

House Bill 3153

Sponsored by Representative SCHAUFLEER (at the request of Oregon Agricultural Alliance)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Places land in urban growth boundary of local government if land is within three-mile radius of glide path of airport and land is suitable and available for industrial or commercial uses customarily associated with or benefited by proximity to airport.

Eliminates certain land use regulations relating to agricultural quarantines and embargoes and to animal and plant disease control from list of land use regulations for which owner may claim compensation because land use regulation restricts use of private real property and reduces fair market value of private real property.

A BILL FOR AN ACT

1
2 Relating to land use planning; creating new provisions; and amending ORS 197.352.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 197.295 to**
5 **197.314.**

6 **SECTION 2. (1) In addition to the lands included within an urban growth boundary under**
7 **ORS 197.296 or 197.299, a local government shall include within its urban growth boundary**
8 **all lands that are:**

9 **(a) Within a three-mile radius of a glide path of an airport, as defined in ORS 836.005,**
10 **within this state; and**

11 **(b) Suitable and available for industrial or commercial uses that either customarily are**
12 **associated with airports or benefited by proximity to an airport.**

13 **(2) Local governments shall conform affected comprehensive plans and land use regu-**
14 **lations implementing the plans to the requirements of subsection (1) of this section within**
15 **one year after the effective date of this 2007 Act.**

16 **SECTION 3. ORS 197.352 is amended to read:**

17 *197.352. [The following provisions are added to and made a part of ORS chapter 197:]*

18 (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regu-
19 lation enacted prior to December 2, 2004, that restricts the use of private real property or **of** any
20 interest therein and has the effect of reducing the fair market value of the property[,] or **of** any
21 interest therein, then the owner of the property shall be paid just compensation.

22 (2) Just compensation [*shall be*] **is** equal to the reduction in the fair market value of the affected
23 property interest resulting from enactment or enforcement of the land use regulation as of the date
24 the owner makes **a** written demand for compensation under this section.

25 (3) Subsection (1) of this section [*shall*] **does** not apply to land use regulations:

26 [(A)] (a) Restricting or prohibiting activities commonly and historically recognized as public
27 nuisances under common law. *This subsection shall be construed narrowly in favor of a finding of*
28 *compensation under this section];*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 [(B)] **(b)** Restricting or prohibiting activities for the protection of public health and safety, such
 2 as fire and building codes, health and sanitation regulations, solid or hazardous waste
 3 regulations[,] and pollution control regulations;

4 [(C)] **(c)** To the extent the land use [*regulation is*] **regulations are** required to comply with
 5 federal law;

6 [(D)] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography
 7 or performing nude dancing[. *Nothing in this subsection, however, is intended to affect or alter rights*
 8 *provided by the Oregon or United States Constitutions*];

9 **(e) Established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.685, 561.687, 561.689, 561.691,**
 10 **561.693, 561.695, 561.995, 570.005 to 570.600, 570.650, 570.700 to 570.710, 570.995, 596.095, 596.100,**
 11 **596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing**
 12 **these statutes; or**

13 [(E)] **(f)** Enacted prior to the date of acquisition of the property by the owner or a family
 14 member of the owner who owned the subject property prior to acquisition or inheritance by the
 15 owner, whichever occurred first.

16 **(4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of a finding**
 17 **of compensation under this section.**

18 **(b) Nothing in subsection (3)(d) of this section is intended to affect or alter rights pro-**
 19 **vided by the Oregon or United States Constitution.**

20 [(4)] **(5)** Just compensation under subsection (1) of this section [*shall be*] **is** due the owner of the
 21 property if [*the*] **a** land use regulation continues to be enforced against the property 180 days after
 22 the owner of the property makes **a** written demand for compensation under this section to the public
 23 entity enacting or enforcing the land use regulation.

24 [(5)] **(6)** For claims arising from land use regulations enacted prior to December 2, 2004, **the**
 25 **owner of the property shall make a** written demand for compensation under [*subsection (4) shall*
 26 *be made*] **subsection (5) of this section** within two years of December 2, 2004, or the date the
 27 public entity applies the land use regulation as an approval [*criteria*] **criterion** to an application
 28 submitted by the owner of the property, whichever is later. For claims arising from land use regu-
 29 lations enacted after December 2, 2004, **the owner of the property shall make a** written demand
 30 for compensation under [*subsection (4) shall be made*] **subsection (5) of this section** within two
 31 years of the enactment of the land use regulation, or the date the owner of the property submits a
 32 land use application in which the land use regulation is an approval [*criteria*] **criterion**, whichever
 33 is later.

34 [(6)] **(7)** If a land use regulation continues to apply to the subject property more than 180 days
 35 after the present owner of the property has made **a** written demand for compensation under this
 36 section, the present owner of the property[,] or **of** any interest therein[, *shall have*] **has** a cause of
 37 action for compensation under this section in the circuit court **for the county** in which the real
 38 property is located, and the present owner of the real property shall be entitled to reasonable at-
 39 torney fees, expenses, costs[,] and other disbursements reasonably incurred to collect the compen-
 40 sation.

41 [(7)] **(8)** A metropolitan service district, city, [*or*] county[,] or state agency may adopt or apply
 42 procedures for the processing of claims under this section, but in no event shall these procedures
 43 act as a prerequisite to the filing of a compensation claim under subsection [(6)] **(7)** of this section,
 44 nor shall the failure of an owner of property to file an application for a land use permit with the
 45 local government serve as grounds for dismissal, abatement[,] or delay of a compensation claim un-

1 der subsection [(6)] (7) of this section.

2 [(8)] (9) Notwithstanding any other state statute or the availability of funds under subsection
 3 [(10)] (11) of this section, in lieu of payment of just compensation under this section, the governing
 4 body responsible for enacting the land use regulation may modify, remove[,] or not [to] apply the
 5 land use regulation or land use regulations to allow the owner to use the property for a use per-
 6 mitted at the time the owner acquired the property.

7 [(9)] (10) A decision by a governing body under this section [shall not be considered] is not a
 8 land use decision as defined in ORS 197.015 [(11)].

9 [(10)] (11) Claims made under this section [shall] must be paid from funds, if any, specifically
 10 allocated by the [legislature] Legislative Assembly, city, county[,] or metropolitan service district
 11 for payment of claims under this section. Notwithstanding the availability of funds under this sub-
 12 section, a metropolitan service district, city, county[,] or state agency [shall have discretion to] may
 13 use available funds to pay claims or [to] may modify, remove[,] or not apply a land use regulation
 14 or land use regulations pursuant to subsection [(6)] (9) of this section. If a claim has not been paid
 15 within two years from the date on which it accrues, the owner [shall be allowed to] may use the
 16 property as permitted at the time the owner acquired the property.

17 [(11)] (12) [Definitions - for purposes of] As used in this section:

18 [(A)] (a) "Family member" shall include the wife, husband, son, daughter, mother, father,
 19 brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law,
 20 aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner of the
 21 property, an estate of any of the foregoing family members[,] or a legal entity owned by any one or
 22 combination of these family members or the owner of the property.

23 [(B)] (b) "Land use regulation" shall include:

24 [(i)] (A) Any statute regulating the use of land or of any interest therein;

25 [(ii)] (B) Administrative rules and goals of the Land Conservation and Development Commission;

26 [(iii)] (C) Local government comprehensive plans, zoning ordinances, land division ordinances[,] and
 27 transportation ordinances;

28 [(iv)] (D) Metropolitan service district regional framework plans, functional plans, planning
 29 goals and objectives; and

30 [(v)] (E) Statutes and administrative rules regulating farming and forest practices.

31 [(C)] (c) "Owner" is the present owner of the property[,] or of any interest therein.

32 [(D)] (d) "Public entity" shall include the state, a metropolitan service district, a city[, or] and
 33 a county.

34 [(12)] (13) The remedy created by this section is in addition to any other remedy under the
 35 Oregon or United States [Constitutions] Constitution, and is not intended to modify or replace any
 36 other remedy.

37 [(13)] (14) If any portion or portions of this section are declared invalid by a court of competent
 38 jurisdiction, the remaining portions of this section [shall remain] continue in full force and effect.

39 **SECTION 4. ORS 197.352 is added to and made a part of ORS chapter 197.**

40 **SECTION 5. The amendments to ORS 197.352 by section 3 of this 2007 Act apply to a**
 41 **claim for compensation made on or after the effective date of this 2007 Act.**