

# House Bill 3540

Sponsored by Representative MACPHERSON, Senator PROZANSKI

## 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**.

Conforms Ballot Measure 37 (2004) to legislative form and style.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to compensation for loss of value of private real property resulting from land use regu-  
3 lation; creating new provisions; amending ORS 197.352; and declaring an emergency.

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

5 **SECTION 1.** ORS 197.352 is amended to read:

6 197.352. *[The following provisions are added to and made a part of ORS chapter 197:]*

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

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

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

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

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

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

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

25 [(E)] **(e)** Enacted prior to the date of acquisition of the property by the owner or a family  
26 member of the owner who owned the subject property prior to acquisition or inheritance by the  
27 owner, whichever occurred first.

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

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

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

5        [(5)] (6) For claims arising from land use regulations enacted prior to December 2, 2004, **the**  
 6 **owner of the property shall make a** written demand for compensation under [*subsection (4) shall*  
 7 *be made*] **subsection (5) of this section** within two years of December 2, 2004, or the date the  
 8 public entity applies the land use regulation as an approval [*criteria*] **criterion** to an application  
 9 submitted by the owner of the property, whichever is later. For claims arising from land use regu-  
 10 lations enacted after December 2, 2004, **the owner of the property shall make a** written demand  
 11 for compensation under [*subsection (4) shall be made*] **subsection (5) of this section** within two  
 12 years of the enactment of the land use regulation, or the date the owner of the property submits a  
 13 land use application in which the land use regulation is an approval [*criteria*] **criterion**, whichever  
 14 is later.

15        [(6)] (7) If a land use regulation continues to apply to the subject property more than 180 days  
 16 after the present owner of the property has made written demand for compensation under this sec-  
 17 tion, the present owner of the property[,] or **of** any interest therein[, *shall have*] **has** a cause of  
 18 action for compensation under this section in the circuit court **for the county** in which the real  
 19 property is located, and the present owner of the real property shall be entitled to reasonable at-  
 20 torney fees, expenses, costs[,] and other disbursements reasonably incurred to collect the compen-  
 21 sation.

22        [(7)] (8) A metropolitan service district, city, [*or*] county[,] or state agency may adopt or apply  
 23 procedures for the processing of claims under this section, but in no event shall these procedures  
 24 act as a prerequisite to the filing of a compensation claim under subsection [(6)] (7) of this section,  
 25 nor shall the failure of an owner of property to file an application for a land use permit with the  
 26 local government serve as grounds for dismissal, abatement[,] or delay of a compensation claim un-  
 27 der subsection [(6)] (7) of this section.

28        [(8)] (9) Notwithstanding any other state statute or the availability of funds under subsection  
 29 [(10)] (11) of this section, in lieu of payment of just compensation under this section, the governing  
 30 body responsible for enacting the land use regulation may modify, remove[,] or not [*to*] apply the  
 31 land use regulation or land use regulations to allow the owner to use the property for a use per-  
 32 mitted at the time the owner acquired the property.

33        [(9)] (10) A decision by a governing body under this section [*shall not be considered*] **is not** a  
 34 land use decision as defined in ORS 197.015 [(11)].

35        [(10)] (11) Claims made under this section [*shall*] **must** be paid from funds, if any, specifically  
 36 allocated by the [*legislature*] **Legislative Assembly**, city, county[,] or metropolitan service district  
 37 for payment of claims under this section. Notwithstanding the availability of funds under this sub-  
 38 section, a metropolitan service district, city, county[,] or state agency [*shall have discretion to*] **may**  
 39 use available funds to pay claims or [*to*] **may** modify, remove[,] or not apply a land use regulation  
 40 or land use regulations pursuant to subsection [(6)] (9) of this section. If a claim has not been paid  
 41 within two years from the date on which it accrues, the owner [*shall be allowed to*] **may** use the  
 42 property as permitted at the time the owner acquired the property.

43        [(11)] (12) [*Definitions - for purposes of*] **As used in** this section:

44        [(A)] (a) "Family member" shall include the wife, husband, son, daughter, mother, father,  
 45 brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law,

1 aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner of the  
2 property, an estate of any of the foregoing family members[,] or a legal entity owned by any one or  
3 combination of these family members or the owner of the property.

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

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

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

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

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

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

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

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

15 [(12)] (13) The remedy created by this section is in addition to any other remedy under the  
16 Oregon or United States [*Constitutions*] **Constitution**, and is not intended to modify or replace any  
17 other remedy.

18 [(13)] (14) If any portion or portions of this section are declared invalid by a court of competent  
19 jurisdiction, the remaining portions of this section [*shall remain*] **continue** in full force and effect.

20 **SECTION 2. ORS 197.352 is added to and made a part of ORS chapter 197.**

21 **SECTION 3. This 2007 Act being necessary for the immediate preservation of the public**  
22 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
23 **on its passage.**

24