

House Bill 3212

Sponsored by Representatives ESQUIVEL, BUCKLEY, GARRARD, RICHARDSON, GILMAN, WINGARD; Representatives BENTZ, FREEMAN, GILLIAM, HANNA, HUFFMAN, KRIEGER, MAURER, SCHAUFLE, THATCHER, THOMPSON, WEIDNER, WHISNANT, Senator WHITSETT (at the request of Jackson County, Oregonians in Action)

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**.

Allows person who filed claim with county or with state under Ballot Measure 37 (2004) to file claim under Ballot Measure 49 (2007) even though person did not file claim with both county and state.

A BILL FOR AN ACT

1
2 Relating to Ballot Measure 49 (2007) claims; creating new provisions; and amending ORS 205.246 and
3 sections 6 and 7, chapter 424, Oregon Laws 2007.

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

5 **SECTION 1.** Section 6, chapter 424, Oregon Laws 2007, is amended to read:

6 **Sec. 6.** (1) A claimant that filed a claim under ORS [197.352] **195.305** on or before [*the date of*
7 *adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June 28,**
8 **2007**, is eligible for three home site approvals on the property if the requirements of this section and
9 sections 8 and 11 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, are met, **or the requirements**
10 **of section 4 of this 2009 Act and of section 11, chapter 424, Oregon Laws 2007, are met.** The
11 procedure for obtaining home site approvals under this section is set forth in section 8 [*of this 2007*
12 *Act*], **chapter 424, Oregon Laws 2007, and section 4 of this 2009 Act.**

13 (2) The number of lots, parcels or dwellings that may be approved for property under this sec-
14 tion may not exceed the lesser of:

15 (a) The number of lots, parcels or dwellings described in a waiver issued by the state before [*the*
16 *effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued, the number of lots,
17 parcels or dwellings described in the claim filed with the state; or

18 (b) Three, except that if there are existing dwellings on the property or the property contains
19 more than one lot or parcel, the number of lots, parcels or dwellings that may be established is re-
20 duced so that the combined number of lots, parcels or dwellings, including existing lots, parcels or
21 dwellings located on or contained within the property, does not exceed three.

22 (3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief
23 under this section may establish at least one additional lot, parcel or dwelling on the property. In
24 addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before
25 [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued, the number of
26 lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant
27 may amend the claim to reduce the number to no more than three by filing notice of the amendment
28 with the form required by section 8 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007, or with**
29 **the form required by section 4 of this 2009 Act.**

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 (4) If a claim was for a use other than a subdivision or partition of property, or other than ap-
 2 proval for establishing a dwelling on the property, the claimant may amend the claim to seek one
 3 or more home site approvals under this section. A person amending a claim under this subsection
 4 may not make a claim under section 7 [of this 2007 Act], **chapter 424, Oregon Laws 2007**.

5 (5) If multiple claims were filed for the same property, the number of lots, parcels or dwellings
 6 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels
 7 or dwellings in the most recent waiver issued by the state before [the effective date of this 2007
 8 Act] **December 6, 2007**, or, if a waiver was not issued, the most recent claim filed with the state,
 9 but not more than three in any case.

10 (6) To qualify for a home site approval under this section, the claimant must have filed a claim
 11 for the property with [both] the state [and] **or with** the county in which the property is located. In
 12 addition, regardless of whether a waiver was issued by the state or the county before [the effective
 13 date of this 2007 Act] **December 6, 2007**, to qualify for a home site approval under this section the
 14 claimant must establish that:

15 (a) The claimant is an owner of the property;

16 (b) All owners of the property have consented in writing to the claim;

17 (c) The property is located entirely outside any urban growth boundary and entirely outside the
 18 boundaries of any city;

19 (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

20 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation
 21 described in ORS [197.352 (3)] **195.305 (3)**; and

22 (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least
 23 the number of lots, parcels or dwellings on the property that are authorized under this section.

24 (7) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-
 25 tion, the Department of Land Conservation and Development must verify that the claim was filed
 26 in compliance with the applicable rules of the Land Conservation and Development Commission and
 27 the Oregon Department of Administrative Services.

28 (8) Except as provided in section 11 [of this 2007 Act], **chapter 424, Oregon Laws 2007**, if the
 29 Department of Land Conservation and Development has issued a final order with a specific number
 30 of home site approvals for a property under this section, the claimant may seek other governmental
 31 authorizations required by law for the partition or subdivision of the property or for the develop-
 32 ment of any dwelling authorized, and a land use regulation enacted by the state or county that has
 33 the effect of prohibiting the partition or subdivision, or the dwelling, does not apply to the review
 34 of those authorizations.

35 **SECTION 2.** Section 7, chapter 424, Oregon Laws 2007, is amended to read:

36 **Sec. 7.** (1) A claimant that filed a claim under ORS [197.352] **195.305** on or before [the date of
 37 adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly] **June 28,**
 38 **2007**, for property that is not high-value farmland or high-value forestland and that is not in a
 39 ground water restricted area is eligible for four to 10 home site approvals for the property if the
 40 requirements of this section and sections 8 and 11 [of this 2007 Act], **chapter 424, Oregon Laws**
 41 **2007**, are met, **or the requirements of section 4 of this 2009 Act and of section 11, chapter 424,**
 42 **Oregon Laws 2007, are met.** The procedure for obtaining home site approvals under this section
 43 is set forth in section 8 [of this 2007 Act], **chapter 424, Oregon Laws 2007, and section 4 of this**
 44 **2009 Act.**

45 (2) The number of lots, parcels or dwellings that may be established on the property under this

1 section may not exceed the lesser of:

2 (a) The number of lots, parcels or dwellings described in a waiver issued by the state before [*the*
 3 *effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued, the number of lots,
 4 parcels or dwellings described in the claim filed with the state;

5 (b) Ten, except that if there are existing dwellings on the property or the property contains
 6 more than one lot or parcel, the number of lots, parcels or dwellings that may be established is re-
 7 duced, so that the combined number of lots, parcels or dwellings, including existing lots, parcels or
 8 dwellings located on or contained within the property, does not exceed 10; or

9 (c) The number of home site approvals with a total value that represents just compensation for
 10 the reduction in fair market value caused by the enactment of one or more land use regulations that
 11 were the basis for the claim, as set forth in subsection (6) of this section.

12 (3) If the number of lots, parcels or dwellings described in a waiver issued by the state before
 13 [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued, the number of
 14 lots, parcels or dwellings described in the claim filed with the state is more than 10, the claimant
 15 may amend the claim to reduce the number to no more than 10 by filing notice of the amendment
 16 with the form required by section 8 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007, or with**
 17 **the form required by section 4 of this 2009 Act.**

18 (4) If multiple claims were filed for the same property, the number of lots, parcels or dwellings
 19 that may be established for purposes of subsection (2)(a) of this section is the number of lots, parcels
 20 or dwellings in the most recent waiver issued by the state before [*the effective date of this 2007*
 21 *Act*] **December 6, 2007**, or, if a waiver was not issued, the most recent claim filed with the state,
 22 but not more than 10 in any case.

23 (5) To qualify for a home site approval under this section, the claimant must have filed a claim
 24 for the property with [*both*] the state [*and*] **or with** the county in which the property is located. In
 25 addition, regardless of whether a waiver was issued by the state or the county before [*the effective*
 26 *date of this 2007 Act*] **December 6, 2007**, to qualify for a home site approval under this section, the
 27 claimant must establish that:

28 (a) The claimant is an owner of the property;

29 (b) All owners of the property have consented in writing to the claim;

30 (c) The property is located entirely outside any urban growth boundary and entirely outside the
 31 boundaries of any city;

32 (d) One or more land use regulations prohibit establishing the lot, parcel or dwelling;

33 (e) The establishment of the lot, parcel or dwelling is not prohibited by a land use regulation
 34 described in ORS [*197.352 (3)*] **195.305 (3)**;

35 (f) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least
 36 the number of lots, parcels and dwellings on the property that are authorized under this section; and

37 (g) The enactment of one or more land use regulations, other than land use regulations de-
 38 scribed in ORS [*197.352 (3)*] **195.305 (3)**, that are the basis for the claim caused a reduction in the
 39 fair market value of the property that is equal to or greater than the fair market value of the home
 40 site approvals that may be established on the property under subsection (2) of this section, with the
 41 reduction in fair market value measured as set forth in subsection (6) of this section.

42 (6) The reduction in the fair market value of the property caused by the enactment of one or
 43 more land use regulations that were the basis for the claim is equal to the decrease, if any, in the
 44 fair market value of the property from the date that is one year before the enactment of the land
 45 use regulation to the date that is one year after the enactment, plus interest. If the claim is based

1 on the enactment of more than one land use regulation enacted on different dates, the reduction in
 2 the fair market value of the property caused by each regulation shall be determined separately and
 3 the values added together to calculate the total reduction in fair market value. The reduction in fair
 4 market value shall be adjusted by any ad valorem property taxes not paid as a result of any special
 5 assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754
 6 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any
 7 recapture of potential additional tax liability that the claimant has paid or will pay for the property
 8 if the property is disqualified from special assessment under ORS 308A.703. Interest shall be com-
 9 puted under this subsection using the average interest rate for a one-year United States Government
 10 Treasury Bill on December 31 of each year of the period between the date the land use regulation
 11 was enacted and the date the claim was filed, compounded annually on January 1 of each year of
 12 the period.

13 (7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal
 14 showing the fair market value of the property one year before the enactment of the land use regu-
 15 lation that was the basis for the claim and the fair market value of the property one year after the
 16 enactment. The appraisal also must show the fair market value of each home site approval to which
 17 the claimant is entitled under *[section 6 (2) of this 2007 Act]* **subsection (2) of this section**, along
 18 with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recap-
 19 ture of additional tax liability that the claimant has paid or will pay for the property if the property
 20 is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of pre-
 21 paring the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the
 22 calculation of the reduction in fair market value under subsection (6) of this section. The appraisal
 23 must:

24 (a) Be prepared by a person certified under ORS chapter 674 or a person registered under ORS
 25 chapter 308;

26 (b) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the
 27 Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

28 (c) Expressly determine the highest and best use of the property at the time the land use regu-
 29 lation was enacted.

30 (8) Relief may not be granted under this section if the highest and best use of the property was
 31 not residential use at the time the land use regulation was enacted.

32 (9) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-
 33 tion, the Department of Land Conservation and Development must verify that the claim was filed
 34 in compliance with the applicable rules of the Land Conservation and Development Commission and
 35 the Oregon Department of Administrative Services.

36 (10) Except as provided in section 11 *[of this 2007 Act]*, **chapter 424, Oregon Laws 2007**, if the
 37 Department of Land Conservation and Development has issued a final order with a specific number
 38 of home site approvals for the property under this section, the claimant may seek other govern-
 39 mental authorizations required by law for the subdivision or partition of the property or for the
 40 development of any dwelling authorized, and a land use regulation enacted by the state or county
 41 that has the effect of prohibiting the subdivision or partition, or the dwelling, does not apply to the
 42 review of those authorizations.

43 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of sections 5 to 11,**
 44 **chapter 424, Oregon Laws 2007.**

45 **SECTION 4. (1) As soon as possible after the effective date of this 2009 Act, the Depart-**

1 **ment of Land Conservation and Development shall send to each county a list of the claimants**
2 **who received notice under section 8, chapter 424, Oregon Laws 2007, and who had property**
3 **within the county for which a claim was made under ORS 195.305, as in effect immediately**
4 **before December 6, 2007. As soon as possible after receiving the list, each county shall pre-**
5 **pare a list of persons who filed claims with the county on or before June 28, 2007, pursuant**
6 **to ORS 195.305, as in effect immediately before December 6, 2007, but who do not appear on**
7 **the list sent to the county by the department. The county shall provide the list to the de-**
8 **partment with copies of the claims for the named claimants, and all county records relating**
9 **to the county's action on the claim.**

10 **(2) As soon as possible after the department receives all of the lists submitted by coun-**
11 **ties under subsection (1) of this section, the department shall send notice to all persons on**
12 **the list and to all persons who filed a claim with the state under ORS 195.305, as in effect**
13 **immediately before December 6, 2007, but who did not file a claim with a county.**

14 **(3) The notice required by subsection (2) of this section must:**

15 **(a) Explain the claimant's options if the claimant wishes to subdivide, partition or es-**
16 **tablish a dwelling on the property under ORS 195.305 to 195.336 and sections 5 to 11, chapter**
17 **424, Oregon Laws 2007;**

18 **(b) Identify any information that the claimant must file; and**

19 **(c) Provide a form for the claimant's use.**

20 **(4) A claimant must choose whether to proceed under section 6 or 7, chapter 424, Oregon**
21 **Laws 2007, by filing the form provided by the department within 90 days after the date the**
22 **department mails the notice and form required under subsections (2) and (3) of this section.**
23 **In addition, the claimant must file any information required in the notice. If the claimant**
24 **fails to file the form within 90 days after the date the department mails the notice, the**
25 **claimant is not entitled to relief under section 6 or 7, chapter 424, Oregon Laws 2007.**

26 **(5) The department shall review the claims in the order in which the department receives**
27 **the forms filed under subsection (4) of this section. In addition to reviewing the claim, the**
28 **department shall review the county's record on the claim, the form filed under subsection**
29 **(4) of this section, any new material from the claimant and any other information required**
30 **by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, to ensure that**
31 **the requirements of this section and section 6 or 7, chapter 424, Oregon Laws 2007, are met.**
32 **The department shall provide a copy of the material submitted by the claimant to the county**
33 **where the property is located and consider written comments from the county that are**
34 **timely filed with the department. If the department determines that the only land use regu-**
35 **lations that restrict the claimant's use of the property are regulations that were enacted by**
36 **the county, the department shall transfer the claim to the county where the property is lo-**
37 **cated and the claim shall be processed by the county in the same manner as prescribed by**
38 **this section for the processing of claims by the department. The county must consider any**
39 **written comments from the department that are timely filed with the county.**

40 **(6) If the claimant elects to obtain relief under section 7, chapter 424, Oregon Laws 2007,**
41 **the claimant must file an appraisal that establishes the reduction in the fair market value**
42 **of the property as described in section 7 (6), chapter 424, Oregon Laws 2007. The actual and**
43 **reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed**
44 **\$5,000, may be added to the calculation of the reduction in fair market value under section**
45 **7 (6), chapter 424, Oregon Laws 2007. The appraisal must be filed with the department or, if**

1 the claim is being processed by the county, with the county within 180 days after the date
 2 the claimant files the election to obtain relief under section 7, chapter 424, Oregon Laws 2007.
 3 A claimant that elects to obtain relief under section 7, chapter 424, Oregon Laws 2007, may
 4 change that election to obtain relief under section 6, chapter 424, Oregon Laws 2007, but only
 5 if the claimant provides written notice of the change on or before the date the appraisal is
 6 filed. If a county is processing the claim, the county may impose a fee for the review of a
 7 claim under section 7, chapter 424, Oregon Laws 2007, in an amount that does not exceed the
 8 actual and reasonable cost of the review.

9 (7) The department or the county shall review claims as quickly as possible, consistent
 10 with careful review of each claim.

11 (8) The department's final order or a county's final decision on a claim under section 6
 12 or 7, chapter 424, Oregon Laws 2007, must either deny the claim or approve the claim. If the
 13 order or decision approves the claim, the order or decision must state the number of home
 14 site approvals issued for the property and may contain other terms that are necessary to
 15 ensure that the use of the property is lawful.

16 **SECTION 5.** ORS 205.246, as amended by section 3, chapter 48, Oregon Laws 2008, is amended
 17 to read:

18 205.246. (1) The county clerk shall record the following instruments required or permitted by law
 19 to be recorded and entered in the office of the county clerk:

- 20 (a) Financing statements recorded in the office of the county clerk under ORS 79.0501 (1)(a);
- 21 (b) Hospital and physician liens recorded under ORS 87.565;
- 22 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS
 23 87.806;
- 24 (d) Cooperative contracts recorded under ORS 62.360;
- 25 (e) Special district assessments attaching to real property;
- 26 (f) Lien foreclosure statements recorded under ORS 87.202;
- 27 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title
 28 to real property;
- 29 (h) Building code exemptions required under ORS 455.320 and 455.345;
- 30 (i) Construction liens recorded under ORS 87.050;
- 31 (j) Liens upon chattels recorded under ORS 87.246;
- 32 (k) Liens on real property recorded under ORS 87.372;
- 33 (L) Employee benefit plan liens recorded under ORS 87.860;
- 34 (m) Attorney liens recorded under ORS 87.455 and 87.460;
- 35 (n) Long term care liens recorded under ORS 87.517;
- 36 (o) Ambulance services liens recorded under ORS 87.623;
- 37 (p) Community property records recorded under ORS 108.530;
- 38 (q) Sheriff transfer of records recorded under ORS 206.100;
- 39 (r) Corrected instruments required under ORS 205.244;
- 40 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,
 41 517.220, 517.280, 517.310 and 517.320;
- 42 (t) Copies of records certified by a county clerk or court clerk;
- 43 (u) Subdivision and partition plats recorded under ORS 92.140;
- 44 (v) Condominiums recorded under ORS chapter 100;
- 45 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of

- 1 transfer or encumbrance presented for recordation under ORS 411.694;
- 2 (x) Bankruptcy documents presented for recordation under ORS 93.770;
- 3 (y) A written warranty agreement under ORS 701.605; and
- 4 (z) An order or decision under section 8 (7), chapter 424, Oregon Laws 2007, **or section 4 of**
- 5 **this 2009 Act** that is final by operation of law or on appeal.
- 6 (2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350
- 7 for recording an instrument required to be recorded under subsection (1) of this section.
- 8 (3) Indexes may be maintained for instruments recorded under subsection (1) of this section in
- 9 the same manner as provided in ORS 205.160.
- 10 _____