

B-Engrossed
Senate Bill 1049

Ordered by the Senate February 19
Including Senate Amendments dated February 8 and February 19

Sponsored by Senator PROZANSKI (Presession filed.)

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.

Establishes, for purposes of Ballot Measure 49 (2007), criteria for determining what was lawfully permitted when certain claimants acquired property.

Modifies provisions related to time limit for acting on relief under Ballot Measure 49 (2007).

Allows claimant that did not comply with certain filing requirements, including claimant that filed claim only with county and not with both county and state, to pursue relief under this Act.

Requires Department of Land Conservation and Development to issue final order on or before specified date.

Requires fee of \$2,500 for processing of certain claims.

Increases limit on biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Department of Land Conservation and Development.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Ballot Measure 49 (2007) claims; creating new provisions; amending ORS 197.090; limit-
3 ing expenditures; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 7 of this 2010 Act are added to and made a part of sections 5**
6 **to 11, chapter 424, Oregon Laws 2007, and sections 2 to 9, chapter 855, Oregon Laws 2009.**

7 **SECTION 2. For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if a claimant**
8 **acquired property on or after January 25, 1975, and before the date the comprehensive plan**
9 **for the county in which the property is located was first acknowledged by the Land Conser-**
10 **vation and Development Commission to comply with the statewide land use planning goals,**
11 **the claimant is deemed to have been lawfully permitted to establish one or more home sites,**
12 **as follows:**

13 **(1) For property that was subsequently designated in the first acknowledged comprehen-**
14 **sive plan as land subject to a goal related to agricultural lands or a goal related to**
15 **forestlands and that was not zoned, was subject to a zone without a fixed minimum acreage**
16 **standard or was subject to a zone with a fixed minimum acreage standard that would have**
17 **allowed at least the number of home sites that would result under the application of this**
18 **subsection:**

19 **(a) If the property contains less than 20 acres, the claimant is deemed to have been**
20 **lawfully permitted to establish one home site on the property.**

21 **(b) If the property contains at least 20 acres and less than 40 acres, the claimant is**
22 **deemed to have been lawfully permitted to establish up to two home sites on the property.**

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 (c) If the property contains 40 acres or more, the claimant is deemed to have been law-
2 fully permitted to establish up to three home sites on the property.

3 (2) For property that was subsequently designated in the first acknowledged comprehen-
4 sive plan as land subject to a goal related to agricultural lands or a goal related to
5 forestlands and that was subject to a zone with a fixed minimum acreage standard that
6 would not have allowed at least the number of home sites that would result under the ap-
7 plication of subsection (1) of this section, the claimant is deemed to have been lawfully per-
8 mitted to establish up to three home sites on the property, consistent with the fixed
9 minimum acreage standard in the zone on the date the claimant acquired the property.

10 (3) For property that was subsequently designated in the first acknowledged comprehen-
11 sive plan as land for rural residential development:

12 (a) If the property was not zoned or was zoned to allow residential development at a
13 density equal to or greater than one dwelling per two acres, the claimant is deemed to have
14 been lawfully permitted to establish up to three home sites with a minimum acreage stand-
15 ard of two acres.

16 (b) If the property was zoned for residential development at a density of less than one
17 dwelling per two acres, the claimant is deemed to have been lawfully permitted to establish
18 up to three home sites, consistent with the density of residential development allowed in the
19 zone on the date the claimant acquired the property.

20 (4) Notwithstanding subsections (1) and (2) of this section, if the record of the claim in-
21 cludes a county evaluation and determination of the compliance or noncompliance of the
22 requested residential use with the applicable statewide land use planning goals, the Depart-
23 ment of Land Conservation and Development may defer to that analysis.

24 **SECTION 3.** Notwithstanding the exception provision that triggers a time limit under
25 section 11 (7), chapter 424, Oregon Laws 2007, if the claimant who obtained the authorization
26 retains an undivided ownership interest in the property and the remaining ownership interest
27 is held by an individual who is a family member of the claimant, the opportunity to develop
28 the property pursuant to an authorization granted under section 6, 7 or 9, chapter 424,
29 Oregon Laws 2007, is not subject to the time limit.

30 **SECTION 4.** For purposes of section 6 (6)(f), chapter 424, Oregon Laws 2007, if, on or af-
31 ter the date the comprehensive plan for the county in which the property is located was first
32 acknowledged by the Land Conservation and Development Commission to comply with the
33 statewide land use planning goals, the property was subject to a resource zone without a
34 fixed minimum acreage standard, the fixed minimum acreage standard is deemed to have
35 been 40 acres for purposes of determining the number of home sites that a claimant would
36 have been lawfully permitted to establish unless the record of the claim establishes that the
37 claimant was lawfully permitted to establish a home site on a lot or parcel of a different
38 acreage.

39 **SECTION 5.** (1) A claimant is eligible for the approval of a maximum of one dwelling
40 under section 6, chapter 424, Oregon Laws 2007, and, unless the property includes a vacant
41 lot or parcel for the dwelling, the claimant also is eligible for approval of a maximum of one
42 lot or parcel on which the dwelling must be established if the claimant:

43 (a) Made a timely election under section 8 (3), chapter 424, Oregon Laws 2007, for relief
44 under section 7, chapter 424, Oregon Laws 2007;

45 (b) Did not file an appraisal or filed an appraisal that did not satisfy the requirements

1 of section 8 (5), chapter 424, Oregon Laws 2007; and

2 (c) Did not change the election to obtain relief under section 6, chapter 424, Oregon Laws
3 2007, as provided in section 8 (5), chapter 424, Oregon Laws 2007.

4 (2) Section 6 (1) to (3), chapter 424, Oregon Laws 2007, does not apply to claims described
5 in this section.

6 (3) Section 8, chapter 855, Oregon Laws 2009, does not apply to claims described in this
7 section.

8 **SECTION 6.** (1) Notwithstanding the requirement in section 6 (6), chapter 424, Oregon
9 Laws 2007, that a claimant must have filed a claim with both the state and the county in
10 which the property is located, the claimant is eligible for the approval of a maximum of one
11 dwelling under section 6, chapter 424, Oregon Laws 2007, and, unless the property includes
12 a vacant lot or parcel for the dwelling, the claimant also is eligible for approval of a maxi-
13 mum of one lot or parcel on which the dwelling must be established if the claimant:

14 (a) Filed, and did not withdraw, a valid claim with a county under ORS 195.305 before
15 December 6, 2007; and

16 (b) Did not file a claim with the state.

17 (2) Counties shall provide certified copies of the claims described in this section on or
18 before June 30, 2010, to the Department of Land Conservation and Development for review.

19 (3) After receiving claims from counties as required under subsection (2) of this section,
20 the department shall notify the claimants that may be eligible for relief under this section.

21 (4) Section 6 (1) to (3), chapter 424, Oregon Laws 2007, does not apply to claims described
22 in this section.

23 (5) For purposes of this section, if the claimant filed a claim with a county on or after
24 November 1, 2006, and died after filing the claim, a person that acquired the property by
25 devise or by operation of law may prosecute the claim.

26 **SECTION 7.** (1) The Department of Land Conservation and Development shall issue a
27 final order for each claim reviewed under section 5 or 6 of this 2010 Act on or before June
28 30, 2011.

29 (2) The department shall charge a fee of \$2,500 for processing a claim that becomes eli-
30 gible for review under section 5 or 6 of this 2010 Act.

31 (3) Moneys collected from the fee required by this section must be deposited in the
32 Compensation and Conservation Fund established by ORS 195.336.

33 (4) If a claimant does not pay the fee required by this section on or before a date estab-
34 lished by rule of the department, the department may close the claim without further review
35 of or action on the claim.

36 (5) If the department does not issue a final order on a claim by the date specified in
37 subsection (1) of this section, the department shall refund the fee paid pursuant to this sec-
38 tion.

39 (6) The department may adopt rules for the processing of claims under section 5 or 6 of
40 this 2010 Act.

41 **SECTION 8.** ORS 197.090 is amended to read:

42 197.090. (1) Subject to policies adopted by the Land Conservation and Development Commission,
43 the Director of the Department of Land Conservation and Development shall:

44 (a) Be the administrative head of the Department of Land Conservation and Development.

45 (b) Coordinate the activities of the department in its land conservation and development func-

1 tions with such functions of federal agencies, other state agencies, local governments and special
2 districts.

3 (c) Appoint, reappoint, assign and reassign all subordinate officers and employees of the de-
4 partment, prescribe their duties and fix their compensation, subject to the State Personnel Relations
5 Law.

6 (d) Represent this state before any agency of this state, any other state or the United States
7 with respect to land conservation and development within this state.

8 (e) Provide clerical and other necessary support services for the **Land Use Board of Appeals**.

9 (2)(a) Subject to local government requirements and the provisions of ORS 197.830 to 197.845,
10 the director may participate in and seek review of:

11 **(A)** A land use decision, expedited land division or limited land use decision involving the
12 goals[, *acknowledged comprehensive plan or land use regulation or other matter within the statutory*
13 *authority of the department or commission*] **or involving an acknowledged comprehensive plan and**
14 **land use regulations implementing the plan; or**

15 **(B) Any other matter within the statutory authority of the department or commission**
16 under ORS chapters 195, 196 and 197.

17 **(b)** The director shall report to the commission on each case in which the department partic-
18 ipates and on the positions taken by the director in each case.

19 [(b)] **(c)** If a meeting of the commission is scheduled prior to the close of the period for seeking
20 review of a land use decision, expedited land division or limited land use decision, the director shall
21 obtain formal approval from the commission prior to seeking review of the decision. However, if the
22 land use decision, expedited land division or limited land use decision becomes final less than 15
23 days before a meeting of the commission, the director shall proceed as provided in paragraph [(c)]
24 **(d)** of this subsection. If the director requests approval from the commission, the applicant and the
25 affected local government shall be notified in writing that the director is seeking commission ap-
26 proval. The director, the applicant and the affected local government shall be given reasonable time
27 to address the commission regarding the director's request for approval to seek review. The parties
28 shall limit their testimony to the factors established under subsection (3) of this section. No other
29 testimony shall be taken by the commission.

30 [(c)] **(d)** If a meeting of the commission is not scheduled prior to the close of the period for
31 seeking review of a land use decision, expedited land division or limited land use decision, at the
32 next commission meeting the director shall report to the commission on each case for which the
33 department has sought review. The director shall request formal approval to proceed with each ap-
34 peal. The applicant and the affected local government shall be notified of the commission meeting
35 in writing by the director. The director, the applicant and the affected local government shall be
36 given reasonable time to address the commission regarding the director's request for approval to
37 proceed with the appeal. The parties shall limit their testimony to the factors established under
38 subsection (3) of this section. No other testimony shall be taken by the commission. If the commis-
39 sion does not formally approve an appeal, the director shall file a motion with the appropriate
40 tribunal to dismiss the appeal.

41 [(d)] **(e)** A decision by the commission under this subsection is not subject to appeal.

42 [(e)] **(f)** For purposes of this subsection, "applicant" means a person seeking approval of a per-
43 mit, as defined in ORS 215.402 or 227.160, expedited land division or limited land use decision.

44 (3) The commission by rule shall adopt a set of factors for the commission to consider when
45 determining whether to appeal or intervene in the appeal of a land use decision, expedited land di-

1 vision or limited land use decision that involves the application of the goals, acknowledged com-
2 prehensive plan, land use regulation or other matter within the authority of the department or
3 commission under ORS chapters 195, 196 and 197.

4 (4) The director may intervene in an appeal of a land use decision, expedited land division or
5 limited land use decision brought by another person in the manner provided for an appeal by the
6 director under subsection [(2)(b) and (c)] (2)(c) and (d) of this section.

7 **SECTION 9. Notwithstanding any other law limiting expenditures, the limitation on**
8 **expenditures established by section 2, chapter 652, Oregon Laws 2009, for the biennium be-**
9 **ginning July 1, 2009, as the maximum limit for payment of expenses from fees, moneys or**
10 **other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal**
11 **funds, collected or received by the Department of Land Conservation and Development, is**
12 **increased by \$746,907 for the purpose of carrying out the provisions of sections 5, 6 and 7 of**
13 **this 2010 Act.**

14 **SECTION 10. The amendments to ORS 197.090 by section 8 of this 2010 Act apply before,**
15 **on or after the effective date of this 2010 Act.**

16 **SECTION 11. This 2010 Act being necessary for the immediate preservation of the public**
17 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
18 **on its passage.**

19