

2005 ASSEMBLY BILL 675

September 19, 2005 – Introduced by Representative ALBERS. Referred to Committee on Property Rights and Land Management.

- 1 **AN ACT** *to create* 895.45 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 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 180 days after the owner sends a written demand for compensation to the governmental unit. 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 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 suit 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 of 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 compensation, the owner may use or develop the property in a manner that was permitted at the time the owner acquired the property.

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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.** 895.45 of the statutes is created to read:

2 **895.45 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.

20 (d) “Nuisance” means a condition that a court has found to be a nuisance under
21 ch. 823, except that a widely accepted or utilized practice by a majority of landowners

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1 that are subject to the same ordinances is not a nuisance if that practice is not
2 specifically prohibited by those ordinances.

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

6 **(2)** (a) If, after the effective date of this paragraph [revisor inserts date], a
7 governmental unit enacts a land use regulation or enforces a land use regulation that
8 was in effect on or after the effective date of this paragraph [revisor inserts date],
9 that restricts the use of private real property or prohibits the development of
10 property that otherwise could be developed and that reduces the fair market value
11 of the property, the property owner shall be paid compensation for that restriction
12 or prohibition. The compensation shall equal the sum of the following:

- 13 1. The amount of the reduction in the fair market value of the real property.
- 14 2. The value of any improvements to the real property that the government unit
15 orders removed as part of the enforcement of the land use regulation.
- 16 3. The reasonable costs of removing those improvements.

17 (b) The compensation shall be due if the land use regulation continues to be
18 enforced against the private real property 180 days after the property owner makes
19 a written demand for compensation to the governmental unit that is enforcing the
20 land use regulation. If a claim for compensation arises from a land use regulation
21 enacted before the effective date of this paragraph [revisor inserts date], the
22 written demand for compensation must be made within 2 years after the date that
23 the governmental unit applies the land use regulation to a land use application
24 submitted by the property owner or within 2 years after the effective date of this
25 paragraph [revisor inserts date], whichever is later. If a claim for compensation

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1 arises from a land use regulation enacted after the effective date of this paragraph
2 [revisor inserts date], the written demand for compensation must be made within
3 2 years after the date that the governmental unit enacts the land use regulation or
4 within 2 years after the property owner submits a land use application that is
5 affected by the land use regulation, whichever is later.

6 **(3)** A governmental unit may adopt procedures for the processing of claims for
7 compensation under sub. (2), but those procedures may not be required as a
8 prerequisite to the filing of a written demand for compensation under sub. (2). The
9 failure of a property owner to file a land use application with a governmental unit
10 is not grounds for dismissal, abatement, or delay of a claim for compensation under
11 sub. (2).

12 **(4)** In lieu of payment of compensation as the result of a written demand under
13 sub. (2), the governmental unit that enacted or enforced the land use regulation may
14 modify, remove, or not apply all or part of the land use regulation to allow the
15 property owner to use the property in a manner that was permitted at the time that
16 the owner acquired the property.

17 **(5)** A property owner may bring an action in circuit court where the private real
18 property is located for compensation listed under sub. (2) (a) 1. to 3. resulting from
19 any land use regulation that restricts the use of the property that otherwise could
20 be developed if the land use regulation continues to apply to the property more than
21 180 days after the property owner has made a written demand for compensation
22 under sub. (2). A property owner bringing an action under this subsection must
23 include in his or her complaint the legal description of the property involved,
24 substantiation of the damage done to the property, the land use regulation that
25 resulted in the request for compensation, and the date that the land use regulation

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1 was enacted or enforced. The court, if ordering compensation, shall also order the
2 governmental unit to pay the property owner's reasonable attorney fees, expenses,
3 costs, and disbursements related to the circuit court action.

4 **(6)** If compensation ordered under sub. (5) is not paid within 2 years after the
5 order is entered, or if the governmental unit has not modified or removed or not
6 applied all or part of the land use regulation as provided under sub. (4) within 2 years
7 after the owner made a written demand for compensation, the property owner shall
8 be allowed to use or develop the private real property in a manner that was permitted
9 at the time that the owner acquired the property.

10 **(7)** Subsection (2) does not apply to a land use regulation that meets any of the
11 following criteria:

12 (a) Restricts or prohibits nuisances.

13 (b) Regulates or prohibits activities for the protection of public health and
14 safety, including fire and building codes, health and sanitation laws and rules, solid
15 or hazardous waste laws or rules, and pollution control laws and rules.

16 (c) Is required to comply with federal law.

17 (d) Prohibits the possession or sale of pornography.

18 (e) Was enacted before the date that the owner acquired the private real
19 property unless the regulation was enacted before the owner acquired the property
20 but after a family member of the owner, the estate of a family member, or a legal
21 entity owned by a family member, acquired the property.

22 **(8)** The provisions of ss. 893.80 and 893.82 do not apply to claims made under
23 this section.

24 **(END)**