

Senate Bill 588

Sponsored by Senator SCHRADER

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**.

Creates position of Compensation and Conservation Ombudsman to review, mediate or negotiate resolution of claims for compensation for land use requirements that restrict use of private real property.

Establishes right to compensation if land use regulation restricts right to site single-family dwelling on up to four lots or parcels. Eliminates right to compensation under Ballot Measure 37 (2004).

Establishes Compensation and Conservation Fund. Continuously appropriates moneys in fund to Department of Land Conservation and Development to pay compensation for loss of property value resulting from land use regulation, to make grants or loans to local governments and to pay department expenses associated with claims. Limits expenditures from fund.

Appropriates moneys from General Fund to department for deposit in Compensation and Conservation Fund.

Sunset right to claim compensation on January 2, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to compensation for loss of value of private real property resulting from land use regulation; creating new provisions; amending ORS 93.040; repealing ORS 197.352; appropriating money; limiting expenditures; and declaring an emergency.

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

COMPENSATION AND CONSERVATION OMBUDSMAN

SECTION 1. (1) The Land Conservation and Development Commission shall appoint an individual to serve, at the pleasure of the commission, as the Compensation and Conservation Ombudsman.

(2) The ombudsman must be an individual of recognized judgment, objectivity and integrity who is qualified by training and experience to:

(a) Analyze problems of land use planning, real property law and real property valuation; and

(b) Mediate or negotiate resolution of complex disputes.

SECTION 2. (1) The Compensation and Conservation Ombudsman may review a proposed claim for compensation, if requested, by a property owner that anticipates filing a claim for compensation under sections 3 to 8 of this 2007 Act.

(2) At the request of any party to a claim for compensation under sections 3 to 8 of this 2007 Act, the ombudsman may mediate or negotiate issues involving a claim for compensation under sections 3 to 8 of this 2007 Act.

(3) A government entity involved in a claim for compensation shall:

(a) Provide the ombudsman with documents or materials requested by the ombudsman

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 to the extent required by ORS 192.410 to 192.505; and

2 (b) Fully cooperate with the ombudsman in the resolution of a claim for compensation.

3 (4) This section does not require a government entity to resolve a claim that the gov-
 4 ernment entity believes does not qualify for compensation under sections 3 to 8 of this 2007
 5 Act.

6
 7 **COMPENSATION FOR LAND USE RESTRICTIONS**

8
 9 **SECTION 3.** As used in sections 3 to 8 of this 2007 Act:

10 (1) "Lot" has the meaning given that term in ORS 92.010.

11 (2) "Parcel" has the meaning given that term in ORS 92.010.

12 (3) "Tract" has the meaning given that term in ORS 215.010.

13 (4) "Urban growth boundary" has the meaning given that term in ORS 195.060.

14 **SECTION 4.** (1) The Land Conservation and Development Commission shall compensate
 15 the property owner of a lot or parcel zoned for farm use, forest use or mixed farm and forest
 16 use as provided in sections 3 to 8 of this 2007 Act if:

17 (a) The property owner had the right to site a single-family dwelling on the lot or parcel
 18 on the date that the property owner acquired the lot or parcel;

19 (b) A state land use requirement, or a local land use requirement necessary to carry out
 20 a state land use requirement, that was adopted after the property owner acquired the lot or
 21 parcel removed the right and remains in effect;

22 (c) The property owner currently does not have the right to site a single-family dwelling
 23 on the lot or parcel;

24 (d) There is not a dwelling on the lot or parcel;

25 (e) The lot or parcel was zoned for farm use, forest use or mixed farm and forest use to
 26 comply with a statewide land use planning goal;

27 (f) The property owner qualifies under one or more of the priorities set forth in sub-
 28 section (2) of this section;

29 (g) The land use requirement reduced the value of the private real property by 20 percent
 30 or more when the requirement was adopted;

31 (h) The property owner files a claim for compensation with the government entities that
 32 adopted the land use requirements; and

33 (i) The exceptions under subsection (7) of this section do not apply.

34 (2) The commission shall provide compensation for a claim under subsection (1) of this
 35 section according to the following priorities:

36 (a) First priority is for a lot or parcel acquired by the property owner before January 1,
 37 1975;

38 (b) Second priority is for a lot or parcel acquired by the property owner on or after
 39 January 1, 1975, and before January 1, 1985; and

40 (c) Third priority is for a lot or parcel acquired by the property owner on or after Janu-
 41 ary 1, 1985, and before March 1, 1994.

42 (3) A property owner is eligible to receive compensation under subsection (1) of this
 43 section for the loss of the right to site one single-family dwelling on each qualifying lot or
 44 parcel, subject to the following limitations:

45 (a) If the property owner owns more than one lot or parcel that qualifies under sub-

1 section (1) of this section, the amount of compensation is based on the number of qualifying
 2 lots or parcels in one tract on the date the land use requirement was adopted.

3 (b) If the property owner owns more than one tract that contains one or more qualifying
 4 lots or parcels, the property owner shall identify one tract as the sole basis for the amount
 5 of compensation.

6 (c) Regardless of the number of qualifying lots or parcels owned by a property owner,
 7 four lots or parcels is the maximum number of qualifying lots or parcels that may be used
 8 as the basis for the amount of compensation.

9 (4) The commission shall compensate the property owner of a lot or parcel lying wholly
 10 or partially outside an urban growth boundary as provided in sections 3 to 8 of this 2007 Act
 11 if:

12 (a) The property owner had the right to divide the portion of the lot or parcel lying out-
 13 side of an urban growth boundary into one or more additional lots or parcels on the date that
 14 the property owner acquired the lot or parcel;

15 (b) A state land use requirement, or a local land use requirement necessary to carry out
 16 a state land use requirement, that was adopted after the property owner acquired the lot or
 17 parcel removed the right and remains in effect;

18 (c) The property owner currently does not have the right to divide the portion of the lot
 19 or parcel lying outside of an urban growth boundary into one or more additional lots or
 20 parcels;

21 (d) The portion of the lot or parcel outside of an urban growth boundary is zoned for:

22 (A) Farm use, forest use or mixed farm and forest use to comply with a statewide land
 23 use planning goal; or

24 (B) Residential use pursuant to an exception to a statewide land use planning goal;

25 (e) The portion of the lot or parcel lying outside of an urban growth boundary is larger
 26 than four acres;

27 (f) The property owner qualifies under one or more of the priorities set forth in sub-
 28 section (5) of this section;

29 (g) The land use requirement reduced the value of the private real property by 20 percent
 30 or more when the requirement was adopted;

31 (h) The property owner files a claim for compensation with the government entities that
 32 adopted the land use requirements; and

33 (i) The exceptions under subsection (7) of this section do not apply.

34 (5) The commission shall provide compensation for a claim under subsection (4) of this
 35 section according to the following priorities:

36 (a) First priority is for a lot or parcel acquired by the property owner before January 1,
 37 1975;

38 (b) Second priority is for a lot or parcel acquired by the property owner on or after
 39 January 1, 1975, and before January 1, 1985; and

40 (c) Third priority is for a lot or parcel acquired by the property owner on or after Janu-
 41 ary 1, 1985, and before March 1, 1994.

42 (6) A property owner is eligible to receive compensation under subsection (4) of this
 43 section for the loss of the right to divide the lots or parcels based on the number of lots or
 44 parcels the property owner formerly had the right to create outside the urban growth
 45 boundary, subject to the following limitations:

1 (a) If the property owner owns more than one lot or parcel that qualifies under sub-
 2 section (4) of this section, the property owner shall identify one qualifying lot or parcel as
 3 the sole basis for the amount of compensation.

4 (b) The amount of compensation is based on the number of lots or parcels that the
 5 property owner could have created from the lot or parcel identified, up to a maximum of four
 6 lots or parcels.

7 (c) A property owner who is eligible to receive compensation for the value of more than
 8 one lot or parcel under subsection (4) of this section may not receive compensation for more
 9 than one lot or parcel until all eligible claims under subsection (4) of this section for the
 10 value of one lot or parcel are paid.

11 (7) A property owner is not eligible to receive compensation under sections 3 to 8 of this
 12 2007 Act if a government entity establishes that:

13 (a) The restriction on the land use is reasonably necessary to, and its primary purpose
 14 is to:

15 (A) Carry out a federal law;

16 (B) Enable a state or local government to receive a federal benefit that directly or indi-
 17 rectly benefits private real property;

18 (C) Avoid violation of a federal law, including but not limited to the Endangered Species
 19 Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as in effect on the effective date of this 2007
 20 Act; or

21 (D) Qualify for an incidental take statement under section 7 of the federal Endangered
 22 Species Act, an incidental take permit under section 10 of the federal Act, or one or more
 23 of the exceptions contained in the federal regulations issued pursuant to section 4(d) of the
 24 federal Act;

25 (b) The government entity is authorized by the federal government to act in lieu of direct
 26 regulation by the federal government, and the restriction is reasonably necessary to carry
 27 out federal law;

28 (c) The restriction is necessitated by a state or local land use requirement that was
 29 adopted before the effective date of this 2007 Act and before the date the property owner
 30 acquired the property, and a reasonably prudent property owner would have known or should
 31 have known of the state or local land use requirement and the type or extent of restriction
 32 necessitated by the land use requirement;

33 (d) The restriction prohibits or regulates a use or development activity to avoid or abate
 34 a nuisance; or

35 (e) The state or local land use requirement containing the restriction was adopted by the
 36 government entity prior to the date on which the property owner acquired the property.

37 **SECTION 5.** (1) Subject to the limitation under section 4 (6)(c) of this 2007 Act, the Land
 38 Conservation and Development Commission may not compensate a claim for compensation
 39 under:

40 (a) Section 4 (2)(b) or (c) or (5)(b) or (c) of this 2007 Act until all eligible claims made
 41 under section 4 (2)(a) and (5)(a) of this 2007 Act have been compensated; and

42 (b) Section 4 (2)(c) or (5)(c) of this 2007 Act until all eligible claims made under section
 43 4 (2)(a) and (b) and (5)(a) and (b) of this 2007 Act have been compensated.

44 (2) To achieve a fair distribution of payments, the commission shall pay eligible claims
 45 within the same priority level in the order received unless provided otherwise by rule of the

1 **commission.**

2 **SECTION 6. (1) The Land Conservation and Development Commission:**

3 (a) **May provide compensation only from funds deposited into the Compensation and**
 4 **Conservation Fund established in section 9 of this 2007 Act; and**

5 (b) **Shall determine the amount of compensation due for each qualifying claim under**
 6 **sections 3 to 8 of this 2007 Act.**

7 (2) **In determining the amount of compensation due under:**

8 (a) **Section 4 (1) to (3) of this 2007 Act, the commission shall consider:**

9 (A) **The fair market value of the right to site a single-family dwelling on the lot or parcel;**

10 (B) **Regional differences; and**

11 (C) **Fairness factors, including taxation practices and the measurable effect on the value**
 12 **of public investments.**

13 (b) **Section 4 (4) to (6) of this 2007 Act, the commission shall consider:**

14 (A) **The fair market value of the right to create a lot or parcel;**

15 (B) **Regional differences; and**

16 (C) **Fairness factors, including taxation practices and the measurable effect on the value**
 17 **of public investments.**

18 (3) **At the option of the property owner, the commission shall provide, in the manner set**
 19 **forth in rules adopted by the commission, at least the following methods for determining the**
 20 **amount of compensation:**

21 (a) **Compensation under section 4 (1) to (3) or (4) to (6) of this 2007 Act, whichever is**
 22 **applicable, based on:**

23 (A) **The fair market value of the right when the land use requirement that restricted the**
 24 **right was adopted, plus interest under ORS 82.010 from the date on which the land use re-**
 25 **quirement was adopted until the date on which the claim is paid; and**

26 (B) **An appraisal performed by an appraiser and taking into account the other factors**
 27 **described in this subsection.**

28 (b) **Compensation, as set forth in a schedule reflecting regional differences, in amounts**
 29 **that are discounted as compared to paragraph (a) of this subsection and offered to property**
 30 **owners through a fast-track claims process without an appraisal.**

31 (c) **Compensation, as set forth in a schedule reflecting regional differences, in amounts**
 32 **that are discounted as compared to paragraph (b) of this subsection and offered to property**
 33 **owners whose right to site a single-family dwelling or to a land division, whichever is appli-**
 34 **cable, may be readily established through a fast-track claims process without a hearing or**
 35 **appraisal.**

36 (4) **The commission shall pay compensation due under sections 3 to 8 of this 2007 Act only**
 37 **if moneys are appropriated and available in the Compensation and Conservation Fund estab-**
 38 **lished in section 9 of this 2007 Act for the purpose of paying claims against the state for**
 39 **compensation under sections 3 to 8 of this 2007 Act.**

40 (5) **The commission shall reduce the amount of compensation otherwise due for a quali-**
 41 **ifying claim under sections 3 to 8 of this 2007 Act by the cumulative amount of property tax**
 42 **savings obtained on the lots or parcels as a result of special assessment under ORS 308A.050**
 43 **to 308A.128, 308A.300 to 308A.330, 308A.350 to 308A.383, 321.257 to 321.390, 321.700 to 321.754**
 44 **or 321.805 to 321.855 for all years in which special assessment applied.**

45 **SECTION 7. (1) If sufficient moneys are available in the Compensation and Conservation**

1 Fund established in section 9 of this 2007 Act to pay the claim, the Land Conservation and
 2 Development Commission shall pay a claim within one year after a final determination that
 3 the claim qualifies for compensation under sections 3 to 8 of this 2007 Act.

4 (2) If the commission fails to pay compensation within the time period described in sub-
 5 section (1) of this section, the state land use requirement upon which the claim is based
 6 ceases to apply to the lot or parcel.

7 **SECTION 8.** A claim for compensation under section 4 of this 2007 Act must be filed on
 8 or before December 31, 2011.

9
 10 **COMPENSATION AND CONSERVATION FUND**

11
 12 **SECTION 9.** (1) The Compensation and Conservation Fund is established, separate and
 13 distinct from the General Fund. Interest earned by the Compensation and Conservation Fund
 14 must be credited to the Compensation and Conservation Fund.

15 (2) Moneys in the Compensation and Conservation Fund are continuously appropriated
 16 to the Department of Land Conservation and Development as follows:

17 (a) _____ percent to pay claims against the state for compensation under sections 3 to
 18 8 of this 2007 Act;

19 (b) _____ percent to make grants or loans to local governments to pay claims for
 20 compensation under sections 3 to 8 of this 2007 Act; and

21 (c) _____ percent to pay the expenses of the department that are directly related to
 22 implementation of sections 3 to 8 and 11 of this 2007 Act and to the evaluation and processing
 23 of claims under sections 3 to 8 of this 2007 Act.

24 **SECTION 10.** In addition to and not in lieu of any other appropriation, there is appro-
 25 priated to the Department of Land Conservation and Development, for the biennium begin-
 26 ning July 1, 2007, out of the General Fund, the amount of \$_____, for deposit in the
 27 Compensation and Conservation Fund established in section 9 of this 2007 Act.

28 **SECTION 11.** (1) Notwithstanding any other law, the amount of \$1 is established for the
 29 biennium beginning July 1, 2007, as the maximum limit for the payment of claims under
 30 section 9 (2)(a) of this 2007 Act from the Compensation and Conservation Fund.

31 (2) Notwithstanding any other law, the amount of \$1 is established for the biennium be-
 32 ginning July 1, 2007, as the maximum limit for making grants or loans to local governments
 33 under section 9 (2)(b) of this 2007 Act from the Compensation and Conservation Fund.

34 (3) Notwithstanding any other law, the amount of \$1 is established for the biennium be-
 35 ginning July 1, 2007, as the maximum limit for the payment of expenses of the Department
 36 of Land Conservation and Development under section 9 (2)(c) from the Compensation and
 37 Conservation Fund.

38 **SECTION 12.** (1) The Land Conservation and Development Commission shall adopt rules
 39 establishing procedures and criteria for the review and award of grants and loans under
 40 section 9 (2)(b) of this 2007 Act from the Compensation and Conservation Fund.

41 (2) The commission shall give priority to grants or loans designed to protect or conserve
 42 unique natural resource areas of national, statewide, regional or local concern.

43
 44 **WAIVER**

1 **SECTION 13.** (1) Prior to obtaining compensation under sections 3 to 8 of this 2007 Act,
2 the owner of the private real property shall:

3 (a) Waive claims under the Fifth Amendment to the United States Constitution and un-
4 der section 18, Article I of the Oregon Constitution, to the extent of compensation provided
5 under sections 3 to 8 of this 2007 Act; and

6 (b) Cause to be recorded an acknowledgment of the waiver in the deed records of the
7 county in which the real property is located.

8 (2) If an owner of private real property is compensated for a land use requirement or
9 reinterpretation under the Fifth Amendment to the United States Constitution or section 18,
10 Article I of the Oregon Constitution, compensation may not be awarded under sections 3 to
11 8 of this 2007 Act unless the owner of the private real property demonstrates that additional
12 compensation is due for a different land use requirement or reinterpretation.

13
14 **CONFORMING AMENDMENTS**
15

16 **SECTION 14.** ORS 93.040 is amended to read:

17 93.040. (1) The following statement shall be included in the body of an instrument transferring
18 or contracting to transfer fee title to real property except for owner's sale agreements or earnest
19 money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR AC-
20 CEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE
21 ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER [ORS 197.352] **section 4 of this 2007 Act**.
22 THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS IN-
23 STRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE
24 SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE
25 PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DE-
26 PARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS
27 AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE
28 ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352]
29 **section 4 of this 2007 Act.**"

30 (2) In all owner's sale agreements and earnest money receipts, there shall be included in the
31 body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRU-
32 MENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES.
33 THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR
34 FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND
35 THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS
36 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON
37 TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY,
38 UNDER [ORS 197.352] **section 4 of this 2007 Act**. BEFORE SIGNING OR ACCEPTING THIS IN-
39 STRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK
40 WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY AP-
41 PROVED USES, THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS
42 OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER [ORS 197.352] **section 4 of this 2007**
43 **Act.**"

44 (3) In all owners' sale agreements and earnest money receipts subject to ORS 358.505, there
45 shall be included in the body of the instrument or by addendum the following statement: "THE

1 PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UN-
2 DER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESER-
3 VATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.”

4 (4) An action may not be maintained against the county recording officer for recording an in-
5 strument that does not contain the statement required in subsection (1) or (2) of this section.

6 (5) An action may not be maintained against any person for failure to include in the instrument
7 the statement required in subsection (1) or (2) of this section, or for recording an instrument that
8 does not contain the statement required in subsection (1) or (2) of this section, unless the person
9 acquiring or agreeing to acquire fee title to the real property would not have executed or accepted
10 the instrument but for the absence in the instrument of the statement required by subsection (1) or
11 (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire
12 fee title to the real property against any person other than the person transferring or contracting
13 to transfer fee title to the real property.

14
15 **MISCELLANEOUS**

16
17 **SECTION 15. (1) ORS 197.352 is repealed.**

18 **(2) Sections 3 to 8 of this 2007 Act are repealed on January 2, 2012.**

19 **SECTION 16. The unit captions used in this 2007 Act are provided only for the conven-
20 ience of the reader and do not become part of the statutory law of this state or express any
21 legislative intent in the enactment of this 2007 Act.**

22 **SECTION 17. This 2007 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
24 on its passage.**