

2007 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 3025 **STATUS:** B-Engrossed – **MINORITY REPORT**
SUBJECT: Modifies land use decision definitions and Measure 37 claims processing timeframes
GOVERNMENT UNIT AFFECTED: Department of Land Conservation and Development,
Department of Justice, and Department of Administrative Services
PREPARED BY: Dawn Farr
REVIEWED BY: Susie Jordan, Doug Wilson, Dallas Weyand
DATE: May 24, 2007

EXPENDITURES: See Comments.

EFFECTIVE DATE: On Passage.

GOVERNOR’S BUDGET: This bill is not anticipated by the Governor’s recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: The bill modifies the definition of ‘land use decision’ and ‘limited land use decision;’ extends deadlines for public entities to act on Measure 37 claims by 180 days for claims filed on or after November 1, 2006 and before December 5, 2006; allows for transfer of waivers; and, adds definition of ownership. The bill requires that additional property taxes received from former special assessment properties be transferred to the Department of Land Conservation and Development (DLCD) for deposit in the Compensation and Conservation Fund established by the State Treasury. Fund moneys are to be continuously appropriated to DLCD to reimburse claimants for costs incurred to obtain waivers and to pay compensation for claims.

Ballot Measure 37 (now ORS 197.352) 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, the Department of Administrative Services (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. DAS, the Department of Justice (DOJ) and DLCD all have a role in processing Measure 37 claims. None of these agencies have received additional resources to process the surge of claims that were filed in the period leading up to December 4, 2006.

HB 3546 (signed into law by the Governor on May 10, 2007) extends the Measure 37 claims processing timeline 360 days, from 180 days to 540 days. The Fiscal Impact Statement for HB 3546 identified total costs of approximately \$7.2 million and 41 positions (31.25 FTE.) to process pending claims within a timeframe of 540 days.

HB 3025 B-Engrossed requires that this same workload be processed within 360 days, for claims received on or after November 1, 2006 and before December 5, 2006. On the surface one might expect that if time is cut in half, workload would double and costs would also double. DAS, DOJ and DLCD have all supplied fiscal impact information that suggests the costs might more than double considering additional complications that come with shortening the timeframe. For example:

- The 180 day extension means more staff for a shorter timeframe 4-6 months instead of the 12 months that were assumed HB 3546, so you might need more than twice the staff
- Recruiting and training staff under such a short timeframe creates challenges which could impact costs
- Equipment and office space needs would have to be adjusted to accommodate increased staffing which could lead to additional costs for desks, computers, phones, etc.

DLCD and DOJ have also raised concerns that it might not be possible to process the surge of claims received within a timeframe extension of just 180 days. Or, that achieving the deadlines might require significant redeployment of existing resources which could compromise the agencies' ability to deliver on other work commitments or provide adequate services to other state agencies.

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 the Measures 37 deadline, 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 within required deadlines, claimants will have 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 could be significant.

The bill creates within DLCD the Compensation and Conservation Fund which can be used to reimburse claimants for costs incurred to obtain waivers and to pay compensation for claims. DLCD indicates that this will have an indeterminate revenue effect on the counties and other taxing districts due to the transfer of additional assessment taxes to DLCD (Section 6 (4)). It follows that there would be an indeterminate Other Funds revenue and expenditure impact to DLCD. The costs to oversee the disbursements from the fund would depend on the size and types of payments made from the Fund. It could range from very little impact that could be assumed by current staff, to a need for additional fiscal and fund management staff. Again, this is indeterminate.