



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 675

**Assembly Substitute
Amendment 1 and Assembly
Amendments 1 and 2 to the
Substitute Amendment**

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Assembly Bill 675

The bill applies to owners of private real property. The bill does not apply to land owned by the United States, the state, a state or local governmental unit, or a nonprofit organization.

The bill applies to land use regulations that restrict the use of private real property. The regulation may be a statute, administrative rule, ordinance, or local plan. Compensation is available under the bill for regulations that either restrict the use of property or prohibit development of property that could otherwise be developed, and also reduce the fair market value of the property. The bill applies to regulations that are enacted after the effective date of the legislation or regulations that are enforced after the effective date of the legislation if the regulations are in effect on or after the effective date of the legislation.

The bill does not apply to land use regulations that restrict or prohibit nuisances, regulate for public health or safety, are required to comply with federal law, prohibit the possession or sale of pornography, or were enacted before the current owner acquired the property unless the owner took title from a family member.

Compensation is for the reduction and fair market value of the property, the value of improvements that are ordered removed by a governmental unit, and the reasonable costs of removing the improvements.

The procedures to obtain compensation start with the owner making a written demand to the governmental unit for compensation. If the regulation is in effect before the effective date of the legislation, the owner must submit the demand within two years after the land use regulation is applied, or two years after the effective date of the legislation, whichever is later. If the regulation is in effect after the effective date of the legislation, the written demand must be submitted within two years after

the regulation is adopted or two years after the owner submits an application that is affected by the regulation, whichever is later. The governmental unit may modify, remove or not apply part or all of the regulation. Commencing 180 days after the written demand for compensation, if the regulation continues to be enforced, the owner can commence an action in circuit court for compensation and, if the owner receives compensation, the court must order payment of attorney's fees and costs.

After a judgment for the owner, if the governmental unit has not paid the amount ordered or removed the regulation within two years after the judgment, the property owner can use or develop the property as permitted when the owner acquired the property.

Assembly Substitute Amendment 1

The substitute amendment is similar to Assembly Bill 675, with the following changes:

- A definition of “property owner” is added to clarify that it is the present owner of the property or interest in property who benefits from the bill.
- The substitute amendment adds compensation for the amount of permit fees paid and not refunded.
- The substitute amendment requires that the regulation must be of a type that applies to a parcel of land rather than to the owner of a parcel of land.
- The substitute amendment clarifies that the owner must make a written demand for compensation or waiver from regulation to the local governmental unit.
- The substitute amendment allows the governmental unit to request additional information and make offers to settle in the 90 days following receipt of the written demand for compensation or a waiver from regulation. The compensation is due if the applicable land use regulation continues to be enforced against private real property 90 days after the final written demand for compensation or a waiver or, if the governmental unit had no justification to request substantiation of the claim, 90 days after the written demand was submitted.
- The substitute amendment adds a provision that the governmental unit may not charge a fee for submission of a claim.
- Under the bill, the governmental unit may withdraw applicability of the regulation to the property. The substitute amendment adds a requirement for the governmental unit to file with the register of deeds an approved resolution describing the removal of the land use regulation.
- The bill allows the property owner to bring action in circuit court if the land use regulation that restricts the use of the property continues in effect more than 180 days after the property owner has made a written demand for compensation. The substitute amendment clarifies that the owner may bring the action in circuit court if 180 days have passed and the property owner has not received an offer of compensation or has not

accepted compensation that was offered or has not received a written offer to waive applicability of the land use regulation.

- The substitute amendment allows the property owner to use a comparative sales analysis to substantiate the claim for compensation.
- The bill provides that compensation is not available for land use regulations that restrict or prohibit nuisances. The substitute amendment deletes this provision and substitutes a provision that requires the governmental unit, if it bases its response to the action brought by the owner on grounds that the regulation is necessary to prevent a public nuisance, and the court finds that the property was not creating a public nuisance, to pay the property owner's reasonable attorneys fees and costs.
- Under the bill, compensation is not available if the regulation was enacted before the date that the owner acquired the real property. An exception to this is provided in the bill if the current owner of the real property took title from a family member and the regulation was enacted after the family member took title. The substitute amendment requires the governmental unit, if the exception applies, to file with the register of deeds a statement that the land use regulation does not apply.

Assembly Amendment 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 requires the local unit of government to record, rather than file, certain documents with the register of deeds regarding the applicability of regulations.

Assembly Amendment 2

Assembly Amendment 2 to Assembly Substitute Amendment 1 eliminates the provision that makes the bill applicable to regulations that restrict the use of property or prohibit development of property, and eliminates the provision that makes the bill applicable to regulations that are enforced, but not necessarily adopted, after the effective date of the legislation. Instead, the amendment makes compensation available for the reduction in value of property for a land use regulation that is adopted by a local governmental unit after the effective date of the legislation, and that reduces the value of the property below its value under the land use regulations previously in effect.

Legislative History

The Assembly Committee on Property Rights and Land Management adopted Assembly Substitute Amendment 1 and recommended passage of the bill as amended on November 29, 2005, on a vote of Ayes, 4; Noes, 2.

The Assembly adopted Assembly Substitute Amendment 1 and Assembly Amendments 1 and 2 to the substitute amendment, and passed the bill, as amended, on March 7, 2006, on a vote of Ayes, 54; Noes, 38; Paired, 4.