

Senate Bill 691

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

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**.

Modifies provisions for claiming compensation for land use regulation that restricts forest practices on private real property.

Allows claim by owner based on land use regulation restricting forest practices and enacted before owner acquired property. Allows owner to prove reduction in fair market value by credible evidence other than appraisal of property. Allows owner to make separate claims, based on same regulation of forest practices, on separate portions of property at same or different times. Allows owner to make claim based on regulation of forest practices after filing notice of forest operation.

A BILL FOR AN ACT

1
2 Relating to compensation for the loss of value of private forestland resulting from regulation of
3 forest practices; creating new provisions; and amending ORS 195.300, 195.305, 195.310 and
4 195.312.

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

6 **SECTION 1.** ORS 195.300 is amended to read:

7 195.300. As used in this section and ORS 195.301 and 195.305 to 195.336 and sections 5 to 11,
8 chapter 424, Oregon Laws 2007:

9 (1) "Acquisition date" means the date described in ORS 195.328.

10 (2) "Claim" means a written demand for compensation filed under:

11 (a) ORS 195.305, as in effect immediately before December 6, 2007; or

12 (b) ORS 195.305 and 195.310 to 195.314, as in effect on and after December 6, 2007.

13 (3) "Enacted" means enacted, adopted or amended.

14 (4) "Fair market value" means the value of property as determined under ORS 195.332.

15 (5) "Farming practice" has the meaning given that term in ORS 30.930.

16 (6) "Federal law" means:

17 (a) A statute, regulation, order, decree or policy enacted by a federal entity or by a state entity
18 acting under authority delegated by the federal government;

19 (b) A requirement contained in a plan or rule enacted by a compact entity; or

20 (c) A requirement contained in a permit issued by a federal or state agency pursuant to a federal
21 statute or regulation.

22 (7) "File" means to submit a document to a public entity.

23 (8) "Forest practice" has the meaning given that term in ORS 527.620.

24 (9) "Ground water restricted area" means an area designated as a critical ground water area
25 or as a ground water limited area by the Water Resources Department or Water Resources Com-
26 mission before December 6, 2007.

27 (10) "High-value farmland" means:

28 (a) High-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone

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 or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are
2 December 6, 2007.

3 (b) Land west of U.S. Highway 101 that is composed predominantly of the following soils in Class
4 III or IV or composed predominantly of a combination of the soils described in ORS 215.710 (1) and
5 the following soils:

6 (A) Subclassification IIIw, specifically Ettersburg Silt Loam and Croftland Silty Clay Loam;

7 (B) Subclassification IIIe, specifically Klooqueth Silty Clay Loam and Winchuck Silt Loam; and

8 (C) Subclassification IVw, specifically Huffling Silty Clay Loam.

9 (c) Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June
10 28, 2007, is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (13) "Just compensation" means:

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

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

4 (14) “Land use regulation” means:

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

6 (b) A provision in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 or 227.500 or in ORS chapter
 7 215 that restricts the residential use of private real property;

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

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

12 (e) *[A provision of the Oregon Forest Practices Act or an]* **A statute or** administrative rule *[of*
 13 *the State Board of Forestry]* that regulates a forest practice *[and that implements the Oregon Forest*
 14 *Practices Act]* **and that is enacted on or after the effective date of this 2009 Act;**

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

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

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

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

22 (16) “Owner” means:

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

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

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

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

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

39 (19) “Public entity” means the state, Metro, a county or a city.

40 (20) “Urban growth boundary” has the meaning given that term in ORS 195.060.

41 (21) “Waive” or “waiver” means an action or decision of a public entity to modify, remove or
 42 not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11,
 43 chapter 424, Oregon Laws 2007, or ORS 195.305, as in effect immediately before December 6, 2007,
 44 to allow:

45 (a) The owner to use property for a use permitted when the owner acquired the property; **or**

1 **(b) For a claim based on a land use regulation described in subsection (14)(e) of this**
2 **section, the owner described in paragraph (a) of this subsection or a subsequent owner to**
3 **use property for a use permitted before the land use regulation was enacted.**

4 (22) “Zoned for residential use” means zoning that has as its primary purpose single-family res-
5 idential use.

6 **SECTION 2.** ORS 195.305 is amended to read:

7 195.305. (1) If a public entity enacts one or more land use regulations that restrict the residen-
8 tial use of private real property or a farming or forest practice and that reduce the fair market
9 value of the property, then the owner of the property shall be entitled to just compensation from the
10 public entity that enacted the land use regulation or regulations as provided in ORS 195.310 to
11 195.314.

12 (2) Just compensation under ORS 195.310 to 195.314 shall be based on the reduction in the fair
13 market value of the property resulting from the land use regulation.

14 (3) Subsection (1) of this section [*shall*] **does** not apply to land use regulations that were enacted
15 prior to the claimant’s acquisition date, **except land use regulations enacted prior to the**
16 **claimant’s acquisition date that are described in ORS 195.300 (14)(e), or to land use regulations:**

17 (a) Restricting or prohibiting activities commonly and historically recognized as public nui-
18 sances under common law;

19 (b) Restricting or prohibiting activities for the protection of public health and safety;

20 (c) To the extent the land use regulation is required to comply with federal law; or

21 (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or
22 performing nude dancing.

23 (4)(a) Subsection (3)(a) of this section shall be construed narrowly in favor of granting just
24 compensation under this section. Nothing in subsection (3) of this section is intended to affect or
25 alter rights provided by the Oregon or United States Constitution.

26 (b) Subsection (3)(b) of this section does not apply to any farming or forest practice regulation
27 that is enacted after January 1, 2007, unless the primary purpose of the regulation is the protection
28 of human health and safety.

29 (c) Subsection (3)(c) of this section does not apply to any farming or forest practice regulation
30 that is enacted after January 1, 2007, unless the public entity enacting the regulation has no dis-
31 cretion under federal law to decline to enact the regulation.

32 (5) A public entity may adopt or apply procedures for the processing of claims under ORS
33 195.310 to 195.336.

34 (6) The public entity that enacted the land use regulation that gives rise to a claim under sub-
35 section (1) of this section shall provide just compensation as required under ORS 195.310 to 195.336.

36 (7) A decision by a public entity that an owner qualifies for just compensation under ORS
37 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, and a decision by a public
38 entity on the nature and extent of that compensation are not land use decisions.

39 (8) The remedies created by ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon
40 Laws 2007, are in addition to any other remedy under the Oregon or United States Constitution, and
41 are not intended to modify or replace any constitutional remedy.

42 (9) If any portion or portions of this section are declared invalid by a court of competent juris-
43 diction, the remaining portions of this section shall remain in full force and effect.

44 **SECTION 3.** ORS 195.310 is amended to read:

45 195.310. (1) A person may file a claim for just compensation under ORS 195.305 and 195.310 to

1 195.314 after June 28, 2007, if:

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

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

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

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

9 (2) For purposes of subsection (1) of this section, **except as provided in subsection (4)(b) of**
10 **this section**, the reduction in the fair market value of the property caused by the enactment of one
11 or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the
12 fair market value of the property from the date that is one year before the enactment of the land
13 use regulation to the date that is one year after the enactment, plus interest. If the claim is based
14 on the enactment of more than one land use regulation enacted on different dates, the reduction in
15 the fair market value of the property caused by each regulation shall be determined separately and
16 the values added together to calculate the total reduction in fair market value. Interest shall be
17 computed under this subsection using the average interest rate for a one-year United States Gov-
18 ernment Treasury Bill on December 31 of each year of the period between the date the land use
19 regulation was enacted and the date the claim was filed, compounded annually on January 1 of each
20 year of the period. A claimant must provide an appraisal showing the fair market value of the
21 property one year before the enactment of the land use regulation and the fair market value of the
22 property one year after the enactment. The actual and reasonable cost of preparing the claim, in-
23 cluding the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the re-
24 duction in fair market value under this subsection. The appraisal must:

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

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

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

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

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

38 (a) **Is the reduction in fair market value of the portion of the property for which the**
39 **claim is filed that is attributable to the land use regulation on the date the claim is filed.**

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

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

42 (B) **By credible evidence of the reduction in fair market value.**

43 [(4)] (5) If the claimant establishes that the requirements of subsection (1) of this section are
44 satisfied and the land use regulation was enacted by Metro, a city or a county, the public entity
45 must either:

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

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

4 [(5)] (6) If the claimant establishes that the requirements of subsection (1) of this section are
5 satisfied and the land use regulation was enacted by state government, as defined in ORS 174.111,
6 the state agency that is responsible for administering the statute, statewide land use planning goal
7 or rule, or the Oregon Department of Administrative Services if there is no state agency responsible
8 for administering the statute, goal or rule, must:

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

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

12 [(6)] (7) A use authorized by this section has the legal status of a lawful nonconforming use in
13 the same manner as provided by ORS 215.130. The claimant may carry out a use authorized by a
14 public entity under this section except that a public entity may waive only land use regulations that
15 were enacted by the public entity. When a use authorized by this section is lawfully established, the
16 use may be continued lawfully in the same manner as provided by ORS 215.130.

17 **SECTION 4.** ORS 195.312 is amended to read:

18 195.312. (1) A person filing a claim under ORS 195.310 shall file the claim in the manner pro-
19 vided by this section. If the property for which the claim is filed has more than one owner, the claim
20 must be signed by all the owners or the claim must include a signed statement of consent from each
21 owner. **Except as provided in subsection (2) of this section,** only one claim for each property
22 may be filed for each land use regulation.

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

24 **(a) May file a claim for a portion of the property;**

25 **(b) May file separate claims for different portions of the same property at the same or**
26 **different times based on the same land use regulation; and**

27 **(c) May not file multiple claims for the same portion of the property based on the same**
28 **land use regulation.**

29 [(2)] (3) A claim filed under ORS 195.310 must be filed with the public entity that enacted the
30 land use regulation that is the basis for the claim.

31 [(3)] (4) Metro, cities, counties and the Department of Land Conservation and Development may
32 impose a fee for the review of a claim filed under ORS 195.310 in an amount not to exceed the actual
33 and reasonable cost of reviewing the claim.

34 [(4)] (5) A person must file a claim under ORS 195.310 within five years after the date the land
35 use regulation was enacted **except that, for a claim based on a land use regulation described**
36 **in ORS 195.300 (14)(e), a person may file the claim within 90 days after the person files a**
37 **notice of operations under ORS 527.670 for the portion of the property for which the claim**
38 **is filed.**

39 [(5)] (6) A public entity that receives a claim filed under ORS 195.310 must issue a final deter-
40 mination on the claim within 180 days after the date the claim is complete, as described in sub-
41 section [(9)] (10) of this section.

42 [(6)] (7) If a claim under ORS 195.310 is filed with state government, as defined in ORS 174.111,
43 the claim must be filed with the department. If the claim is filed with Metro, a city or a county, the
44 claim must be filed with the chief administrative office of the public entity, or with an individual
45 designated by ordinance, resolution or order of the public entity.

1 [(7)] (8) A claim filed under ORS 195.310 must be in writing and must include:

2 (a) The name and address of each owner;

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

4 (c) **Except for a claim based on a land use regulation described in ORS 195.300 (14)(e),**
 5 evidence of the acquisition date of the claimant, including the instrument conveying the property
 6 to the claimant and a report from a title company identifying the person in which title is vested and
 7 the claimant's acquisition date and describing exceptions and encumbrances to title that are of re-
 8 cord;

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

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

14 (f) An appraisal of the property that complies with ORS 195.310 (2) **or, as applicable under**
 15 **ORS 195.310 (4)(b), credible evidence of the reduction in fair market value.**

16 [(8)] (9) A claim filed under ORS 195.310 must include the fee, if any, imposed by the public
 17 entity with which the claim is filed pursuant to subsection [(3)] (4) of this section.

18 [(9)] (10) The public entity shall review a claim filed under ORS 195.310 to determine whether
 19 the claim complies with the requirements of ORS 195.310 to 195.314. If the claim is incomplete, the
 20 public entity shall notify the claimant in writing of the information or fee that is missing within 60
 21 days after receiving the claim and allow the claimant to submit the missing information or fee. The
 22 claim is complete when the public entity receives any fee required by subsection [(8)] (9) of this
 23 section and:

24 (a) The missing information;

25 (b) Part of the missing information and written notice from the claimant that the remainder of
 26 the missing information will not be provided; or

27 (c) Written notice from the claimant that none of the missing information will be provided.

28 [(10)] (11) If a public entity does not notify a claimant within 60 days after a claim is filed under
 29 ORS 195.310 that information or the fee is missing from the claim, the claim is deemed complete
 30 when filed.

31 [(11)] (12) A claim filed under ORS 195.310 is deemed withdrawn if the public entity gives notice
 32 to the claimant under subsection [(9)] (10) of this section and the claimant does not comply with the
 33 requirements of subsection [(9)] (10) of this section.

34 **SECTION 5. The amendments to ORS 195.300, 195.305, 195.310 and 195.312 by sections 1**
 35 **to 4 of this 2009 Act apply to a claim based on a land use regulation described in ORS 195.300**
 36 **(14)(e) that is enacted on or after the effective date of this 2009 Act.**