

# Senate Bill 947

Sponsored by Senator PROZANSKI

## 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 to pursue relief under Ballot Measure 49 (2007) if person filed claim under Ballot Measure 37 (2004) but was determined to be ineligible for relief because property was located, in whole or in part, within boundaries of city but not within urban growth boundary.

## 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 5 and 9, chapter 424, Oregon Laws 2007.

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

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

6 **Sec. 5.** 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 entitled to just compensation as provided in:

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

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

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

19 **SECTION 2.** Section 9, chapter 424, Oregon Laws 2007, is amended to read:

20 **Sec. 9.** (1) A claimant that filed a claim under ORS [197.352] **195.305** on or before [*the date of*  
21 *adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June 28,**  
22 **2007**, for property located, in whole or in part, within **the boundaries of a city or within** an urban  
23 growth boundary may establish one to 10 single-family dwellings on the portion of the property lo-  
24 cated within the **city or** urban growth boundary.

25 (2) The number of single-family dwellings that may be established on the portion of the property  
26 located within **the city or** the urban growth boundary under this section may not exceed the lesser  
27 of:

28 (a) The number of single-family dwellings described in a waiver issued by Metro, a city or a  
29 county before [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued,  
30 the number described in the claim filed with Metro, a city or a county;

31 (b) Ten, except that if there are existing dwellings on the property, the number of single-family

**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 dwellings that may be established is reduced so that the maximum number of dwellings, including  
 2 existing dwellings located on the property, does not exceed 10; or

3 (c) The number of single-family dwellings the total value of which represents just compensation  
 4 for the reduction in fair market value caused by the enactment of one or more land use regulations  
 5 that were the basis for the claim, as set forth in subsection (6) of this section.

6 (3) If the number of single-family dwellings described in a waiver issued by Metro, a city or a  
 7 county before [*the effective date of this 2007 Act*] **December 6, 2007**, or, if a waiver was not issued,  
 8 the number described in the claim filed with Metro, a city or a county is more than 10, the claimant  
 9 may amend the claim to reduce the number to no more than 10 by filing notice of the amendment  
 10 with the information required by section 10 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**.

11 (4) If multiple claims were filed for the same property, the number of single-family dwellings that  
 12 may be established for purposes of subsection (2)(a) of this section is the number in the most recent  
 13 waiver issued by Metro, a city or a county before [*the effective date of this 2007 Act*] **December 6,**  
 14 **2007**, or, if a waiver was not issued, the most recent claim filed with Metro, a city or a county, but  
 15 not more than 10 in any case.

16 (5) To qualify for the relief provided by this section, the claimant must have filed a claim for  
 17 the property with the city or county in which the property is located. In addition, regardless of  
 18 whether a waiver was issued by Metro, a city or a county before [*the effective date of this 2007*  
 19 *Act*] **December 6, 2007**, to qualify for relief under this section, the claimant must establish that:

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

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

22 (c) The property is located, in whole or in part, within **the boundaries of a city or within an**  
 23 **urban growth boundary**;

24 (d) On the claimant's acquisition date, the claimant lawfully was permitted to establish at least  
 25 the number of dwellings on the property that are authorized under this section;

26 (e) The property is zoned for residential use;

27 (f) One or more land use regulations prohibit establishing the single-family dwellings;

28 (g) The establishment of the single-family dwellings is not prohibited by a land use regulation  
 29 described in ORS [*197.352*] **195.305** (3);

30 (h) The land use regulation described in paragraph (f) of this subsection was enacted after the  
 31 date the property, or any portion of the property, was **annexed to the city or** brought into the  
 32 urban growth boundary;

33 (i) If the property is located within the boundaries of Metro, the land use regulation that is the  
 34 basis for the claim was enacted after the date the property was included within the boundaries of  
 35 Metro;

36 (j) If the property is located within a city, the land use regulation that is the basis for the claim  
 37 was enacted after the date the property was annexed to the city; and

38 (k) The enactment of one or more land use regulations, other than land use regulations de-  
 39 scribed in ORS [*197.352*] **195.305** (3), that are the basis of the claim caused a reduction in the fair  
 40 market value of the property, as determined under subsection (6) of this section, that is equal to or  
 41 greater than the fair market value of the single-family dwellings that may be established on the  
 42 property under subsection (2) of this section.

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

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

14 (7) For the purposes of subsection (6) of this section, a claimant must provide an appraisal  
15 showing the fair market value of the property one year before the enactment of the land use regu-  
16 lation that was the basis for the claim and the fair market value of the property one year after the  
17 enactment. The appraisal also must show the fair market value of each single-family dwelling to  
18 which the claimant is entitled under subsection (2) of this section, along with evidence of any ad  
19 valorem property taxes not paid, any severance taxes paid and any recapture of additional tax li-  
20 ability that the owner has paid or will pay for the property if the property is disqualified from spe-  
21 cial assessment under ORS 308A.703. The actual and reasonable cost of preparing the claim,  
22 including the cost of the appraisal, not to exceed \$5,000, may be added to the calculation of the re-  
23 duction in fair market value under section 7 (6) [*of this 2007 Act*], **chapter 424, Oregon Laws**  
24 **2007**. 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) Expressly determine the highest and best use of the property at the time the land use regu-  
30 lation was enacted.

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

33 (9) When Metro, a city or a county has issued a final decision authorizing one or more single-  
34 family dwellings under this section on the portion of the property located within **the city or within**  
35 the urban growth boundary, the claimant may seek other governmental authorizations required by  
36 law for that use, and a land use regulation enacted by a public entity that has the effect of prohib-  
37 iting the use does not apply to the review of those authorizations, except as provided in section 11  
38 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007**. If Metro is reviewing a claim for a property,  
39 and a city or a county is reviewing a claim for the same property, Metro and the city or county  
40 shall coordinate the review and decisions and may:

41 (a) Provide that one of the public entities be principally responsible for the review; and

42 (b) Provide that the decision of each of the public entities is contingent on the decision of the  
43 other public entity.

44 (10) The only types of land use that are authorized by this section are the subdivision or parti-  
45 tion of land for one or more single-family dwellings, or the establishment of one or more single-

1 family dwellings on land on which the dwellings would not otherwise be allowed.

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

4 **SECTION 4.** (1) As soon as practicable after the effective date of this 2009 Act, a public  
5 entity with which a claim was filed under ORS 195.305 before December 28, 2007, shall send  
6 notice to all claimants who were determined to be ineligible for relief under ORS 195.305 to  
7 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, because the claimant's property  
8 was located, in whole or in part, within the boundaries of a city but not within an urban  
9 growth boundary.

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

11 (a) Explain that the claimant is entitled to seek relief under section 9, chapter 424,  
12 Oregon Laws 2007;

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

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

15 (3) A claimant may proceed under section 9, chapter 424, Oregon Laws 2007, by filing the  
16 form provided by the public entity within 90 days after the date the public entity mails the  
17 notice and form required under subsections (1) and (2) of this section. In addition, the  
18 claimant must file any information required in the notice. If the claimant fails to file the  
19 form within 90 days after the date the public entity mails the notice, the claimant is not  
20 entitled to relief under section 9, chapter 424, Oregon Laws 2007.

21 (4) The public entity shall review the claims in the order in which the public entity re-  
22 ceives the forms filed under subsection (3) of this section. The public entity shall review any  
23 new material from the claimant and any other information required by ORS 195.305 to 195.336  
24 and sections 5 to 11, chapter 424, Oregon Laws 2007, to ensure that the requirements of this  
25 section and section 9, chapter 424, Oregon Laws 2007, are met. The public entity shall provide  
26 a copy of the material submitted by the claimant to the Department of Land Conservation  
27 and Development and consider written comments from the department that are timely filed  
28 with the public entity.

29 (5) The public entity shall review claims as quickly as practicable, consistent with careful  
30 review of each claim.

31 (6) The public entity's final decision on a claim under section 9, chapter 424, Oregon Laws  
32 2007, must either deny the claim or approve the claim. If the decision approves the claim,  
33 the decision must state the number of home site approvals issued for the property and may  
34 contain other terms that are necessary to ensure that the use of the property is lawful.

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

37 205.246. (1) The county clerk shall record the following instruments required or permitted by law  
38 to be recorded and entered in the office of the county clerk:

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

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

41 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS  
42 87.806;

43 (d) Cooperative contracts recorded under ORS 62.360;

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

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

- 1 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title
- 2 to real property;
- 3 (h) Building code exemptions required under ORS 455.320 and 455.345;
- 4 (i) Construction liens recorded under ORS 87.050;
- 5 (j) Liens upon chattels recorded under ORS 87.246;
- 6 (k) Liens on real property recorded under ORS 87.372;
- 7 (L) Employee benefit plan liens recorded under ORS 87.860;
- 8 (m) Attorney liens recorded under ORS 87.455 and 87.460;
- 9 (n) Long term care liens recorded under ORS 87.517;
- 10 (o) Ambulance services liens recorded under ORS 87.623;
- 11 (p) Community property records recorded under ORS 108.530;
- 12 (q) Sheriff transfer of records recorded under ORS 206.100;
- 13 (r) Corrected instruments required under ORS 205.244;
- 14 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,
- 15 517.220, 517.280, 517.310 and 517.320;
- 16 (t) Copies of records certified by a county clerk or court clerk;
- 17 (u) Subdivision and partition plats recorded under ORS 92.140;
- 18 (v) Condominiums recorded under ORS chapter 100;
- 19 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of
- 20 transfer or encumbrance presented for recordation under ORS 411.694;
- 21 (x) Bankruptcy documents presented for recordation under ORS 93.770;
- 22 (y) A written warranty agreement under ORS 701.605; and
- 23 (z) An order or decision under section 8 (7), chapter 424, Oregon Laws 2007, **or section 4 of**
- 24 **this 2009 Act** that is final by operation of law or on appeal.
- 25 (2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350
- 26 for recording an instrument required to be recorded under subsection (1) of this section.
- 27 (3) Indexes may be maintained for instruments recorded under subsection (1) of this section in
- 28 the same manner as provided in ORS 205.160.

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