

HOUSE JOINT RESOLUTION Q

October 18, 2005, Introduced by Reps. Palmer, Drolet, Robertson, Gosselin, Casperson, Hoogendyk, Brandenburg, Rocca, Taub, Vander Veen, Amos, Baxter, Stahl and Farhat and referred to the Committee on Government Operations.

A joint resolution proposing an amendment to the state constitution of 1963, by adding section 7 to article X, to create a right of compensation for land use regulations.

Resolved by the Senate and House of Representatives of the state of Michigan, That the following amendment to the state constitution of 1963, to create a right of compensation for land use regulations, is proposed, agreed to, and submitted to the people of the state:

ARTICLE X

SEC. 7. (1) IF A PUBLIC ENTITY ENACTS OR ENFORCES A NEW LAND USE REGULATION OR ENFORCES A LAND USE REGULATION ENACTED BEFORE THE EFFECTIVE DATE OF THIS SECTION THAT RESTRICTS THE USE OF PRIVATE

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1 REAL PROPERTY OR ANY INTEREST THEREIN AND HAS THE EFFECT OF
2 REDUCING THE FAIR MARKET VALUE OF THE PROPERTY, OR ANY INTEREST
3 THEREIN, THEN THE OWNER SHALL BE PAID COMPENSATION.

4 (2) THE AMOUNT OF COMPENSATION UNDER PARAGRAPH (1) SHALL EQUAL
5 THE REDUCTION IN THE FAIR MARKET VALUE OF THE AFFECTED PROPERTY
6 INTEREST RESULTING FROM ENACTMENT OR ENFORCEMENT OF THE LAND USE
7 REGULATION AS OF THE DATE THE OWNER MAKES WRITTEN DEMAND FOR
8 COMPENSATION UNDER THIS SECTION.

9 (3) PARAGRAPH (1) DOES NOT APPLY:

10 (A) TO A LAND USE REGULATION RESTRICTING OR PROHIBITING
11 ACTIVITIES COMMONLY AND HISTORICALLY RECOGNIZED AS PUBLIC NUISANCES
12 UNDER COMMON LAW. THIS SUBDIVISION SHALL BE CONSTRUED NARROWLY IN
13 FAVOR OF A FINDING OF COMPENSATION UNDER THIS SECTION.

14 (B) TO A LAND USE REGULATION RESTRICTING OR PROHIBITING
15 ACTIVITIES FOR THE PROTECTION OF PUBLIC HEALTH AND SAFETY, SUCH AS
16 FIRE AND BUILDING CODES, HEALTH AND SANITATION REGULATIONS, SOLID
17 OR HAZARDOUS WASTE REGULATIONS, AND POLLUTION CONTROL REGULATIONS.

18 (C) TO THE EXTENT A LAND USE REGULATION IS REQUIRED TO COMPLY
19 WITH FEDERAL LAW.

20 (D) TO A LAND USE REGULATION RESTRICTING OR PROHIBITING THE
21 USE OF A PROPERTY FOR A SEXUALLY ORIENTED BUSINESS. THIS
22 SUBDIVISION DOES NOT AFFECT OR ALTER RIGHTS PROVIDED BY THIS
23 CONSTITUTION OR THE UNITED STATES CONSTITUTION.

24 (E) TO A LAND USE REGULATION ENACTED BEFORE THE DATE OF
25 ACQUISITION OF THE PROPERTY BY THE OWNER OR BY A FAMILY MEMBER OF
26 THE OWNER WHO OWNED THE SUBJECT PROPERTY BEFORE ACQUISITION OR
27 INHERITANCE BY THE OWNER, WHICHEVER OCCURRED FIRST.

1 (4) THE OWNER IS ENTITLED TO COMPENSATION UNDER PARAGRAPH (1)
2 IF THE LAND USE REGULATION CONTINUES TO BE ENFORCED AGAINST THE
3 PROPERTY 180 DAYS AFTER THE OWNER MAKES WRITTEN DEMAND FOR
4 COMPENSATION UNDER THIS SECTION TO THE PUBLIC ENTITY ENACTING OR
5 ENFORCING THE LAND USE REGULATION.

6 (5) FOR CLAIMS ARISING FROM LAND USE REGULATIONS ENACTED
7 BEFORE THE EFFECTIVE DATE OF THIS SECTION, THE OWNER SHALL DEMAND
8 COMPENSATION UNDER PARAGRAPH (4) WITHIN 2 YEARS OF THE EFFECTIVE
9 DATE OF THIS SECTION, OR THE DATE THE PUBLIC ENTITY APPLIES THE
10 LAND USE REGULATION AS AN APPROVAL CRITERION TO AN APPLICATION
11 SUBMITTED BY THE OWNER, WHICHEVER IS LATER. FOR CLAIMS ARISING FROM
12 LAND USE REGULATIONS ENACTED AFTER THE EFFECTIVE DATE OF THIS
13 SECTION, WRITTEN DEMAND FOR COMPENSATION UNDER PARAGRAPH (4) SHALL
14 BE MADE WITHIN 2 YEARS OF THE ENACTMENT OF THE LAND USE REGULATION,
15 OR THE DATE THE OWNER SUBMITS A LAND USE APPLICATION FOR WHICH THE
16 LAND USE REGULATION IS AN APPROVAL CRITERION, WHICHEVER IS LATER.

17 (6) IF A LAND USE REGULATION CONTINUES BE ENFORCED AGAINST THE
18 PROPERTY MORE THAN 180 DAYS AFTER THE OWNER MAKES WRITTEN DEMAND
19 FOR COMPENSATION UNDER THIS SECTION, THE OWNER MAY BRING AN ACTION
20 FOR COMPENSATION UNDER THIS SECTION IN THE CIRCUIT COURT IN THE
21 COUNTY IN WHICH THE REAL PROPERTY IS LOCATED, AND THE OWNER IS
22 ENTITLED TO REASONABLE ATTORNEY FEES, COSTS, AND OTHER EXPENSES
23 REASONABLY INCURRED TO COLLECT THE COMPENSATION.

24 (7) A PUBLIC ENTITY MAY ADOPT OR APPLY PROCEDURES FOR THE
25 PROCESSING OF CLAIMS UNDER THIS SECTION, BUT SUCH A PROCEDURE SHALL
26 NOT BE A PREREQUISITE TO THE FILING OF AN ACTION UNDER PARAGRAPH
27 (6). THE FAILURE OF AN OWNER TO FILE AN APPLICATION FOR A LAND USE

1 PERMIT WITH THE PUBLIC ENTITY IS NOT GROUNDS FOR DISMISSAL,
2 ABATEMENT, OR DELAY OF AN ACTION UNDER PARAGRAPH (6).

3 (8) NOTWITHSTANDING ANY STATE STATUTE OR THE AVAILABILITY OF
4 MONEY UNDER PARAGRAPH (9), IN LIEU OF PAYMENT OF COMPENSATION UNDER
5 THIS SECTION, THE GOVERNING BODY RESPONSIBLE FOR ENACTING THE LAND
6 USE REGULATION MAY AMEND OR REPEAL THE LAND USE REGULATION OR NOT
7 APPLY IT TO THE PROPERTY SO AS TO ALLOW THE OWNER TO USE THE
8 PROPERTY FOR A USE PERMITTED AT THE TIME THE OWNER ACQUIRED THE
9 PROPERTY.

10 (9) CLAIMS MADE UNDER THIS SECTION SHALL BE PAID FROM MONEY,
11 IF ANY, SPECIFICALLY ALLOCATED FOR PAYMENT OF CLAIMS UNDER THIS
12 SECTION BY THE PUBLIC ENTITY THAT ENACTED THE LAND USE REGULATION.
13 NOTWITHSTANDING THE AVAILABILITY OF SUCH MONEY, A PUBLIC ENTITY MAY
14 USE OTHER AVAILABLE MONEY TO PAY CLAIMS. IF A CLAIM HAS NOT BEEN
15 PAID WITHIN 2 YEARS FROM THE DATE ON WHICH IT ACCRUES, THE OWNER
16 MAY USE THE PROPERTY AS PERMITTED AT THE TIME THE OWNER ACQUIRED
17 THE PROPERTY.

18 (10) THE REMEDY CREATED BY THIS SECTION IS IN ADDITION TO ANY
19 OTHER REMEDY UNDER THIS CONSTITUTION OR THE UNITED STATES
20 CONSTITUTION AND IS NOT INTENDED TO MODIFY OR REPLACE ANY OTHER
21 REMEDY.

22 (11) AS USED IN THIS SECTION:

23 (A) "FAMILY MEMBER" MEANS THE WIFE, HUSBAND, SON, DAUGHTER,
24 MOTHER, FATHER, BROTHER, BROTHER-IN-LAW, SISTER, SISTER-IN-LAW,
25 SON-IN-LAW, DAUGHTER-IN-LAW, MOTHER-IN-LAW, FATHER-IN-LAW, AUNT,
26 UNCLE, NIECE, NEPHEW, STEPPARENT, STEPCHILD, GRANDPARENT, OR
27 GRANDCHILD OF THE OWNER, AN ESTATE OF ANY OF THESE FAMILY MEMBERS,

1 OR A LEGAL ENTITY OWNED BY 1 OR MORE OF THESE FAMILY MEMBERS OR BY
2 THE OWNER OR BY BOTH.

3 (B) "LAND USE REGULATION" MEANS ANY OF THE FOLLOWING:

4 (i) ANY STATUTE, ORDINANCE, OR RULE REGULATING THE USE OF LAND
5 OR ANY INTEREST IN LAND.

6 (ii) COMPREHENSIVE PLANS, ZONING ORDINANCES, LAND DIVISION
7 ORDINANCES, AND TRANSPORTATION ORDINANCES OF A LOCAL GOVERNMENT OR
8 AUTHORITY.

9 (iii) ANY STATUTE, ORDINANCE, OR RULE REGULATING FARMING AND
10 FOREST PRACTICES.

11 (C) "OWNER" MEANS THE PRESENT OWNER OF THE PROPERTY OR ANY
12 INTEREST THEREIN.

13 (D) "PUBLIC ENTITY" MEANS THE STATE, A CITY, A VILLAGE, A
14 TOWNSHIP, A COUNTY, OR ANY COMBINATION THEREOF, AND INCLUDES AN
15 AUTHORITY ESTABLISHED BY ANY OF THESE.

16 Resolved further, That the foregoing amendment shall be
17 submitted to the people of the state at the next general election
18 in the manner provided by law.