Senators SCHULTZ and A. LASEE. Referred to Committee on Property Rights.

- 1 **AN ACT to create** 895.08 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 bill allows an owner of private real property to seek compensation from the state or a political subdivision of the state (governmental unit) if the governmental unit enacts or enforces a statute, administrative rule, ordinance, or plan (land use regulation) that restricts the use of the 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 permit fees paid and not refunded, the value of any improvements ordered removed, plus the cost of removing those improvements.

Under the bill, an aggrieved property owner is generally entitled to compensation if the land use regulation continues to be enforced against the property 90 days after the owner sends a written demand for compensation to the governmental unit. A demand for compensation must be made within two years after the land use regulation takes effect. Instead of paying the owner compensation, the governmental unit may modify, remove, or not apply the land use regulation to allow the owner to use the property in a manner that was permitted at the time that the owner acquired the property. If the land use regulation remains in effect 180 days after a written demand for compensation, the property owner may bring action against the governmental unit in the county in which the property is located. Finally, if court-ordered compensation is not paid within two years after the order is entered or if the 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

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compensation, the owner may use or develop the property in a manner that was permitted at the time that the owner acquired the property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 895.08 of the statutes is created to read:

2 **895.08 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) "Governmental unit" means the state, a political subdivision of the state,
8 a special purpose district in the state, an agency or corporation of a political
9 subdivision or special purpose district, or a combination or subunit of any of the
10 foregoing.

11 (c) "Land use regulation" means any of the following:

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

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

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

18 4. A town, county, or regional plan that regulates the use of real property or of
19 any interest in real property.

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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, a governmental unit, or a nonprofit
7 organization described in section 501 (c) of the Internal Revenue Code.

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

10 **(2)** (a) If, after the effective date of this paragraph ... [revisor inserts date], a
11 governmental unit enacts a land use regulation or enforces a land use regulation that
12 was in effect on or after the effective date of this paragraph ... [revisor inserts date],
13 that restricts the use of private real property, or prohibits the development of
14 property that otherwise could be developed, that reduces the fair market value of the
15 property, that applies to a parcel of land, not to an owner of a parcel of land, and that
16 continues to apply to that land regardless of who owns the property, the property
17 owner shall be compensated for that restriction or prohibition.

18 (b) The compensation of the property owner under par. (a) shall equal the sum
19 of the following:

- 20 1. The amount of the reduction in the fair market value of the real property.
- 21 2. The amount of permit fees paid and not refunded.
- 22 3. The value of any improvements to the real property that the government unit
23 orders removed as part of the enforcement of the land use regulation.
- 24 4. The reasonable costs of removing the improvements under subd. 3.

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1 (c) The property owner shall submit a written demand for compensation or
2 waiver from regulation to the governmental unit. The demand shall include
3 identification of the property, a description of the land use regulation, an itemized
4 statement of the amount of compensation requested, and documentation to support
5 the amount of compensation requested.

6 (d) If a claim for compensation or waiver is from an applicable land use
7 regulation enacted before the effective date of this paragraph [revisor inserts
8 date], the written demand for compensation must be made within 2 years after the
9 date that the governmental unit applies the land use regulation to a land use
10 application submitted by the property owner or within 2 years after the effective date
11 of this paragraph [revisor inserts date], whichever is later. If a claim for
12 compensation arises from a land use regulation enacted after the effective date of
13 this paragraph [revisor inserts date], the written demand for compensation must
14 be made within 2 years after the date that the governmental unit enacts the land use
15 regulation or within 2 years after the property owner submits a land use application
16 that is affected by the land use regulation, whichever is later.

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

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

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1 (b) The governmental unit lacked justification to request for substantiation of
2 the claim amount during the 90-day period subsequent to the claim being filed.

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

10 (5) In lieu of payment of compensation as the result of a written demand under
11 sub. (2), the governmental unit that enacted or enforced the land use regulation may
12 modify, remove, or not apply all or part of the land use regulation to allow the
13 property owner to use the property in a manner that was permitted at the time that
14 the owner acquired the property. The governmental unit shall file an approved
15 resolution of the modification, removal, or inapplicability of land use regulation with
16 the register of deeds, specifying the address and legal description of the property to
17 which the modification, removal, or inapplicability applies.

18 (6) A property owner may bring an action in circuit court where the private real
19 property is located for compensation listed under sub. (2) (b) 1. to 4. resulting from
20 any land use regulation that restricts the use of the property that otherwise could
21 be developed if the land use regulation continues to apply to the property more than
22 180 days after the property owner has made a written demand for compensation
23 under sub. (2) and the property owner has not received an offer of compensation or
24 has not accepted the compensation that is offered or has not received a written offer
25 to waive the applicable land use regulation from any person with proper authority.

ASSEMBLY BILL 805**SECTION 1**

1 A property owner bringing an action under this subsection must include in his or her
2 complaint the legal description of the property involved, substantiation of the
3 damage done to the property, the land use regulation that resulted in the request for
4 compensation, and the date that the land use regulation was enacted or enforced.
5 The property owner may use a comparative sales analysis as a reasonably accurate
6 method to substantiate the damage done to the property and the resulting reduction
7 in the fair market value of the property. The court, if ordering compensation, shall
8 also order the governmental unit to pay the property owner's reasonable attorney
9 fees, expenses, costs, and disbursements related to the circuit court action.

10 (7) If the governmental unit argues in an action brought under sub. (6) that the
11 land use regulation is necessary to prevent a public nuisance, and the court finds that
12 the property was not creating a public nuisance, the court shall, in addition to the
13 other remedies in this section, order the governmental unit to pay the property
14 owner's reasonable attorney fees, expenses, costs, and disbursements related to the
15 court action.

16 (8) If compensation ordered under sub. (6) is not paid within 2 years after the
17 order is entered, or if the governmental unit has not modified or removed or not
18 applied all or part of the land use regulation as provided under sub. (5) within 2 years
19 after the owner made a written demand for compensation, the property owner shall
20 be allowed to use or develop the private real property in a manner that was permitted
21 at the time that the owner acquired the property.

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

