

Enrolled
Senate Bill 691

Sponsored by Senator JOHNSON (at the request of Oregon Forest Industries Council)

CHAPTER

AN ACT

Relating to compensation for the loss of value of private forestland resulting from regulation of forest practices; creating new provisions; and amending ORS 195.300, 195.310 and 195.312.

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

SECTION 1. ORS 195.300 is amended to read:

195.300. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007:

- (1) "Acquisition date" means the date described in ORS 195.328.
- (2) "Claim" means a written demand for compensation filed under:
 - (a) ORS 195.305, as in effect immediately before December 6, 2007; or
 - (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.
- (3) "Enacted" means enacted, adopted or amended.
- (4) "Fair market value" means the value of property as determined under ORS 195.332.
- (5) "Farming practice" has the meaning given that term in ORS 30.930.
- (6) "Federal law" means:
 - (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity acting under authority delegated by the federal government;
 - (b) A requirement contained in a plan or rule enacted by a compact entity; or
 - (c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal statute or regulation.
- (7) "File" means to submit a document to a public entity.
- (8) "Forest practice" has the meaning given that term in ORS 527.620.
- (9) "Ground water restricted area" means an area designated as a critical ground water area or as a ground water limited area by the Water Resources Department or Water Resources Commission before December 6, 2007.
- (10) "High-value farmland" means:
 - (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007.
 - (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and the following soils:
 - (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;
 - (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and
 - (C) Subclassification IVw, specifically Huffling Silty Clay Loam.

(c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:

(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;

(B) Within the boundaries of a district, as defined in ORS 540.505; or

(C) Within the boundaries of a diking district formed under ORS chapter 551.

(d) Land that contains not less than five acres planted in wine grapes.

(e) Land that is in an exclusive farm use zone and that is at an elevation between 200 and 1,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The Southern Oregon viticultural area as described in 27 C.F.R. 9.179;

(B) The Umpqua Valley viticultural area as described in 27 C.F.R. 9.89; or

(C) The Willamette Valley viticultural area as described in 27 C.F.R. 9.90.

(f) Land that is in an exclusive farm use zone and that is no more than 3,000 feet above mean sea level, with an aspect between 67.5 and 292.5 degrees and a slope between zero and 15 percent, and that is located within:

(A) The portion of the Columbia Gorge viticultural area as described in 27 C.F.R. 9.178 that is within the State of Oregon;

(B) The Rogue Valley viticultural area as described in 27 C.F.R. 9.132;

(C) The portion of the Columbia Valley viticultural area as described in 27 C.F.R. 9.74 that is within the State of Oregon;

(D) The portion of the Walla Walla Valley viticultural area as described in 27 C.F.R. 9.91 that is within the State of Oregon; or

(E) The portion of the Snake River Valley viticultural area as described in 27 C.F.R. 9.208 that is within the State of Oregon.

(11) "High-value forestland" means land:

(a) That is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species; or

(b) That is in a forest zone or a mixed farm and forest zone, that is located in eastern Oregon and composed predominantly of soils capable of producing more than 85 cubic feet per acre per year of wood fiber and that is capable of producing more than 4,000 cubic feet per year of commercial tree species.

(12) "Home site approval" means approval of the subdivision or partition of property or approval of the establishment of a dwelling on property.

(13) "Just compensation" means:

(a) Relief under sections 5 to 11, chapter 424, Oregon Laws 2007, for land use regulations enacted on or before January 1, 2007; and

(b) Relief under ORS 195.310 to 195.314 for land use regulations enacted after January 1, 2007.

(14) "Land use regulation" means:

(a) A statute that establishes a minimum lot or parcel size;

(b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter 215 that restricts the residential use of private real property;

(c) A provision of a city comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property zoned for residential use;

(d) A provision of a county comprehensive plan, zoning ordinance or land division ordinance that restricts the residential use of private real property;

[*(e) A provision of the Oregon Forest Practices Act or an administrative rule of the State Board of Forestry that regulates a forest practice and that implements the Oregon Forest Practices Act;*]

(e) A provision, enacted or adopted on or after the effective date of this 2009 Act, of:

(A) The Oregon Forest Practices Act;

(B) An administrative rule of the State Board of Forestry; or
(C) Any other law enacted, or rule adopted, solely for the purpose of regulating a forest practice;

(f) ORS 561.191, a provision of ORS 568.900 to 568.933 or an administrative rule of the State Department of Agriculture that implements ORS 561.191 or 568.900 to 568.933;

(g) An administrative rule or goal of the Land Conservation and Development Commission; or

(h) A provision of a Metro functional plan that restricts the residential use of private real property.

(15) “Lawfully established unit of land” has the meaning given that term in ORS 92.010.

(16) “Lot” has the meaning given that term in ORS 92.010.

[(15)] **(17) “Measure 37 permit” means a final decision by Metro, a city or a county to authorize the development, subdivision or partition or other use of property pursuant to a waiver.**

[(16)] **(18) “Owner” means:**

(a) The owner of fee title to the property as shown in the deed records of the county where the property is located;

(b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

(19) “Parcel” has the meaning given that term in ORS 92.010.

[(17)] **(20) “Property” means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body, as defined in ORS 192.410.**

[(18)] **(21) “Protection of public health and safety” means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation regulations, solid or hazardous waste regulations and pollution control regulations.**

[(19)] **(22) “Public entity” means the state, Metro, a county or a city.**

[(20)] **(23) “Urban growth boundary” has the meaning given that term in ORS 195.060.**

[(21)] **(24) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property.**

[(22)] **(25) “Zoned for residential use” means zoning that has as its primary purpose single-family residential use.**

SECTION 2. ORS 195.310 is amended to read:

195.310. (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to 195.314 after June 28, 2007, if:

(a) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(b) The person’s desired use of the property is a residential use or a farming or forest practice;

(c) The person’s desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(d) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 195.305 (3), has reduced the fair market value of the property.

(2) For purposes of subsection (1) of this section, **except as provided in subsection (4) of this section**, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use

regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

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

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

(c) **Unless the claim is based on the enactment of one or more land use regulations described in ORS 195.300 (14)(e)**, expressly determine the highest and best use of the property at the time the land use regulation was enacted.

(3) **Unless the claim is based on the enactment of one or more land use regulations described in ORS 195.300 (14)(e)**, relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.

(4) **For a claim based on a land use regulation described in ORS 195.300 (14)(e), the reduction in fair market value:**

(a) **Is the reduction in fair market value of a lawfully established unit of land that is attributable to the land use regulation on the date the claim is filed.**

(b) **May, at the election of the owner who files the claim, be supported:**

(A) **In the manner described in subsection (2) of this section; or**

(B) **By appraisals showing the value of the land and harvestable timber, with and without application of the land use regulation, conducted in accordance with generally accepted forest industry practices for determining the value of timberland.**

[(4)] (5) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity must either:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

[(5)] (6) If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111, the state agency that is responsible for administering the statute, statewide land use planning goal or rule, or the Oregon Department of Administrative Services if there is no state agency responsible for administering the statute, goal or rule, must:

(a) Compensate the claimant for the reduction in the fair market value of the property; or

(b) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

[(6)] (7) A use authorized by this section has the legal status of a lawful nonconforming use in the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a public entity under this section except that a public entity may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130.

(8) For a claim based on a land use regulation described in ORS 195.300 (14)(e), an authorization granted to a claimant under subsection (5)(b) or (6)(b) of this section may be used by an owner of the property subsequent to the owner who filed the claim.

SECTION 3. ORS 195.312 is amended to read:

195.312. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, the claim must be signed by all the owners or the claim must include a signed statement of consent from each owner. **Except as provided in subsection (2) of this section,** only one claim for each property may be filed for each land use regulation.

(2) For a claim based on a land use regulation described in ORS 195.300 (14)(e), an owner:

(a) May file a claim only for property that is a lawfully established unit of land;

(b) May file separate claims for different lawfully established units of land at the same or different times based on the same land use regulation; and

(c) May not file multiple claims for the same lawfully established unit of land based on the same land use regulation.

[2] **(3)** A claim filed under ORS 195.310 must be filed with the public entity that enacted the land use regulation that is the basis for the claim.

[3] **(4)** Metro, cities, counties and the Department of Land Conservation and Development may impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual and reasonable cost of reviewing the claim.

[4] **(5)** A person must file a claim under ORS 195.310 within five years after the date the land use regulation was enacted.

[5] **(6)** A public entity that receives a claim filed under ORS 195.310 must issue a final determination on the claim within 180 days after the date the claim is complete, as described in subsection [9] **(10)** of this section.

[6] **(7)** If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111, the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the claim must be filed with the chief administrative office of the public entity, or with an individual designated by ordinance, resolution or order of the public entity.

[7] **(8)** A claim filed under ORS 195.310 must be in writing and must include:

(a) The name and address of each owner;

(b) The address, if any, and tax lot number, township, range and section of the property;

(c) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(d) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the public entity to identify the specific land use regulation that is the basis for the claim;

(e) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(f) An appraisal of the property that complies with ORS 195.310 (2) **or, for a claim based on a land use regulation described in ORS 195.300 (14)(e), an appraisal that complies with ORS 195.310 (4)(b).**

[8] **(9)** A claim filed under ORS 195.310 must include the fee, if any, imposed by the public entity with which the claim is filed pursuant to subsection [3] **(4)** of this section.

[9] **(10)** The public entity shall review a claim filed under ORS 195.310 to determine whether the claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the public entity shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by subsection [8] **(9)** of this section and:

- (a) The missing information;
- (b) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or
- (c) Written notice from the claimant that none of the missing information will be provided.

[(10)] (11) If a public entity does not notify a claimant within 60 days after a claim is filed under ORS 195.310 that information or the fee is missing from the claim, the claim is deemed complete when filed.

[(11)] (12) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice to the claimant under subsection [(9)] (10) of this section and the claimant does not comply with the requirements of subsection [(9)] (10) of this section.

SECTION 4. The amendments to ORS 195.300, 195.310 and 195.312 by sections 1 to 3 of this 2009 Act apply to a claim based on a land use regulation described in ORS 195.300 (14)(e) that is enacted or adopted on or after the effective date of this 2009 Act.

Passed by Senate May 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 3, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

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Secretary of State