

A-Engrossed
House Bill 3225

Ordered by the House May 4
Including House Amendments dated May 4

Sponsored by COMMITTEE ON LAND USE

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.

[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.]

Specifies that certain claimants under Ballot Measure 49 (2007) are eligible to receive relief under Act. Specifies that claimant is not eligible to receive relief if claimant has common law vested right.

Allows claimant that did not comply with previous filing requirements, including requirement that claim be filed with public entity that enacted regulation, to pursue relief under Act if claimant satisfies specified criteria.

Allows claimant with majority of property located outside urban growth boundary to pursue relief under Act. Specifies that development of land established pursuant to grant of relief must be located on portion of property outside urban growth boundary.

Allows claimant that filed claim only with state and not with both county and state to pursue relief under Act.

Directs Land Conservation and Development Commission to establish procedure for processing eligible claims under Act. Requires Department of Land Conservation and Development to issue final order on or before specified dates. Directs department to investigate certain improperly filed claims. Requires fee of \$175 for processing of certain claims. Authorizes Director of Department of Land Conservation and Development to prioritize processing of specified number of claims that demonstrate hardship.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Ballot Measure 49 (2007) claims; creating new provisions; amending ORS 195.336 and
3 205.246 and sections 5, 6, 7, 8 and 11, chapter 424, Oregon Laws 2007; and declaring an emer-
4 gency.

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

6 **SECTION 1. Sections 2, 3, 4, 5, 6, 7, 8 and 9 of this 2009 Act are added to and made a part**
7 **of sections 5 to 11, chapter 424, Oregon Laws 2007.**

8 **SECTION 2. (1) Subject to section 7 of this 2009 Act and subsections (2) and (3) of this**
9 **section, a claimant that filed a timely election under section 8, chapter 424, Oregon Laws**
10 **2007, to pursue compensation as described in section 5 (3), chapter 424, Oregon Laws 2007,**
11 **is eligible to pursue relief under this section and section 6, chapter 424, Oregon Laws 2007.**

12 **(2) A claimant is not eligible to pursue relief under this section if the claimant has been**
13 **determined to have a common law vested right as described in section 5 (3), chapter 424,**
14 **Oregon Laws 2007, in a final judgment, or final order, that is not subject to further appeal.**

15 **(3) A claimant must elect to pursue relief under this section on or before December 31,**
16 **2009, in the manner prescribed pursuant to section 6 of this 2009 Act.**

17 **(4) The Department of Land Conservation and Development shall review claims under**

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 this section using the procedures established pursuant to section 6 of this 2009 Act.

2 **SECTION 3.** (1) Notwithstanding the requirement in section 5, chapter 424, Oregon Laws
3 2007, that a claim under ORS 195.305 be filed before June 28, 2007, and notwithstanding the
4 requirement in sections 6 (7) and 7 (9), chapter 424, Oregon Laws 2007, that a claim comply
5 with applicable rules of the Land Conservation and Development Commission, a claimant is
6 eligible to pursue relief under this section and section 6, chapter 424, Oregon Laws 2007, if
7 the claimant satisfies the requirements of subsection (2) of this section and either:

8 (a) Filed a valid claim for just compensation under ORS 195.305 with the appropriate
9 county on or before December 4, 2006, and with the state on or after December 4, 2006, and
10 before December 6, 2007; or

11 (b) Submitted a land use application before June 28, 2007, that was a prerequisite to filing
12 a valid claim for just compensation on or after December 4, 2006, and filed the claim with the
13 state before December 6, 2007.

14 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under
15 this section and section 6, chapter 424, Oregon Laws 2007, if the claimant:

16 (a) Did not receive notice and an opportunity to file an election under section 8 (3),
17 chapter 424, Oregon Laws 2007, and the claimant makes an election to pursue relief under
18 this section on or before December 31, 2009, in the manner prescribed pursuant to section 6
19 of this 2009 Act;

20 (b) Received notice and made a timely election under section 8 (3), chapter 424, Oregon
21 Laws 2007, to pursue relief under section 7, chapter 424, Oregon Laws 2007, but received a
22 preliminary decision of denial from the Department of Land Conservation and Development
23 before the claimant could submit an appraisal; or

24 (c) Received notice and made a timely election under section 8 (3), chapter 424, Oregon
25 Laws 2007, to pursue relief under section 6, chapter 424, Oregon Laws, 2007.

26 (3) The Department of Land Conservation and Development shall review claims under
27 this section using the procedures established pursuant to section 6 of this 2009 Act.

28 **SECTION 4.** (1) Notwithstanding the requirement in sections 5 (1) and 6 (6), chapter 424,
29 Oregon Laws 2007, that the property be located entirely outside any urban growth boundary
30 and entirely outside any city, a claimant is eligible to pursue relief under this section if the
31 majority of the property described in the claim is outside an urban growth boundary and the
32 claimant made a timely election under section 8 (3), chapter 424, Oregon Laws 2007, to pursue
33 relief under section 6, chapter 424, Oregon Laws 2007.

34 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under
35 this section and section 6, chapter 424, Oregon Laws 2007.

36 (3) The Department of Land Conservation and Development shall review claims under
37 this section using the procedures established pursuant to section 6 of this 2009 Act.

38 **SECTION 5.** (1) Notwithstanding the requirement in section 6 (6), chapter 424, Oregon
39 Laws 2007, that the claimant must have filed a claim for the property with the state and with
40 the county in which the property is located, a claimant is eligible to pursue relief under this
41 section if the claimant filed a claim only with the state and the claimant made a timely
42 election under section 8 (3), chapter 424, Oregon Laws 2007, to pursue relief under section
43 6, chapter 424, Oregon Laws 2007.

44 (2) A claimant described in subsection (1) of this section is eligible to pursue relief under
45 this section and section 6, chapter 424, Oregon Laws 2007.

1 **(3) The Department of Land Conservation and Development shall review claims under**
2 **this section using the procedures established pursuant to section 6 of this 2009 Act.**

3 **SECTION 6. (1) The Land Conservation and Development Commission shall adopt rules**
4 **establishing the procedure for processing eligible claims under sections 2 to 5 of this 2009**
5 **Act.**

6 **(2) The Department of Land Conservation and Development shall issue a final order on**
7 **or before December 31, 2010, for claims reviewed under sections 2 to 5 of this 2009 Act.**

8 **SECTION 7. A claimant is not entitled to implement relief under the theory of common**
9 **law vested right and under sections 5 to 11, chapter 424, Oregon Laws 2007.**

10 **SECTION 8. The Department of Land Conservation and Development shall issue a final**
11 **order on or before June 30, 2010, for claims reviewed under section 6 or 7, chapter 424,**
12 **Oregon Laws 2007, as those sections were in effect on January 1, 2009.**

13 **SECTION 9. Notwithstanding the requirement of section 8 (4), chapter 424, Oregon Laws**
14 **2007, that the Department of Land Conservation and Development review claims in the order**
15 **received, upon a recommendation of the Compensation and Conservation Ombudsman ap-**
16 **pointed under ORS 195.320 that a hardship exists, made in the discretion of the ombudsman,**
17 **the Director of the Department of Land Conservation and Development may, in the dis-**
18 **cretion of the director, advance up to 100 claims for priority processing in cases of demon-**
19 **strated hardship.**

20 **SECTION 10. Section 5, chapter 424, Oregon Laws 2007, is amended to read:**

21 **Sec. 5.** A claimant that filed a claim under ORS [197.352] **195.305** on or before [*the date of*
22 *adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June 28,**
23 **2007,** is entitled to just compensation as provided in:

24 **(1) Section 6 or 7 [of this 2007 Act], chapter 424, Oregon Laws 2007,** at the claimant's election,
25 if the property described in the claim is located entirely outside any urban growth boundary and
26 entirely outside the boundaries of any city;

27 **(2) Section 9 [of this 2007 Act], chapter 424, Oregon Laws 2007,** if the property described in
28 the claim is located, in whole or in part, within **the boundaries of a city or within** an urban
29 growth boundary; or

30 **(3) A waiver issued before [the effective date of this 2007 Act] December 6, 2007,** to the extent
31 that the claimant's use of the property complies with the waiver and the claimant has a common law
32 vested right on [*the effective date of this 2007 Act*] **December 6, 2007,** to complete and continue the
33 use described in the waiver.

34 **SECTION 11. Section 6, chapter 424, Oregon Laws 2007, is amended to read:**

35 **Sec. 6. (1)(a)** A claimant that filed a claim under ORS [197.352] **195.305** on or before [*the date*
36 *of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June**
37 **28, 2007,** is eligible for three home site approvals on the property if the requirements of this section
38 and:

39 **(A) Sections 8 and 11 [of this 2007 Act], chapter 424, Oregon Laws 2007,** are met[.];

40 **(B) Section 2 of this 2009 Act and section 11, chapter 424, Oregon Laws 2007,** are met;

41 **(C) Section 3 of this 2009 Act and section 11, chapter 424, Oregon Laws 2007,** are met;

42 **(D) Section 4 of this 2009 Act and section 11, chapter 424, Oregon Laws 2007,** are met;

43 **or**

44 **(E) Section 5 of this 2009 Act and section 11, chapter 424, Oregon Laws 2007,** are met.

45 **(b)** The procedure for obtaining home site approvals under this section is set forth in section 8

1 [of this 2007 Act], **chapter 424, Oregon Laws 2007, or, for sections 2 to 5 of this 2009 Act, is**
 2 **established pursuant to section 6 of this 2009 Act.**

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

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

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

12 (3) Notwithstanding subsection (2) of this section, a claimant that otherwise qualifies for relief
 13 under this section may establish at least one additional lot, parcel or dwelling on the property. In
 14 addition, if the number of lots, parcels or dwellings described in a waiver issued by the state before
 15 [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued, the number of
 16 lots, parcels or dwellings described in the claim filed with the state is more than three, the claimant
 17 may amend the claim to reduce the number to no more than three by filing notice of the amendment
 18 with the form required by section 8 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007, or, for**
 19 **sections 2 to 5 of this 2009 Act, in the manner established pursuant to section 6 of this 2009**
 20 **Act.**

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

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

30 (6) To qualify for a home site approval under this section, the claimant must have filed a claim
 31 for the property with both the state and the county in which the property is located. In addition,
 32 regardless of whether a waiver was issued by the state or the county before [*the effective date of this*
 33 *2007 Act*] **December 6, 2007**, to qualify for a home site approval under this section the claimant
 34 must establish that:

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

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

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

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

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

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

44 (7) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-
 45 tion, the Department of Land Conservation and Development must verify that the claim was filed

1 in compliance with the applicable rules of the Land Conservation and Development Commission and
2 the Oregon Department of Administrative Services.

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

10 **SECTION 12.** Section 7, chapter 424, Oregon Laws 2007, is amended to read:

11 **Sec. 7.** (1) A claimant that filed a claim under ORS [197.352] **195.305** on or before [the date of
12 adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly] **June 28,**
13 **2007**, for property that is not high-value farmland or high-value forestland and that is not in a
14 ground water restricted area is eligible for four to 10 home site approvals for the property if the
15 requirements of this section and sections 8 and 11 [of this 2007 Act], **chapter 424, Oregon Laws**
16 **2007**, are met. The procedure for obtaining home site approvals under this section is set forth in
17 section 8 [of this 2007 Act], **chapter 424, Oregon Laws 2007**.

18 (2) The number of lots, parcels or dwellings that may be established on the property under this
19 section may not exceed the lesser of:

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

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

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

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

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

40 (5) To qualify for a home site approval under this section, the claimant must have filed a claim
41 for the property with both the state and the county in which the property is located. In addition,
42 regardless of whether a waiver was issued by the state or the county before [the effective date of this
43 2007 Act] **December 6, 2007**, to qualify for a home site approval under this section, the claimant
44 must establish that:

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

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

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

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

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

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

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

14 (6) The reduction in the fair market value of the property caused by the enactment of one or
15 more land use regulations that were the basis for the claim is equal to the decrease, if any, in the
16 fair market value of the property from the date that is one year before the enactment of the land
17 use regulation to the date that is one year after the enactment, plus interest. If the claim is based
18 on the enactment of more than one land use regulation enacted on different dates, the reduction in
19 the fair market value of the property caused by each regulation shall be determined separately and
20 the values added together to calculate the total reduction in fair market value. The reduction in fair
21 market value shall be adjusted by any ad valorem property taxes not paid as a result of any special
22 assessment of the property under ORS 308A.050 to 308A.128, 321.257 to 321.390, 321.700 to 321.754
23 or 321.805 to 321.855, plus interest, offset by any severance taxes paid by the claimant and by any
24 recapture of potential additional tax liability that the claimant has paid or will pay for the property
25 if the property is disqualified from special assessment under ORS 308A.703. Interest shall be com-
26 puted under this subsection using the average interest rate for a one-year United States Government
27 Treasury Bill on December 31 of each year of the period between the date the land use regulation
28 was enacted and the date the claim was filed, compounded annually on January 1 of each year of
29 the period.

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

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

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

45 (c) Expressly determine the highest and best use of the property at the time the land use regu-

1 lation was enacted.

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

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

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

15 **SECTION 13.** Section 8, chapter 424, Oregon Laws 2007, is amended to read:

16 **Sec. 8.** (1) No later than 120 days after [the effective date of this 2007 Act] **December 6, 2007**,
17 the Department of Land Conservation and Development shall send notice to all the following
18 claimants that filed a claim for property outside an urban growth boundary:

19 (a) A claimant whose claim was denied by the state before [the effective date of this 2007 Act]
20 **December 6, 2007**, but who may become eligible for just compensation because of [section 21 (2) of
21 this 2007 Act] **ORS 195.328 (2)** or any other provision of [sections 5 to 22 of this 2007 Act] **ORS**
22 **195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007**;

23 (b) A claimant whose claim was approved by the state before [the effective date of this 2007
24 Act] **December 6, 2007**; and

25 (c) A claimant whose claim has not been approved or denied by the state before [the effective
26 date of this 2007 Act] **December 6, 2007**.

27 (2) The notice required by subsection (1) of this section must:

28 (a) Explain the claimant's options if the claimant wishes to subdivide, partition or establish a
29 dwelling on the property under [sections 5 to 22 of this 2007 Act] **ORS 195.305 to 195.336 and**
30 **sections 5 to 11, chapter 424, Oregon Laws 2007**;

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

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

33 (3) A claimant must choose whether to proceed under section 6 or 7 [of this 2007 Act], **chapter**
34 **424, Oregon Laws 2007**, by filing the form provided by the department within [90] **120** days after
35 the date the department mails the notice and form required under subsection (1) of this section. In
36 addition, the claimant must file any information required in the notice. If the claimant fails to file
37 the form within [90] **120** days after the date the department mails the notice, the claimant is not
38 entitled to relief under section 6 or 7 [of this 2007 Act], **chapter 424, Oregon Laws 2007**.

39 (4) The department shall review the claims in the order in which the department receives the
40 forms required under subsection (3) of this section. In addition to reviewing the claim, the depart-
41 ment shall review the department's record on the claim, the form required under subsection (3) of
42 this section, any new material from the claimant and any other information required by [sections 5
43 to 22 of this 2007 Act] **ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws**
44 **2007**, to ensure that the requirements of this section and section 6 or 7 [of this 2007 Act], **chapter**
45 **424, Oregon Laws 2007**, are met. The department shall provide a copy of the material submitted

1 by the claimant to the county where the property is located and consider written comments from
 2 the county that are timely filed with the department. If the department determines that the only land
 3 use regulations that restrict the claimant's use of the property are regulations that were enacted
 4 by the county, the department shall transfer the claim to the county where the property is located
 5 and the claim shall be processed by the county in the same manner as prescribed by this section for
 6 the processing of claims by the department. The county must consider any written comments from
 7 the department that are timely filed with the county.

8 (5) If the claimant elects to obtain relief under section 7 *[of this 2007 Act]*, **chapter 424, Oregon**
 9 **Laws 2007**, the claimant must file an appraisal that establishes the reduction in the fair market
 10 value of the property as required by section 7 (6) *[of this 2007 Act]*, **chapter 424, Oregon Laws**
 11 **2007**. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not
 12 to exceed \$5,000, may be added to the calculation of the reduction in fair market value under section
 13 7 (6) *[of this 2007 Act]*, **chapter 424, Oregon Laws 2007**. The appraisal must be filed with the de-
 14 partment or, if the claim is being processed by the county, with the county within 180 days after the
 15 date the claimant files the election to obtain relief under section 7 *[of this 2007 Act]*, **chapter 424,**
 16 **Oregon Laws 2007**. A claimant that elects to obtain relief under section 7 *[of this 2007 Act]*,
 17 **chapter 424, Oregon Laws 2007**, may change that election to obtain relief under section 6 *[of this*
 18 *2007 Act]*, **chapter 424, Oregon Laws 2007**, but only if the claimant provides written notice of the
 19 change on or before the date the appraisal is filed. If a county is processing the claim, the county
 20 may impose a fee for the review of a claim under section 7 *[of this 2007 Act]*, **chapter 424, Oregon**
 21 **Laws 2007**, in an amount that does not exceed the actual and reasonable cost of the review.

22 (6) The department or the county shall review claims as quickly as possible, consistent with
 23 careful review of the claim. The department shall report to the Joint Legislative Audit Committee
 24 on or before March 31, 2008, concerning the department's progress and the counties' progress in
 25 completing review of claims under sections 6 and 7 *[of this 2007 Act]*, **chapter 424, Oregon Laws**
 26 **2007**.

27 (7) The department's final order and a county's final decision on a claim under section 6 or 7
 28 *[of this 2007 Act]*, **chapter 424, Oregon Laws 2007**, must either deny the claim or approve the claim.
 29 If the order or decision approves the claim, the order or decision must state the number of home
 30 site approvals issued for the property and may contain other terms that are necessary to ensure that
 31 the use of the property is lawful.

32 **SECTION 14.** Section 11, chapter 424, Oregon Laws 2007, is amended to read:

33 **Sec. 11.** (1) A subdivision or partition of property, or the establishment of a dwelling on prop-
 34 erty, authorized under sections 5 to 11 *[of this 2007 Act]*, **chapter 424, Oregon Laws 2007**, must
 35 comply with all applicable standards governing the siting or development of the dwelling, lot or
 36 parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or
 37 parcel. However, the standards must not be applied in a manner that has the effect of prohibiting
 38 the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 *[of this 2007 Act]*,
 39 **chapter 424, Oregon Laws 2007**, unless the standards are reasonably necessary to avoid or abate
 40 a nuisance, to protect public health or safety or to carry out federal law.

41 **(2) If the property described in a claim is bisected by an urban growth boundary, any new**
 42 **dwelling, lot or parcel established on the property pursuant to an order under section 6,**
 43 **chapter 424, Oregon Laws 2007, must be located on the portion of the property outside the**
 44 **urban growth boundary.**

45 [(2)] (3) Before beginning construction of any dwelling authorized under section 6 or 7 *[of this*

1 *2007 Act*], **chapter 424, Oregon Laws 2007**, the owner must comply with the requirements of ORS
 2 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest
 3 zone.

4 [(3)(a)] (4)(a) A city or county may approve the creation of a lot or parcel to contain a dwelling
 5 authorized under sections 5 to 11 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**. However, a
 6 new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest
 7 zone may not exceed:

8 (A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or
 9 on land within a ground water restricted area; or

10 (B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland
 11 or on land within a ground water restricted area.

12 (b) If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest
 13 zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant
 14 lot or parcel for farm or forest use.

15 [(4)] (5) If an owner is authorized to subdivide or partition more than one property, or to es-
 16 tablish dwellings on more than one property, under sections 5 to 11 [*of this 2007 Act*], **chapter 424,**
 17 **Oregon Laws 2007**, and the properties are in an exclusive farm use zone, a forest zone or a mixed
 18 farm and forest zone, the owner may cluster some or all of the dwellings, lots or parcels on one of
 19 the properties if that property is less suitable than the other properties for farm or forest use. If
 20 one of the properties is zoned for residential use, the owner may cluster some or all of the dwellings,
 21 lots or parcels that would have been located in an exclusive farm use zone, a forest zone or a mixed
 22 farm and forest zone on the property zoned for residential use.

23 [(5)] (6) An owner is not eligible for more than 20 home site approvals under sections 5 to 11
 24 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, regardless of how many properties that person
 25 owns or how many claims that person has filed.

26 [(6)] (7) An authorization to partition or subdivide the property, or to establish dwellings on the
 27 property, granted under section 6, 7 or 9 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, runs
 28 with the property and may be either transferred with the property or encumbered by another person
 29 without affecting the authorization. There is no time limit on when an authorization granted under
 30 section 6, 7 or 9 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, must be carried out, except
 31 that once the owner who obtained the authorization conveys the property to a person other than
 32 the owner's spouse or the trustee of a revocable trust in which the owner is the settlor, the subse-
 33 quent owner of the property must create the lots or parcels and establish the dwellings authorized
 34 by a waiver under section 6, 7 or 9 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, within 10
 35 years of the conveyance. In addition:

36 (a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9 [*of this*
 37 *2007 Act*], **chapter 424, Oregon Laws 2007**, remains a discrete lot or parcel, unless the lot or parcel
 38 lines are vacated or the lot or parcel is further divided, as provided by law; and

39 (b) A dwelling or other residential use of the property based on an authorization under section
 40 6, 7 or 9 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**, is a permitted use and may be estab-
 41 lished or continued by the claimant or a subsequent owner, except that once the claimant conveys
 42 the property to a person other than the claimant's spouse or the trustee of a revocable trust in
 43 which the claimant is the settlor, the subsequent owner must establish the dwellings or other resi-
 44 dential use authorized under section 6, 7 or 9 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**,
 45 within 10 years of the conveyance.

1 [(7)] (8) When relief has been claimed under sections 5 to 11 [of this 2007 Act], **chapter 424,**
2 **Oregon Laws 2007:**

3 (a) Additional relief is not due; and

4 (b) An additional claim may not be filed, compensation is not due and a waiver may not be is-
5 sued with regard to the property under [sections 5 to 22 of this 2007 Act or ORS 197.352] **ORS**
6 **195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, or ORS 195.305** as in
7 effect immediately before [the effective date of this 2007 Act] **December 6, 2007**, except with respect
8 to a land use regulation enacted after January 1, 2007.

9 [(8)] (9) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights
10 to carry out a use of land authorized under sections 5 to 11 [of this 2007 Act], **chapter 424, Oregon**
11 **Laws 2007**, from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities
12 and counties may enter into cooperative agreements under ORS chapter 195 to establish a system
13 for the purchase and sale of severable development interests as described in ORS 94.531. A system
14 established under this subsection may provide for the transfer of severable development interests
15 between the jurisdictions of the public entities that are parties to the agreement for the purpose of
16 allowing development to occur in a location that is different from the location in which the devel-
17 opment interest arises.

18 [(9)] (10) If a claimant is an individual, the entitlement to prosecute the claim under section 6,
19 7 or 9 [of this 2007 Act], **chapter 424, Oregon Laws 2007**, and an authorization to use the property
20 provided by a waiver under section 6, 7 or 9 [of this 2007 Act], **chapter 424, Oregon Laws 2007:**

21 (a) Is not affected by the death of the claimant if the death occurs on or after [the effective date
22 of this 2007 Act] **December 6, 2007**; and

23 (b) Passes to the person that acquires the property by devise or by operation of law.

24 **SECTION 15.** ORS 205.246, as amended by section 3, chapter 48, Oregon Laws 2008, is amended
25 to read:

26 205.246. (1) The county clerk shall record the following instruments required or permitted by law
27 to be recorded and entered in the office of the county clerk:

28 (a) Financing statements recorded in the office of the county clerk under ORS 79.0501 (1)(a);

29 (b) Hospital and physician liens recorded under ORS 87.565;

30 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS
31 87.806;

32 (d) Cooperative contracts recorded under ORS 62.360;

33 (e) Special district assessments attaching to real property;

34 (f) Lien foreclosure statements recorded under ORS 87.202;

35 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title
36 to real property;

37 (h) Building code exemptions required under ORS 455.320 and 455.345;

38 (i) Construction liens recorded under ORS 87.050;

39 (j) Liens upon chattels recorded under ORS 87.246;

40 (k) Liens on real property recorded under ORS 87.372;

41 (L) Employee benefit plan liens recorded under ORS 87.860;

42 (m) Attorney liens recorded under ORS 87.455 and 87.460;

43 (n) Long term care liens recorded under ORS 87.517;

44 (o) Ambulance services liens recorded under ORS 87.623;

45 (p) Community property records recorded under ORS 108.530;

- 1 (q) Sheriff transfer of records recorded under ORS 206.100;
- 2 (r) Corrected instruments required under ORS 205.244;
- 3 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,
- 4 517.220, 517.280, 517.310 and 517.320;
- 5 (t) Copies of records certified by a county clerk or court clerk;
- 6 (u) Subdivision and partition plats recorded under ORS 92.140;
- 7 (v) Condominiums recorded under ORS chapter 100;
- 8 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of
- 9 transfer or encumbrance presented for recordation under ORS 411.694;
- 10 (x) Bankruptcy documents presented for recordation under ORS 93.770;
- 11 (y) A written warranty agreement under ORS 701.605; and
- 12 (z) An order or decision under section 8 (7), chapter 424, Oregon Laws 2007, **or section 6 of**
- 13 **this 2009 Act** that is final by operation of law or on appeal.

14 (2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350
15 for recording an instrument required to be recorded under subsection (1) of this section.

16 (3) Indexes may be maintained for instruments recorded under subsection (1) of this section in
17 the same manner as provided in ORS 205.160.

18 **SECTION 16. Section 17 of this 2009 Act is added to and made a part of sections 5 to 11,**
19 **chapter 424, Oregon Laws 2007.**

20 **SECTION 17. (1) The Department of Land Conservation and Development shall investi-**
21 **gate:**

22 (a) **The number of claimants that filed claims only with a county under ORS 195.305, as**
23 **in effect immediately before December 6, 2007; and**

24 (b) **Why the claimants described in paragraph (a) of this subsection filed claims only with**
25 **the county.**

26 (2) **If requested to do so by the department, a county shall provide the department with**
27 **a list of the claims described in subsection (1) of this section and copies of the claims.**

28 (3) **The department shall investigate:**

29 (a) **The number of claims that were filed under section 7, chapter 424, Oregon Laws 2007,**
30 **in which the claimant failed to file an appraisal or to make an election to seek relief under**
31 **section 6, chapter 424, Oregon Laws 2007; and**

32 (b) **Why the claimants described in paragraph (a) of this subsection failed to file an ap-**
33 **praisal or to make an election to seek relief under section 6, chapter 424, Oregon Laws 2007.**

34 (4) **The department shall report its findings to an appropriate interim committee of the**
35 **Legislative Assembly on or before December 31, 2009.**

36 **SECTION 18. (1) The Department of Land Conservation and Development shall charge a**
37 **fee of \$175 for each claim that:**

38 (a) **Becomes eligible for relief under sections 2 to 5 of this 2009 Act or section 8, chapter**
39 **424, Oregon Laws 2007; and**

40 (b) **The department processes.**

41 (2) **Moneys collected from fees charged under subsection (1) of this section shall be de-**
42 **posited in the Compensation and Conservation Fund.**

43 (3) **If a claimant fails to pay the fee charged under subsection (1) of this section, the**
44 **department may withhold issuance of a final order approving relief that would otherwise be**
45 **due the claimant.**

1 **(4) If the department fails to issue a final order on a claim by the date specified in section**
2 **6 of this 2009 Act, the department shall refund the fee paid under subsection (1) of this sec-**
3 **tion.**

4 **SECTION 19.** ORS 195.336 is amended to read:

5 195.336. (1) The Compensation and Conservation Fund is established in the State Treasury, sep-
6 arate and distinct from the General Fund. Interest earned on moneys in the Compensation and
7 Conservation Fund shall be credited to the fund. The fund consists of moneys received by the De-
8 partment of Land Conservation and Development under ORS 195.305 to 195.336 and sections 5 to 11,
9 chapter 424, Oregon Laws 2007, **and section 18 of this 2009 Act** and other moneys available to the
10 department for the purpose described in subsection (2) of this section.

11 (2) Moneys in the fund are continuously appropriated to the department for the purpose of
12 paying expenses incurred to review claims under ORS 195.305 to 195.336 and sections 5 to 11,
13 chapter 424, Oregon Laws 2007, **and sections 2 to 5 of this 2009 Act** and for the purpose of paying
14 the expenses of the Compensation and Conservation Ombudsman appointed under ORS 195.320.

15 **SECTION 20.** (1) **Notwithstanding the requirement of section 8 (4), chapter 424, Oregon**
16 **Laws 2007, that the Department of Land Conservation and Development review claims in the**
17 **order received, upon a recommendation of the Compensation and Conservation Ombudsman**
18 **appointed under ORS 195.320 that a hardship exists, made in the discretion of the ombuds-**
19 **man, the Director of the Department of Land Conservation and Development may, in the**
20 **discretion of the director, advance up to 100 claims for priority processing in cases of dem-**
21 **onstrated hardship.**

22 (2) **For purposes of this section, demonstrated hardship includes, but is not limited to:**

23 **(a) Threatened loss of ownership of the property;**

24 **(b) A contractual obligation to sell the property, entered into before November 6, 2007;**

25 **(c) Prolonged illness or medical expenses that threaten the financial status of the prop-**
26 **erty owner;**

27 **(d) Threatened expiration of permits granted to carry out development on the property;**
28 **and**

29 **(e) A situation in which a claimant cannot continue to occupy an existing dwelling on the**
30 **property and wants to occupy a new dwelling on the property.**

31 **SECTION 21.** (1) **For claims under section 6 or 7, chapter 424, Oregon Laws 2007, the**
32 **Department of Land Conservation and Development shall confer with the county in which**
33 **the claim was filed and utilize the county's record on the claim.**

34 (2) **The department may rely on a decision by a county under Ballot Measure 37 (2004),**
35 **or on one or more prior land use decisions by a county, in determining whether to authorize**
36 **a land division or dwelling under the standards of section 6 or 7, chapter 424, Oregon Laws**
37 **2007.**

38 **SECTION 22.** **The amendments to section 7 (7), chapter 424, Oregon Laws 2007, by section**
39 **12 of this 2009 Act apply to claims for compensation made before, on or after the effective**
40 **date of this 2009 Act.**

41 **SECTION 23.** **This 2009 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
43 **on its passage.**

44