

**SENATE MINORITY REPORT
AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3025**

May 25

President Courtney:

A minority of your Committee on Environment and Natural Resources, to whom was referred A-engrossed House Bill 3025, having had the same under consideration, respectfully reports it back with the recommendation that it do pass with the following amendments:

1 On page 1 of the printed A-engrossed bill, line 2, delete the third semicolon and insert “and
2 197.352; appropriating money;”.

3 On page 6, after line 28, insert:

4 **“SECTION 4. (1) Sections 5 to 7 of this 2007 Act are added to and made a part of ORS
5 chapter 195.**

6 **“(2) ORS 197.352 is added to and made a part of sections 5 to 7 of this 2007 Act.**

7 **“SECTION 5. As used in sections 5 to 7 of this 2007 Act:**

8 **“(1) ‘Land use regulation’ has the meaning given that term in ORS 197.352.**

9 **“(2) ‘Owner’ has the meaning given that term in ORS 197.352.**

10 **“(3) ‘Public entity’ has the meaning given that term in ORS 197.352.**

11 **“(4) ‘Waiver’ means an action or decision of a public entity under ORS 197.352 to modify,
12 remove or not apply one or more land use regulations to allow an owner to use private real
13 property for a use permitted when the owner acquired the property.**

14 **“SECTION 6. (1) For a claim for compensation filed on or after November 1, 2006, and
15 before December 5, 2006, the 180-day periods under ORS 197.352 (4) and (6) are extended by
16 180 days.**

17 **“(2) If a public entity grants a waiver under ORS 197.352 (8) on or after the effective date
18 of this 2007 Act that authorizes a division of land under ORS 92.010 to 92.190, the minimum
19 size of lots or parcels created must be equal to or larger than the median size of the tax lots
20 contained entirely within one mile of the perimeter of the proposed subdivision or partition
21 or must be 20 acres, whichever is smaller.**

22 **“(3) After a public entity grants the waiver, the rights to use private real property pro-
23 vided by the waiver run with the land and may be transferred with the property.**

24 **“(4) Upon disqualification from special assessment as described in ORS 308A.703 based
25 on a change in use related to a waiver, the additional taxes collected by county tax collectors
26 pursuant to ORS 308A.700 to 308A.733, after refunds, must be transferred to the Department
27 of Land Conservation and Development for deposit in the Compensation and Conservation
28 Fund established under section 7 of this 2007 Act.**

29 **“SECTION 7. (1) The Compensation and Conservation Fund is established in the State
30 Treasury, separate and distinct from the General Fund. Interest earned by the moneys in the
31 Compensation and Conservation Fund shall be credited to the fund. The fund consists of
32 moneys received by the Department of Land Conservation and Development under section 6**

1 of this 2007 Act and other moneys made available to the department for the purposes de-
2 scribed in subsection (2) of this section.

3 “(2) Moneys in the fund are continuously appropriated to the department for the pur-
4 poses of:

5 “(a) Reimbursing owners for the costs incurred to obtain waivers based on valid claims
6 for compensation if legislative action retroactively reduces the uses that may be authorized
7 under a waiver for a claim filed before the effective date of this 2007 Act; and

8 “(b) Paying just compensation for claims.

9 “**SECTION 8.** ORS 197.352 is amended to read:

10 “197.352. [*The following provisions are added to and made a part of ORS chapter 197:*]

11 “(1) If a public entity enacts or enforces a new land use regulation or enforces a land use reg-
12 ulation enacted prior to December 2, 2004, that restricts the use of private real property or any
13 interest therein and has the effect of reducing the fair market value of the property, or any interest
14 therein, then the owner of the property shall be paid just compensation.

15 “(2) Just compensation shall be equal to the reduction in the fair market value of the affected
16 property interest resulting from enactment or enforcement of the land use regulation as of the date
17 the owner makes written demand for compensation under this section.

18 “(3) Subsection (1) of this section shall not apply to land use regulations:

19 “(A) Restricting or prohibiting activities commonly and historically recognized as public nui-
20 sances under common law. This subsection shall be construed narrowly in favor of a finding of
21 compensation under this section;

22 “(B) Restricting or prohibiting activities for the protection of public health and safety, such as
23 fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and
24 pollution control regulations;

25 “(C) To the extent the land use regulation is required to comply with federal law;

26 “(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or
27 performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights
28 provided by the Oregon or United States Constitutions; or

29 “(E) Enacted prior to the date of acquisition of the property by the owner or a family member
30 of the owner who owned the subject property prior to acquisition or inheritance by the owner,
31 whichever occurred first.

32 “(4) **Subject to section 6 (1) of this 2007 Act**, just compensation under subsection (1) of this
33 section shall be due the owner of the property if the land use regulation continues to be enforced
34 against the property 180 days after the owner of the property makes written demand for compen-
35 sation under this section to the public entity enacting or enforcing the land use regulation.

36 “(5) For claims arising from land use regulations enacted prior to December 2, 2004, written
37 demand for compensation under subsection (4) shall be made within two years of December 2, 2004,
38 or the date the public entity applies the land use regulation as an approval criteria to an application
39 submitted by the owner of the property, whichever is later. For claims arising from land use regu-
40 lations enacted after December 2, 2004, written demand for compensation under subsection (4) shall
41 be made within two years of the enactment of the land use regulation, or the date the owner of the
42 property submits a land use application in which the land use regulation is an approval criteria,
43 whichever is later.

44 “(6) **Subject to section 6 (1) of this 2007 Act**, if a land use regulation continues to apply to
45 the subject property more than 180 days after the present owner of the property has made written

1 demand for compensation under this section, the present owner of the property, or any interest
2 therein, shall have a cause of action for compensation under this section in the circuit court in
3 which the real property is located, and the present owner of the real property shall be entitled to
4 reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the
5 compensation.

6 “(7) A metropolitan service district, city, or county, or state agency may adopt or apply proce-
7 dures for the processing of claims under this section, but in no event shall these procedures act as
8 a prerequisite to the filing of a compensation claim under subsection (6) of this section, nor shall
9 the failure of an owner of property to file an application for a land use permit with the local gov-
10 ernment serve as grounds for dismissal, abatement, or delay of a compensation claim under sub-
11 section (6) of this section.

12 “(8) Notwithstanding any other state statute or the availability of funds under subsection (10)
13 of this section, in lieu of payment of just compensation under this section, the governing body re-
14 sponsible for enacting the land use regulation may modify, remove, or not to apply the land use
15 regulation or land use regulations to allow the owner to use the property for a use permitted at the
16 time the owner acquired the property, **subject to section 6 (2) of this 2007 Act.**

17 “(9) A decision by a governing body under this section shall not be considered a land use deci-
18 sion as defined in ORS 197.015 (11).

19 “(10) Claims made under this section shall be paid from funds, if any, specifically allocated by
20 the legislature, city, county, or metropolitan service district for payment of claims under this sec-
21 tion. Notwithstanding the availability of funds under this subsection, a metropolitan service district,
22 city, county, or state agency shall have discretion to use available funds to pay claims or to modify,
23 remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this
24 section. If a claim has not been paid within two years from the date on which it accrues, the owner
25 shall be allowed to use the property as permitted at the time the owner acquired the property.

26 “(11) Definitions - for purposes of this section:

27 “(A) ‘Family member’ shall include the wife, husband, son, daughter, mother, father, brother,
28 brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt,
29 uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property,
30 an estate of any of the foregoing family members, or a legal entity owned by any one or combination
31 of these family members or the owner of the property.

32 “(B) ‘Land use regulation’ shall include:

33 “(i) Any statute regulating the use of land or any interest therein;

34 “(ii) Administrative rules and goals of the Land Conservation and Development Commission;

35 “(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and
36 transportation ordinances;

37 “(iv) Metropolitan service district regional framework plans, functional plans, planning goals
38 and objectives; *[and]*

39 “(v) Statutes and administrative rules regulating farming *[and forest]* practices; **and**

40 “(vi) **Statutes and administrative rules regulating forest practices that are primarily in-**
41 **tended to protect public health and safety or that directly implement or apply a federal law**
42 **without discretion as to the manner of implementation or application of the federal law.**

43 “(C) ‘Owner’ is the present owner of the property, or any interest therein, **and a spouse who**
44 **was the spouse when the property, or the interest, was acquired without regard to whether**
45 **the spouse is named on the instrument conveying the property, or the interest.**

1 “(D) ‘Public entity’ shall include the state, a metropolitan service district, a city, or a county.

2 “(E) **‘The time the owner acquired the property’ means the earliest date from which the**
3 **owner has owned, or has held a continuous ownership interest in, the property either indi-**
4 **vidually or by ownership of a legal entity to or from which the owner may have transferred**
5 **a title interest in the property as long as the owner or a family member of the owner has**
6 **continuously retained ownership of the legal entity or a beneficial interest in the voting**
7 **control or equity of the legal entity.**

8 “(12) The remedy created by this section is in addition to any other remedy under the Oregon
9 or United States Constitutions, and is not intended to modify or replace any other remedy.

10 “(13) If any portion or portions of this section are declared invalid by a court of competent ju-
11 risdiction, the remaining portions of this section shall remain in full force and effect.”.

12 In line 29, delete “4” and insert “9”.

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/s/ Jason Atkinson
Senator

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/s/ Roger Beyer
Senator

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