

House Bill 3286

Sponsored by Representative HANNA

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**.

Authorizes construction of single family dwelling on tract of 10 acres or larger on which land use restriction or reinterpretation prevents construction of dwelling. Requires landowner to apply to governing body of city or county, or its designee, for approval to construct dwelling. Requires governing body of city or county, or its designee, to approve or deny application within 120 days after date application is submitted. Provides for judicial review of denial of application. Specifies regulations that apply to siting and construction of dwelling.

A BILL FOR AN ACT

1
2 Relating to approval of single family dwelling.

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

4 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter**
5 **197.**

6 **SECTION 2. As used in sections 2 to 7 of this 2007 Act:**

7 (1) "Government entity" means a state agency, board or commission in the executive
8 branch of state government or a local government or other political subdivision of the state.

9 (2) "Land use restriction" means:

10 (a) A law, a statewide land use planning goal or an administrative rule establishing
11 standards or requirements relating to land use planning under ORS chapter 195, 196, 197, 215,
12 227 or 268.

13 (b) A comprehensive plan acknowledged under ORS 197.251 or a land use regulation.

14 (c) Regional goals and objectives, a regional framework plan or a land use ordinance
15 adopted by a metropolitan service district to implement a regional framework plan.

16 (3) "Owner" means:

17 (a) The record holder of fee title interest in real property;

18 (b) The contract purchaser of real property; or

19 (c) A legal entity created in whole or in part by the preceding owner to which the pre-
20 ceding owner transferred fee title interest in the real property before, on or after the effec-
21 tive date of this 2007 Act.

22 (4) "Reinterpretation" means the application of a land use restriction by a government
23 entity in a manner that differs from the established interpretation of the land use restriction
24 on the date the owner acquired the real property.

25 (5) "Tract" has the meaning given that term in ORS 215.010.

26 **SECTION 3. (1) If a government entity enacts or adopts a land use restriction or applies**
27 **a reinterpretation and the land use restriction or the reinterpretation prevents the owner**
28 **of a lawfully established tract from building a single family dwelling on the tract, the gov-**
29 **erning body of the city or county with jurisdiction over the tract, or its designee, shall, upon**

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 application by the owner, approve the siting of a single family dwelling on the tract provided:

2 (a) The tract is 10 acres or larger; and

3 (b) The owner demonstrates that, except as required in section 5 of this 2007 Act, the
4 single family dwelling will be built in compliance with the laws that applied when the owner
5 acquired the tract.

6 (2) An owner is not entitled to approval under subsection (1) of this section if a govern-
7 ment entity establishes:

8 (a) The single family dwelling would constitute a public or private nuisance under law or
9 common law;

10 (b) The land use restriction or reinterpretation implements a federal law; or

11 (c) The land use restriction or reinterpretation provides access to public beaches and it
12 is not reasonably feasible to site a single family dwelling on the tract because of the access.

13 (3) An owner seeking to establish a single family dwelling under this section shall submit
14 an application to the governing body of the city or county with jurisdiction over the tract,
15 or its designee, according to procedures adopted by the city or county. The governing body
16 of the city or county, or its designee, shall approve or deny the application within 120 days
17 after the date the application is submitted.

18 **SECTION 4.** (1) Notwithstanding ORS 197.830 to 197.845 or any provision of ORS 34.020
19 and 34.102 to the contrary, if an application to establish a single family dwelling under sec-
20 tion 3 of this 2007 Act is denied by the governing body of the city or county, or its designee,
21 the owner may seek review of the decision as provided under ORS 34.010 to 34.100. Except
22 as provided in this section, the provisions of ORS 34.010 to 34.100 apply to an action filed
23 under this section.

24 (2) An owner that files an action under this section:

25 (a) Shall seek review in the circuit court for the county that denied approval of the ap-
26 plication or, if a city denied approval, the county that contains the city that denied approval;
27 and

28 (b) Is entitled to a trial by jury.

29 (3) If a judgment is entered authorizing the owner to build the single family dwelling, the
30 court shall:

31 (a) If more than one government entity is responsible for the land use restriction or re-
32 interpretation that prevents the siting of a single family dwelling on the tract, order each
33 responsible government entity to issue any permits necessary for construction and use of the
34 dwelling.

35 (b) Award attorney fees, costs and disbursements and the reasonable expenses incurred
36 in the preparation and prosecution of the action to the owner.

37 **SECTION 5.** (1) A single family dwelling authorized under section 3 or 4 of this 2007 Act:

38 (a) Must comply with reasonable siting standards for fire, health and safety; and

39 (b) Is subject to ORS 223.297 to 223.314 and local ordinances adopted thereunder.

40 (2) A government entity may not impose any code provisions, fees or other requirements
41 on the construction and use of a single family dwelling authorized under section 3 or 4 of this
42 2007 Act that do not apply generally to dwellings authorized without reference to sections 2
43 to 7 of this 2007 Act.

44 (3) The governing body of a city or county with jurisdiction over the tract, or its
45 designee, may not impose standards under subsection (1)(a) of this section in a manner that

1 prevents the siting of the single family dwelling unless the governing body establishes that
2 the tract does not have emergency access, potable water or adequate capacity to dispose of
3 sewage.

4 (4) The governing body of a city or county with jurisdiction over the tract, or its
5 designee, may purchase the right granted by section 3 or 4 of this 2007 Act in lieu of au-
6 thORIZING the uses allowed by section 3 or 4 of this 2007 Act.

7 **SECTION 6.** A government entity may not implement or interpret sections 2 to 7 of this
8 2007 Act by enacting or adopting an administrative rule, a statewide land use planning goal,
9 a comprehensive plan provision, a land use regulation, a regional goal or objective, a regional
10 framework plan provision or a land use ordinance adopted to implement a regional frame-
11 work plan that is inconsistent with sections 2 to 7 of this 2007 Act.

12 **SECTION 7.** Sections 2 to 7 of this 2007 Act are cumulative and do not abrogate other
13 lawful remedies available, including any remedies available for government actions under the
14 Oregon Constitution or the United States Constitution.

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