



### **Claims Backlog and Processing Steps:**

In 2004, voters passed Ballot Measure 37 (now ORS 197.352) which requires compensation to landowners whose property values are negatively impacted by land use laws or regulations and who file claims with the appropriate governmental unit. The choice for the governmental unit is to pay the claimant an amount equal to the loss in value due to the land use law, or to not apply the restricting law. Measure 37 provided a two year period to file initial claims with respect to already existing land use regulations, and that two-year period expired December 4, 2006. During the period immediately preceding that deadline, DAS received a massive influx of claims. To date approximately 6,707 claims have been filed with the state, 3,545 of these claims were filed between November 13 and December 4, 2006. At this time, DAS, DOJ and DLCD have not received additional staffing to process the surge of claims that were filed in the period leading up to December 4, 2006. The Governor's budget was submitted just before the surge occurred; hence, it assumed a much smaller level of claims based on information available at that time.

Measure 37 claims against the State of Oregon are processed as follows:

1. All claims are filed with the Department of Administrative Services (DAS) where the information submitted with the claim is checked for completeness, the ownership of the property and when the current owner bought the property is determined, and neighbors of the property are notified of the claim. This step generally takes one to two months to complete since ownership information must be obtained.
2. The Department of Justice (DOJ) makes an initial "checklist" review of the claim, including the materials submitted with the claim and the ownership information. DOJ also identifies the state agency(ies) affected by the claim.
3. The claim and associated material is then sent by DAS to the responsible state agency, which in 96% of the claims is the Department of Land Conservation and Development (DLCD). The agency prepares a draft report which specifies the rules or laws that restrict the use the claimant wants to carry out, makes the initial decision of whether the claimant is entitled to relief, and determines whether to pay compensation or allow the development to continue. No funds were appropriated for claimant compensation. This report is then reviewed by DOJ attorneys for legal sufficiency and consistency.
4. The draft report is then sent to the claimant and other interested parties for up to ten days of review. Comments are sent back to DLCD, often with more information to augment the report. The agency has the option of changing its report and findings based on the comments and new information.

The claimant or an interested party (e.g., a neighbor) can challenge the state's decision in court.

### **Department of Administrative Services (DAS):**

DAS indicates that staff are almost current with completion of their assigned tasks for processing Measure 37 claims received to date, and anticipates being able to process future claims with the resources provided in the Governor's Recommended Budget for the 2007-09 biennium. Measure 37 General Fund expenditures attributed to DAS efforts are \$739,183 for the 2007-09 biennium. Personal Services costs are \$526,544 and fund five positions (5.0 FTE). Related Services and Supplies costs are \$212,639.

### **Department of Justice (DOJ):**

DOJ currently has a Measure 37 claims backlog of approximately 3,545 claims. The Department estimates that it will need to process approximately 300 claims per month to ensure that this backlog is eliminated by the 540 day time period defined in the bill. DOJ indicates to achieve this target it will need a total of 20 positions for the first year of the 2007-09 biennium: 13 Senior Assistant Attorney Generals (AAG), three Paralegals, two Legal Secretaries (LS), and two Office Specialist (OS) 2. Of the 20 positions, one is assigned to Appellate Courts, 11 will be assigned to General Council and 8 will be dedicated to Trials. The second half of the biennium, total positions will be reduced to 12: eight Senior

AAGs, two LS, one Paralegal, and one OS1. The agency plans to use existing attorneys to complete a portion of the work. Of the 13 Senior AAGs needed to implement the bill, at least three attorneys will be temporarily diverted from other work in the agency to work on Ballot Measure 37 related activities. Final resource decisions will be made as part of the approval of the DOJ budget bill.

DOJ Other Fund expenditures and revenues are detailed in the table that follows.

	<b>Projected Cost</b>	<b>2007-09 Governor's Recommended</b>	<b>Difference</b>
<b>DOJ Expenditures – Other Funds</b>			
Personal Services - General Fund (GF)	\$ 2,604,391	\$ 1,409,584	1,194,807
Services and Supplies - (GF)	\$ 960,932	\$ 490,536	470,396
Total Other Fund Expenditures	\$ 3,565,323	\$ 1,900,120	1,665,203
<b>DOJ Revenue – Other Funds</b>			
Legal Fees Assessed	\$ 4,579,056	\$ 2,274,464	\$ 2,304,592

DOJ expects to log 32,800 AAG hours, at \$128 per hour, and 5,144 Paralegal hours, at \$74 per hour, to process the Measure 37 backlog. Based on this projection, DOJ anticipates receiving \$4,579,056 in Other Fund legal fee revenues. Other Fund expenditures are estimated to be \$3,594,025 for the 2007-09 biennium. Personal Services costs are \$2,604,391 and Services and Supplies are \$989,634. Total Other Fund Revenues are \$2,304,592 above the Governor's Recommended Budget. Total expenditures are \$1,665,203 above the funds provided for in the Governor's Recommended Budget.

The difference between the revenues generated for the Department of Justice and the projected expenditures are explained by a combination of factors. First, the DOJ expenditures listed above do not include anticipated cost of living increases and flexible benefit changes that are traditionally increased by the Emergency Board during the interim. Since DOJ uses Other Funds to support these positions, it must generate sufficient revenue to cover the costs authorized by the Emergency Board later in the biennium. The rate must also cover all costs including the administrative and other central costs of the agency whether they are in the base budget or in an expanded program such as this. DOJ does not plan to add central agency costs as a result of this bill. Since DOJ charges all agencies and programs the same rates, more revenue is generated than is required for the impact of this bill. The Joint Committee on Ways and Means' Public Safety Subcommittee will need to view the impact of these additional revenues on the overall rate if this measure passes. As a result, the rates could be adjusted downward and therefore reducing the revenue figure listed above.

**Department of Land Conservation and Development (DLCD):**

Similar to DOJ, DLCD also has a Measure 37 claims backlog of approximately 3,545 claims. The Department estimates that it will need to process approximately 300 claims per month to ensure that this backlog is eliminated by the 540 day time period defined in the bill. DLCD indicates to achieve this target it will need to a total of 16 positions for the first year of the 2007-09 biennium: six Planner 3s, five Program Analyst (PA) 2s, two Administrative Specialist (AS) 2s, one AS 1, one OS 2, and one Manager D position. The second half of the biennium, positions will be reduced to five: two Planner 3s, one PA 2, one AS 2, and one Manager D position. The department experienced recruitment difficulties for these positions during the last biennia, so the department may fill a portion of the claims writing and reviewing activities with existing non-Measure 37 staff. It is important to note that ongoing department programs and services will be impacted if the Department employs this strategy.

Measure 37 General Fund expenditures attributed to DLCD efforts are estimated to be \$6,500,267 for the 2007-09 biennium. Personal Services costs are \$1,523,570 and Services and Supplies are \$397,641. The

remainder, \$4,579,056 is reserved to cover Attorney General costs. As noted above, this amount could be adjusted downward if the overall rate is reduced by the Ways and Means Public Safety Subcommittee. Total Expenditures are \$1,986,324 above the funds provided for in the Governor's Recommended Budget.

The League of Oregon Cities and Association of Oregon Counties indicate that there will be no fiscal impact to counties or cities from passage of this bill.

Under Measure 37, the state has the choice to pay compensation or to "waive" the land use regulation. To date, state government has exercised the option to waive regulations because no funding has been made available to pay compensation. However, if state government does not act on a claim and the land use regulation on which a claim is based continues to apply to the property after 180 days, the claimant has a cause of action in court for compensation, as well as for attorney fees and costs. Therefore, to the extent the state is unable to process claims that were filed in the period leading up to December 4, each of those claimants has the right to go to court to seek a judgment for compensation. The state is potentially liable for the amount of compensation claimed. The exact extent of this potential liability is indeterminate; however, the fiscal impact is expected to be significant.