

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 3225 **STATUS:** A Engrossed
SUBJECT: Ballot Measure 49 claims
GOVERNMENT UNIT AFFECTED: Department of Land Conservation and Development,
Department of Justice and Counties
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REVIEWED BY: Laurie Byerly
DATE: April 30, 2009

| | <u>2009-2011</u> | <u>2011-2013</u> |
|---------------------------------------|------------------|------------------|
| EXPENDITURES: See Comments. | | |

REVENUES:

Department of Land Conservation and Development

| | | |
|--------------------------|----|--------|
| Filing Fee - Other Funds | \$ | 69,125 |
|--------------------------|----|--------|

EFFECTIVE DATE: On passage.

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 Measure 49 relief eligibility; directs Department of Land Conservation and Development (DLCD) to review certain additional claims and to adopt rules for processing those claims; establishes June 30, 2010 as the deadline for DLCD to issue final orders; directs DLCD to study county claims and report to the legislature by December 31, 2009; allows DLCD to charge a fee of \$175 for new claims; allows DLCD to withhold issuance of final order if fee is not paid and allows for reimbursement of fee if order is not issued within deadlines specified in the bill; and, allows DLCD to move claims up in process due to hardship of claimant.

Context

In November 2007, Oregon voters approved Measure 49, which modified statutes created with the passage of Measure 37 in 2004. The original law required providing compensation, in the form of direct payments or land use regulation waivers, to landowners whose property values were negatively impacted by land use laws or regulations. Measure 49 replaced those compensatory remedies with provisions for a specific number of home site approvals.

When Measure 49 passed, DLCD had to send election notices to all eligible claimants who had filed claims under Measure 37. Claimants responded, indicating how they wanted to proceed under the law's new provisions, which resulted in 4,600 election forms being filed with the agency. As of April 1, 2009, over 500 final orders have been issued for these claims.

The agency's 2007-09 budget includes about \$9.5 million General Fund and 35 positions, authorized primarily as limited duration, to process Measure 49 claims. The 2008 Special Session approved about half of these resources in February 2008; the budget at that time was based on estimates and preliminary assumptions regarding the types of positions and capacity needed to process the claims. The budget was

also predicated on DLCD completing the review and resolution of claims by December 31, 2010. Under current law, the time for completion of Measure 37/49 claims is not fixed in statute.

For 2009-11, the Governor’s recommended budget (GRB) includes 5 permanent positions to staff the Measure 49 program; these are budgeted within the Essential Budget Level. The budget also includes Policy Option Package (POP) 107, which adds 26 limited duration positions and one permanent position, at a cost of \$5,964,826 General Fund. This package was developed in spring 2008 using assumptions and claim processing timelines similar to those noted above.

With actual claim processing experience under its belt, the agency has refined the level and types of resources needed to complete this work. DLCD recently developed an updated estimate for what it would cost to complete claims processing by December 31, 2010. The agency’s revised projection indicates it would cost \$5,215,315 General Fund, which is \$749,511 less than the amount contemplated in the Governor’s budget. Only 20 positions would be needed under this scenario.

Impacts of the Bill on DLCD

Under the bill, DLCD would need to process approximately 395 new claims and make final determinations on claims by June 30, 2010. The additional work and new timeframe, which compresses work initially planned for an 18 month period into 12 months, requires the agency to bring on more resources (positions) in the 2009-11 biennium but use them over a shorter period of time. With these changes, DLCD estimates the cost to complete claim processing would be \$5,348,754 General Fund, which is slightly more than the updated estimate noted above. The agency would need 8 additional positions, for a total of 28. This fiscal impact does not address potential costs that could be incurred if the statutory deadline was not met and claimants were to take legal action.

The bill should not change the general process DLCD has been following to resolve existing claims; however, to meet bill requirements DLCD would modify the mix of positions and distribute workload differently. Less than half of the new claims would need a separate process and rule making to establish the procedures for them. The “hardship” claim provision in the bill would be handled by the Measure 49 Ombudsman. The requirement to investigate county only claims and report findings to the legislature by December 31, 2009 would be taken care of by an existing position.

The table below summarizes expenditures under three scenarios: POP 107 (December 31, 2010), Revised POP 107 (December 31, 2010), and SB 945 (new claims plus June 30, 2010 completion).

Summary of Information for Completion of Measure 37/49 Claims

| | GRB POP 107 | Revised POP 107 | HB 3225 |
|---------------------------------------|------------------------|----------------------------|------------------|
| Expenditures | | | |
| Personal Services – General Fund (GF) | \$ 2,308,535 | 1,807,111 | 1,923,895 |
| Services and Supplies – GF | \$ 1,151,841 | 642,203 | 655,698 |
| Attorney General Expenses – GF | \$ 2,504,450 | 2,766,001 | 2,769,161 |
| Total GF Expenditures | \$ 5,964,826 | 5,215,315 | 5,348,754 |
| Positions/FTE | 27/19.25 | 20/15.00 | 28/15.38 |

The bill also authorizes DLCD to charge a fee of \$175 per new claim. Assuming 395 claims are received, the Department anticipates receiving \$69,125 in Other Fund revenues which can be used to offset the costs to implement this bill.

The Department of Justice (DOJ) may see some increased activity due to this bill. This change is not expected to require positions beyond what is already anticipated in the DOJ budget.

The Association of Oregon Counties anticipates a minimal fiscal impact associated with the bill.