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.

AN ACT to create 895.08 of the statutes; relating to: compensation for the 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:

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

895.08 Compensation for public use of private land. (1) In this section:

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

(b) “Governmental unit” means the state, a political subdivision of the state, a special purpose district in the state, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

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

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

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

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

4. A town, county, or regional plan that regulates the use of real property or of any interest in real property.
(d) “Nuisance” means a condition that a court has found to be a nuisance under ch. 823, except that a widely accepted or utilized practice by a majority of landowners that are subject to the same ordinances is not a nuisance if that practice is not specifically prohibited by those ordinances.

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

(f) “Property owner” means the present owner of the property or of an interest in the property.

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

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

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

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

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

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

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

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

(a) An applicable land use regulation continues to be enforced against the private real property 90 days after the property owner has made a written demand for compensation or waiver from regulation to the governmental unit that is enforcing the land use regulation.
(b) The governmental unit lacked justification to request for substantiation of
the claim amount during the 90-day period subsequent to the claim being filed.

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

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

(6) A property owner may bring an action in circuit court where the private real
property is located for compensation listed under sub. (2) (b) 1. to 4. resulting from
any land use regulation that restricts the use of the property that otherwise could
be developed if the land use regulation continues to apply to the property more than
180 days after the property owner has made a written demand for compensation
under sub. (2) and the property owner has not received an offer of compensation or
has not accepted the compensation that is offered or has not received a written offer
to waive the applicable land use regulation from any person with proper authority.
A property owner bringing an action under this subsection must include in his or her complaint the legal description of the property involved, substantiation of the damage done to the property, the land use regulation that resulted in the request for compensation, and the date that the land use regulation was enacted or enforced. The property owner may use a comparative sales analysis as a reasonably accurate method to substantiate the damage done to the property and the resulting reduction in the fair market value of the property. The court, if ordering compensation, shall also order the governmental unit to pay the property owner’s reasonable attorney fees, expenses, costs, and disbursements related to the circuit court action.

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

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

(9) Subsection (2) does not apply to a land use regulation that meets any of the following criteria:
(a) Regulates or prohibits activities for the protection of public health and safety, including fire and building codes, health and sanitation laws and rules, solid or hazardous waste laws or rules, and pollution control laws and rules.

(b) Is required to comply with federal law.

(c) Prohibits the possession or sale of pornography.

(d) Was enacted before the date that the owner acquired the private real property unless the regulation was enacted before the owner acquired the property but after a family member of the owner, the estate of a family member, or a legal entity owned by a family member, acquired the property. The governmental unit shall file a statement of the land use regulation that does not apply under this paragraph with the register of deeds, specifying the address and legal description of the property to which the statement applies.

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