

Senate Bill 948

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 owner of private real property who took specified actions in pursuit of claim for compensation under Ballot Measure 37 (2004) on or before June 28, 2007, to file claim under Ballot Measure 49 (2007).

A BILL FOR AN ACT

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

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

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

6 **Sec. 6.** (1)(a) A claimant that filed a claim under ORS [*197.352*] **195.305** on or before [*the date*
7 *of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly*] **June**
8 **28, 2007**, is eligible for three home site approvals on the property if:

9 (A) The requirements of this section and sections 8 and 11 [*of this 2007 Act*], **chapter 424,**
10 **Oregon Laws 2007**, are met; or

11 (B) **The requirements of section 4 of this 2009 Act and of section 11, chapter 424, Oregon**
12 **Laws 2007, are met.**

13 (b) The procedure for obtaining home site approvals under this section is set forth in section 8
14 [*of this 2007 Act*], **chapter 424, Oregon Laws 2007, and section 4 of this 2009 Act.**

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

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

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

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

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

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

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

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

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

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

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

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

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

36 **Sec. 7.** (1)(a) A claimant that filed a claim under ORS [197.352] **195.305** on or before [the date
 37 of adjournment sine die of the 2007 regular session of the Seventy-fourth Legislative Assembly] **June**
 38 **28, 2007**, for property that is not high-value farmland or high-value forestland and that is not in a
 39 ground water restricted area is eligible for four to 10 home site approvals for the property if:

40 (A) The requirements of this section and sections 8 and 11 [of this 2007 Act], **chapter 424,**
 41 **Oregon Laws 2007**, are met; **or**

42 (B) **The requirements of section 4 of this 2009 Act and of section 11, chapter 424, Oregon**
 43 **Laws 2007, are met.**

44 (b) The procedure for obtaining home site approvals under this section is set forth in section 8
 45 [of this 2007 Act], **chapter 424, Oregon Laws 2007, and section 4 of this 2009 Act.**

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (g) The enactment of one or more land use regulations, other than land use regulations de-
39 scribed in ORS [*197.352 (3)*] **195.305 (3)**, that are the basis for the claim caused a reduction in the
40 fair market value of the property that is equal to or greater than the fair market value of the home
41 site approvals that may be established on the property under subsection (2) of this section, with the
42 reduction in fair market value measured as set forth in subsection (6) 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 home site approval to which
 18 the claimant is entitled under [*section 6 (2) of this 2007 Act*] **subsection (2) of this section**, along
 19 with evidence of any ad valorem property taxes not paid, any severance taxes paid and any recap-
 20 ture of additional tax liability that the claimant has paid or will pay for the property if the property
 21 is disqualified from special assessment under ORS 308A.703. The actual and reasonable cost of pre-
 22 paring the claim, including the cost of the appraisal, not to exceed \$5,000, may be added to the
 23 calculation of the reduction in fair market value under subsection (6) of this section. The appraisal
 24 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) If the claim was filed after December 4, 2006, to issue a home site approval under this sec-
 34 tion, the Department of Land Conservation and Development must verify that the claim was filed
 35 in compliance with the applicable rules of the Land Conservation and Development Commission and
 36 the Oregon Department of Administrative Services.

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

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

1 **SECTION 4.** (1) Notwithstanding the amendments to ORS 195.305 by section 4, chapter
 2 424, Oregon Laws 2007, the Department of Land Conservation and Development and the ap-
 3 propriate local government shall review and either approve or deny claims for just compen-
 4 sation under ORS 195.305, as in effect immediately before December 6, 2007, that were filed
 5 by owners of private real property who:

6 (a) Filed a claim for just compensation under ORS 195.305 with the appropriate local
 7 government before December 4, 2006, and with the state on or after December 4, 2006, and
 8 before June 28, 2007; or

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

12 (2) If the department and the appropriate local government reviewing a claim under
 13 subsection (1) of this section determine that the claim:

14 (a) Does not state a valid basis for just compensation under ORS 195.305, as in effect
 15 immediately before December 6, 2007, the department and appropriate local government shall
 16 deny the claim and send notice to the claimant in the manner in which other claimants were
 17 notified under ORS 195.305, as in effect immediately before December 6, 2007.

18 (b) States a valid basis for just compensation under ORS 195.305, as in effect immediately
 19 before December 6, 2007, the department and appropriate local government shall approve the
 20 claim and the department shall send notice to the claimant that:

21 (A) Explains the claimant's options if the claimant wishes to partition a lot or parcel or
 22 establish a dwelling on the property under ORS 195.305 to 195.336 and sections 5 to 11, chap-
 23 ter 424, Oregon Laws 2007;

24 (B) Identifies any information that the claimant must file; and

25 (C) Provides a form for the claimant's use.

26 (3) A claimant, whose claim under this section is approved, may proceed under section
 27 6, chapter 424, Oregon Laws 2007, by filing the form provided by the department within 90
 28 days after the date the department mails the notice and form required under subsection
 29 (2)(b) of this section. In addition, the claimant must file any information required in the
 30 notice. If the claimant fails to file the form within 90 days after the date the department
 31 mails the notice, the claimant is not entitled to relief under section 6, chapter 424, Oregon
 32 Laws 2007.

33 (4) The department or the appropriate local government shall review claims as quickly
 34 as possible, consistent with careful review of each claim.

35 (5) The department's final order or the appropriate local government's final decision on
 36 a claim under section 6, chapter 424, Oregon Laws 2007, must either deny the claim or ap-
 37 prove the claim. If the order or decision approves the claim, the order or decision must state
 38 the number of home site approvals issued for the property and may contain other terms that
 39 are necessary to ensure that the use of the property is lawful.

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

42 205.246. (1) The county clerk shall record the following instruments required or permitted by law
 43 to be recorded and entered in the office of the county clerk:

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

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

- 1 (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS
 2 87.806;
- 3 (d) Cooperative contracts recorded under ORS 62.360;
- 4 (e) Special district assessments attaching to real property;
- 5 (f) Lien foreclosure statements recorded under ORS 87.202;
- 6 (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title
 7 to real property;
- 8 (h) Building code exemptions required under ORS 455.320 and 455.345;
- 9 (i) Construction liens recorded under ORS 87.050;
- 10 (j) Liens upon chattels recorded under ORS 87.246;
- 11 (k) Liens on real property recorded under ORS 87.372;
- 12 (L) Employee benefit plan liens recorded under ORS 87.860;
- 13 (m) Attorney liens recorded under ORS 87.455 and 87.460;
- 14 (n) Long term care liens recorded under ORS 87.517;
- 15 (o) Ambulance services liens recorded under ORS 87.623;
- 16 (p) Community property records recorded under ORS 108.530;
- 17 (q) Sheriff transfer of records recorded under ORS 206.100;
- 18 (r) Corrected instruments required under ORS 205.244;
- 19 (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210,
 20 517.220, 517.280, 517.310 and 517.320;
- 21 (t) Copies of records certified by a county clerk or court clerk;
- 22 (u) Subdivision and partition plats recorded under ORS 92.140;
- 23 (v) Condominiums recorded under ORS chapter 100;
- 24 (w) Requests for notice of transfer or encumbrance or terminations of requests for notice of
 25 transfer or encumbrance presented for recordation under ORS 411.694;
- 26 (x) Bankruptcy documents presented for recordation under ORS 93.770;
- 27 (y) A written warranty agreement under ORS 701.605; and
- 28 (z) An order or decision under section 8 (7), chapter 424, Oregon Laws 2007, **or section 4 of**
 29 **this 2009 Act** that is final by operation of law or on appeal.
- 30 (2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350
 31 for recording an instrument required to be recorded under subsection (1) of this section.
- 32 (3) Indexes may be maintained for instruments recorded under subsection (1) of this section in
 33 the same manner as provided in ORS 205.160.
- 34