

Senate Bill 406

Sponsored by Senator SCHRADER

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**.

Establishes system to provide various types of compensation in specified instances when land use requirement reduces fair market value of property. Establishes program for creation, purchase, sale, exchange or conveyance of transferable development credits. Imposes compensation and conservation taxes. Appropriates moneys to Compensation and Conservation Authority.

Takes effect on effective date of constitutional amendment or revision that exempts taxes imposed under Act from property tax limitations in Oregon Constitution.

A BILL FOR AN ACT

1
2 Relating to change in property value resulting from land use requirement; creating new provisions;
3 amending ORS 92.095, 92.120, 92.843 and 100.110; appropriating money; limiting expenditures;
4 prescribing an effective date; and providing for revenue raising that requires approval by a
5 three-fifths majority.

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

7 **SECTION 1. (1) The definitions set forth in ORS 197.015 (1), (5) and (8) to (21) apply to**
8 **sections 1 to 25 and 28 to 31 of this 2005 Act.**

9 **(2) As used in sections 1 to 25 and 28 to 31 of this 2005 Act:**

10 **(a) "Fair market value" means the most probable price in cash or other terms typical to**
11 **the market that an informed seller could expect to be paid by an informed buyer in a sale**
12 **of the subject real property, each acting prudently and without compulsion in an arm's-**
13 **length transaction.**

14 **(b) "Federal requirement" means a legal requirement established:**

15 **(A) Under the United States Constitution;**

16 **(B) By statute, administrative regulation, order or policy adopted by a federal entity; or**

17 **(C) Under a permit issued by a federal entity or state agency pursuant to a federal stat-**
18 **ute or administrative regulation.**

19 **(c) "Government entity" means a local government or a state entity, if the local gov-**
20 **ernment or state entity has authority to adopt a land use requirement.**

21 **(d) "Land use requirement" means:**

22 **(A) One of the following state land use requirements:**

23 **(i) A provision of ORS chapter 195, 196, 197, 215, 227 or 268; or**

24 **(ii) A statewide land use planning goal or an administrative rule adopted by the Land**
25 **Conservation and Development Commission.**

26 **(B) One of the following local land use requirements:**

27 **(i) A planning goal or objective, regional framework plan, functional plan or ordinance**
28 **of a metropolitan service district;**

29 **(ii) A comprehensive plan; or**

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 (iii) A land use regulation.

2 (e) "Lot" has the meaning given that term in ORS 92.010.

3 (f) "Parcel" has the meaning given that term in ORS 215.010.

4 (g) "Private nuisance" means an unreasonable interference with another person's private
5 use and enjoyment of land as determined by state statute or common law.

6 (h) "Property owner" means a person who has the fee simple interest in the private real
7 property, or a purchaser of private real property under an instrument required to be re-
8 corded under ORS 93.635 (1).

9 (i) "Public nuisance" means an unreasonable interference with a right common to the
10 general public as determined by state statute or common law.

11 (j) "Receiving district" means a designated area of land to which transferable develop-
12 ment credits generated in a sending district may be transferred and in which additional uses
13 or development are allowed by reason of the transfer.

14 (k) "Reinterpretation" means a written interpretation of a land use requirement that
15 originates in a quasi-judicial proceeding or from a government entity's written interpretation
16 that overrules or contradicts the government entity's past practices regarding implementa-
17 tion of the land use requirement.

18 (L) "Restriction" means:

19 (A) A specific limitation on the type or extent of development or use of private real
20 property contained in a land use requirement, including a height limit, setback requirement
21 or prohibition on using private real property for a particular purpose; or

22 (B) A reinterpretation.

23 (m) "Sending district" means a designated area of land from which development rights
24 may be transferred in the form of transferable development credits for use in one or more
25 receiving districts.

26 (n) "Transferable development credit" means a right that is established under section 18
27 of this 2005 Act to use private real property.

28 **SECTION 2.** (1) A property owner may file a claim for compensation under sections 1 to
29 12 of this 2005 Act if private real property of the owner is subject to a restriction that re-
30 duces the fair market value of the property by:

31 (a) 25 percent or more as the direct result of a single restriction that is adopted by a
32 government entity or issued by a quasi-judicial decision maker after the effective date of this
33 2005 Act; or

34 (b) 45 percent or more as the direct result of multiple restrictions adopted by a govern-
35 ment entity or issued by a quasi-judicial decision maker after the effective date of this 2005
36 Act and within any four-year period.

37 (2) For the purpose of determining whether the fair market value of private real property
38 is reduced by 25 percent or more under subsection (1)(a) of this section:

39 (a) The reduction in fair market value is calculated by comparing the fair market value
40 of the property immediately before and immediately after the date on which the restriction
41 was adopted or issued.

42 (b) If, within the four years prior to the date on which the restriction that is the basis
43 for the claim was adopted or issued, the government entity took action that caused an in-
44 crease of five percent or more in the fair market value of the property, the resulting in-
45 crease in fair market value, minus a fee or charge, if any, that the property owner paid the

1 government entity for the action, must be included in calculating the reduction in fair mar-
2 ket value.

3 (3) For the purpose of determining whether the fair market value of private real property
4 is reduced by 45 percent or more under subsection (1)(b) of this section:

5 (a) The reduction in fair market value is calculated by comparing the fair market value
6 of the property immediately after the date on which the oldest restriction that is a basis for
7 the claim was adopted or issued with the fair market value of the property as of the same
8 date but subject to the land use requirements of the government entity that were in effect
9 on the latest of the following:

10 (A) The effective date of this 2005 Act;

11 (B) The date the property owner acquired the property; or

12 (C) Four years prior to the date on which the oldest restriction that is a basis for the
13 claim was adopted or issued.

14 (b) If, within the four years prior to the date on which the oldest restriction that is a
15 basis for the claim was adopted or issued, the government entity took action that caused an
16 increase of five percent or more in the fair market value of the property, the resulting in-
17 crease in fair market value, minus a fee or charge, if any, that the property owner paid the
18 government entity for the action, must be included in calculating the reduction in fair mar-
19 ket value.

20 (4) A property owner is not entitled to compensation under sections 1 to 12 of this 2005
21 Act if a government entity establishes one of the following:

22 (a) The restriction is necessary and its primary purpose is to:

23 (A) Carry out a federal requirement;

24 (B) Enable a government entity to receive a federal benefit that directly or indirectly
25 benefits private real property; or

26 (C) Avoid violation of a federal requirement including, but not limited to, the Endangered
27 Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.), as amended and in effect on the ef-
28 fective date of this 2005 Act, or to qualify for an incidental take statement under 16 U.S.C.
29 1536, an incidental take permit under 16 U.S.C. 1539 or an exception contained in the federal
30 regulations issued pursuant to 16 U.S.C. 1533(d).

31 (b) The government entity is authorized by the federal government to act in lieu of direct
32 regulation by the federal government and the restriction is necessary to carry out federal
33 law.

34 (c) The restriction is necessitated by a land use requirement adopted prior to the effec-
35 tive date of this 2005 Act and prior to the date on which the property owner acquired the
36 property, and a prudent property owner would or should have known about the land use re-
37 quirement and the type or extent of restriction necessitated by the land use requirement.

38 (d) The restriction prohibits or regulates a use or development activity in order to avoid
39 or abate a private or public nuisance.

40 (e) The restriction was adopted or issued prior to the date on which the property owner
41 acquired the property.

42 (5) A property owner may not assign the right to file a claim for compensation under
43 sections 1 to 12 of this 2005 Act.

44 **SECTION 3.** (1) The state is liable for a claim for compensation under sections 1 to 12
45 of this 2005 Act that is based on:

1 (a) A restriction required by a state land use requirement; or

2 (b) A restriction required by a local land use requirement to the extent that the re-
3 striction was necessary to carry out a state land use requirement.

4 (2) A metropolitan service district organized under ORS chapter 268 is liable for a claim
5 for compensation under sections 1 to 12 of this 2005 Act that is based on:

6 (a) A restriction required by a land use requirement adopted by the metropolitan service
7 district; or

8 (b) A restriction required by a land use requirement adopted by a city or county to the
9 extent that the restriction was necessary to carry out a land use requirement adopted by the
10 metropolitan service district.

11 (3) A city or county is liable for a claim for compensation under sections 1 to 12 of this
12 2005 Act that is based on a restriction required by a land use requirement adopted by the
13 city or county if the claim is not described in subsection (1) or (2) of this section.

14 **SECTION 4.** (1) If a property owner is entitled to compensation under section 2 of this
15 2005 Act, the compensation must have a value equal to the reduction in fair market value
16 as determined under section 2 of this 2005 Act.

17 (2) Compensation may include cash or cash equivalent, land or development benefits, or
18 a combination of both.

19 (3) The provisions of ORS 306.353 to 306.359 do not apply to a tax abatement provided
20 under this section.

21 (4) As used in this section:

22 (a) "Cash or cash equivalent" includes, but is not limited to:

23 (A) Cash or a warrant, check or order as provided in ORS chapter 293 or 294;

24 (B) For claims against the state, income tax credits and deductions; and

25 (C) For claims against a local government, exemptions from the property taxes imposed
26 only by that local government, as provided in section 5 (1)(a) of this 2005 Act.

27 (b) "Land or development benefit" includes, but is not limited to:

28 (A) A modification, variance or adjustment of a restriction that is authorized by law and
29 that results in an increase in fair market value;

30 (B) Transferable development credits;

31 (C) Land exchanges;

32 (D) Increases in density or intensity of use allowed on all or a portion of the real prop-
33 erty or changes in density or intensity of use that do not exceed the overall density or in-
34 tensity standards; and

35 (E) A modification of a condition of approval of a particular use of the real property.

36 **SECTION 5.** (1) The governing body of a local government that is required to pay com-
37 pensation under sections 1 to 12 of this 2005 Act may:

38 (a) Provide the compensation in the form of a limited exemption from the property taxes
39 otherwise imposed by that local government.

40 (b) Issue general obligation bonds in a principal amount that does not exceed the amount
41 of compensation for which the local government is liable under sections 1 to 12 of this 2005
42 Act.

43 (c) Impose a compensation and conservation tax as described in section 29 of this 2005
44 Act on private real property that benefits from the imposition of a restriction on other pri-
45 vate real property.

1 (d) Levy property taxes that are exempt from the limitations of sections 11 and 11b, Ar-
2 ticle XI of the Oregon Constitution:

3 (A) To pay compensation under sections 1 to 12 of this 2005 Act and the costs of deter-
4 mining and levying the taxes; or

5 (B) To repay the general obligation bonds authorized under this section and the costs of
6 issuing the bonds.

7 (2) If the governing body of a local government grants a limited exemption under sub-
8 section (1)(a) of this section, the local government shall:

9 (a) Grant the limited exemption to the lot or parcel that is subject to the restriction or,
10 at the request of the property owner, to another lot or parcel within the jurisdiction of the
11 local government; and

12 (b) Notify the county assessor of the county in which the lot or parcel is located of the
13 terms of the limited exemption not later than July 1 of the tax year in which the limited
14 exemption first applies.

15 (3)(a) The county treasurer shall use revenue from an assessment authorized under
16 subsection (1)(c) of this section to pay compensation under sections 1 to 12 of this 2005 Act
17 and the costs of imposing and collecting the assessment.

18 (b) The amount collected as an assessment under subsection (1)(c) of this section may
19 not exceed the amount of compensation for which the local government is liable under
20 sections 1 to 12 of this 2005 Act plus the costs of the local government in imposing and col-
21 lecting the assessment.

22 (c) An assessment authorized under subsection (1)(c) of this section:

23 (A) May be imposed only after reasonable notice and a public hearing;

24 (B) May not exceed the estimated benefit to the assessed real property;

25 (C) May be paid in installments over a period of at least 10 years and may include ap-
26 propriate interest; and

27 (D) Must be apportioned among benefited private real properties in a reasonable manner
28 by the governing body of the local government.

29 (d) The governing body of a local government that levies a property tax under subsection
30 (1)(d) of this section may issue revenue bonds under ORS 288.805 to 288.945, except that ORS
31 288.815 does not apply to the issuance of revenue bonds under this paragraph.

32 (4) A levy imposed under subsection (1)(d) of this section is not an operating tax under
33 ORS 310.055.

34 **SECTION 6.** (1) When a claim for compensation is made under section 2 of this 2005 Act:

35 (a) The effect of the adoption of a land use requirement on the fair market value of the
36 property may be considered under section 2 (3)(a) of this 2005 Act only if, within 90 days of
37 adoption, the property owner provides written notice to the government entity that adopted
38 the land use requirement:

39 (A) Stating that the property owner reserves the right to file a claim for compensation
40 under sections 1 to 12 of this 2005 Act based on adoption of the land use requirement;

41 (B) Identifying the private real property;

42 (C) Identifying the land use requirement; and

43 (D) Estimating the percentage by which the property owner alleges that the fair market
44 value of the property is reduced by the adoption of the land use requirement.

45 (b) The property owner must file the claim for compensation as provided in this section

1 within one year after:

2 (A) For a claim made under section 2 (1)(a) of this 2005 Act, the date on which the re-
 3 striction that is the basis for the claim was adopted or issued, except as provided in sub-
 4 section (3) of this section.

5 (B) For a claim made under section 2 (1)(b) of this 2005 Act, the date on which the land
 6 use requirement containing the second oldest restriction that is the basis for the claim was
 7 adopted or issued.

8 (2) If the government entity mailed or caused to be mailed written notice of a proposed
 9 restriction to the property owner at least 20 days before the date of the last hearing at which
 10 testimony on the restriction was allowed, the property owner must file the claim for com-
 11 pensation within 90 days after the date on which the restriction that is the basis for the
 12 claim was adopted or issued.

13 (3) Filing of a claim for compensation:

14 (a) During a city's or county's consideration of a completed development application
 15 constitutes a waiver of the 120-day requirement of ORS 215.427 or 227.178.

16 (b) Stays an appeal, if any, to the Land Use Board of Appeals that is based on a city's
 17 or county's action on a development application.

18 (c) Does not relieve a person from complying with the requirements of ORS 197.830 for
 19 the filing of a notice of intent to appeal. After a city or county takes final action on a claim
 20 for compensation, the Land Use Board of Appeals may proceed with an appeal for which
 21 notice was properly filed.

22 (4) A claim for compensation must include:

23 (a) An appraisal prepared by a state licensed appraiser or a state certified appraiser, as
 24 those terms are defined in ORS 674.010;

25 (b) A description, on a form prescribed by rules adopted by the Compensation and Con-
 26 servation Board pursuant to section 14 of this 2005 Act, of the manner in which the property
 27 owner contends that the restriction allegedly creates a right to compensation;

28 (c) The fee for the processing of the claim, in an amount established by rules adopted
 29 by the board pursuant to section 14 of this 2005 Act; and

30 (d) Other information or documents required by rules adopted by the board pursuant to
 31 section 14 of this 2005 Act.

32 **SECTION 7.** (1) The Compensation and Conservation Board that is established in section
 33 14 of this 2005 Act shall, by rule, establish a fast track alternative for a property owner
 34 seeking compensation under sections 1 to 12 of this 2005 Act if the basis for the claim is that
 35 the property owner:

36 (a) Subject to the limitations described in subsection (4) of this section, has a lot or
 37 parcel that is zoned for agriculture, forestry or mixed agriculture and forestry and:

38 (A) The property owner had a right to site a dwelling on the lot or parcel when the
 39 property owner acquired the lot or parcel;

40 (B) The right to site the dwelling was eliminated by a state land use requirement that
 41 was adopted after the property owner acquired the lot or parcel and remains in effect or by
 42 a local land use requirement necessary to carry out a state land use requirement that was
 43 adopted after the property owner acquired the lot or parcel and remains in effect;

44 (C) The property owner does not have a right to site a dwelling on the lot or parcel;

45 (D) There is no dwelling on the lot or parcel;

1 (E) The lot or parcel was zoned for agriculture, forestry or mixed agriculture and
2 forestry to comply with a statewide planning goal; and

3 (F) The exceptions under section 2 (4) of this 2005 Act do not apply.

4 (b) Has a lot or parcel located wholly or partially outside of an urban growth boundary
5 and:

6 (A) The property owner had a right to divide the portion of the lot or parcel located
7 outside of an urban growth boundary into two or more lots or parcels when the property
8 owner acquired the lot or parcel;

9 (B) The right to divide the property into two or more lots or parcels was eliminated by
10 a state land use requirement that was adopted after the property owner acquired the lot or
11 parcel and remains in effect or by a local land use requirement necessary to carry out a
12 state land use requirement that was adopted after the property owner acquired the lot or
13 parcel and remains in effect;

14 (C) The property owner does not have a right to divide the portion of the lot or parcel
15 located outside of an urban growth boundary into two or more lots or parcels;

16 (D) The portion of the lot or parcel located outside of an urban growth boundary is zoned
17 for agriculture, forestry or mixed agriculture and forestry to comply with a statewide plan-
18 ning goal, or for residential use pursuant to an exception to a statewide planning goal;

19 (E) The portion of the lot or parcel located outside of an urban growth boundary is larger
20 than four acres; and

21 (F) The exceptions under section 2 (4) of this 2005 Act do not apply.

22 (2) The board, or the Compensation and Conservation Authority as provided by rule of
23 the board, shall determine the amount and form of compensation due a qualifying claim un-
24 der this section. In determining the amount of compensation due under:

25 (a) Subsection (1)(a) of this 2005 Act, the board, or the authority as provided by rule of
26 the board, shall consider the fair market value of the right to site a dwelling on the lot or
27 parcel, regional differences and fairness factors, including taxation practices and the meas-
28 urable effect on the value of public investments.

29 (b) Subsection (1)(b) of this section, the board, or the authority as provided by rule of the
30 board, shall consider the fair market value of the right to create a lot or parcel, regional
31 differences and fairness factors, including taxation practices and the measurable effect on
32 the value of public investments.

33 (3) The board, or the authority as provided by rule of the board, shall provide by rule to
34 the property owner methods for determining the amount of compensation, including but not
35 limited to:

36 (a) Compensation based on the fair market value of the rights described under subsection
37 (1) of this section determined by an appraisal performed by a state licensed appraiser or state
38 certified appraiser and taking into account the factors described in this section;

39 (b) Compensation amounts discounted as compared to paragraph (a) of this subsection,
40 as set forth in a schedule reflecting regional differences and offered to property owners
41 through a fast track claims process without an appraisal; and

42 (c) Compensation amounts discounted as compared to paragraph (b) of this subsection,
43 as set forth in a schedule reflecting regional differences and offered to property owners
44 whose right to site a dwelling or to a land division, whichever is applicable, may be readily
45 established through a fast track claims process without a hearing or appraisal.

1 (4) A property owner is eligible to receive compensation under subsection (1)(a) of this
 2 section for the loss of the right to site one dwelling on each qualifying lot or parcel, subject
 3 to the following limitations:

4 (a) If the property owner owns more than one qualifying lot or parcel, the amount of
 5 compensation must be based on the number of qualifying lots or parcels in a single tract as
 6 of the date the land use requirement was adopted.

7 (b) If the property owner owns more than one tract that contains one or more qualifying
 8 lots or parcels, the property owner shall identify one tract that will be used as the sole basis
 9 for the amount of compensation.

10 (c) Regardless of the number of qualifying lots or parcels owned by the property owner,
 11 only 10 or fewer qualifying lots or parcels may be used as the basis for the amount of com-
 12 pensation to be awarded.

13 **SECTION 8.** (1)(a) Except as provided in paragraph (c) of this subsection, a property
 14 owner may file a claim for compensation under sections 1 to 12 of this 2005 Act only with the
 15 city in which the private real property is located or, if the private real property is located
 16 outside city limits, with the county in which the property is located.

17 (b) Except as provided in paragraph (c) of this subsection, a claim properly filed with a
 18 city or county must be processed as provided in sections 9 and 10 of this 2005 Act.

19 (c) If a claim for compensation is based solely on the direct application of a restriction
 20 contained in a state land use requirement and there is no local land use requirement imple-
 21 menting the restriction:

22 (A) The property owner may file the claim only with the Compensation and Conservation
 23 Authority established in section 13 of this 2005 Act; and

24 (B) The authority shall process the claim as provided in section 11 of this 2005 Act.

25 (2) Notwithstanding subsection (1) of this section, if the city, county or authority that
 26 receives a claim for compensation determines that the property owner did not provide all of
 27 the information required under section 6 (4) of this 2005 Act, the city, county or authority
 28 shall notify the claimant of the information that is missing. If the claimant does not submit
 29 the missing information within a reasonable period of time, established by rules adopted by
 30 the Compensation and Conservation Board pursuant to section 14 of this 2005 Act, then the
 31 city, county or authority shall reject the claim. If a claim for compensation is rejected under
 32 this subsection, the property owner may appeal to the Oregon Tax Court as provided in
 33 section 12 of this 2005 Act.

34 (3)(a) When a claim or notice of claim is filed, the property owner may request that the
 35 processing of the claim be deferred until after the property owner submits an application for
 36 a permit that requires application of the restriction upon which the claim or notice of claim
 37 is based and the government entity acts upon the application. A request for deferral need
 38 not be approved by the government entity.

39 (b) The property owner may not defer a claim, for any reason, for more than two years.

40 **SECTION 9.** (1) If a city or county determines that a property owner submitted a com-
 41 plete claim for compensation, the city or county shall make an initial determination of
 42 whether one or more other government entities are wholly or partially liable for the claim
 43 under section 2 of this 2005 Act. If the city or county makes an initial determination that
 44 another government entity is wholly or partially liable for a claim, the city or county shall
 45 send a copy of the claim to that other government entity. When the city or county deter-

1 mines that the claim for compensation is complete, the city or county shall provide infor-
2 mation to the claimant that explains the process for reviewing the claim.

3 (2) Within five business days after the initial determination by the city or county under
4 subsection (1) of this section, the city or county shall mail written notice, as provided in
5 subsection (3) of this section, of the claim for compensation to:

6 (a) The property owner making the claim;

7 (b) Other government entities that may be wholly or partially liable for the claim;

8 (c) The Compensation and Conservation Authority; and

9 (d) A metropolitan service district organized under ORS chapter 268, if the real property
10 is located within the district.

11 (3) The notice required under subsection (2) of this section must state:

12 (a) The name of the property owner who filed the claim for compensation;

13 (b) The address of the private real property covered by the claim;

14 (c) The restriction that is the basis of the claim for compensation;

15 (d) The reduction in fair market value of the property that the property owner alleges
16 was caused by the restriction; and

17 (e) The initial determination of the city or county as to which government entities are
18 liable for the claim.

19 (4) The government entities shall attempt to reach agreement as to:

20 (a) Which government entities are liable for the claim for compensation; and

21 (b) Each government entity's share of the liability as a percentage.

22 (5) If the government entities cannot reach agreement under subsection (4) of this sec-
23 tion within 60 days after notice is mailed under subsection (2) of this section and:

24 (a) The state is a potentially liable government entity, the authority shall file a
25 declaratory judgment action in the Oregon Tax Court seeking a declaration as to which
26 government entities are liable for the claim for compensation, if valid, and what percentage
27 share of the liability applies to each government entity.

28 (b) The state is not a potentially liable government entity, the authority shall establish
29 by rule which government entity must file the declaratory judgment action described in this
30 subsection.

31 (6) For a declaratory judgment action under subsection (5) of this section:

32 (a) The government entity that files the action shall name each of the other government
33 entities as defendants.

34 (b) When the authority or government entity serves the defendants with notice of the
35 action, the authority or government entity shall mail written notice of the declaratory
36 judgment action to the property owner who filed the claim.

37 (c) A final judicial decision with respect to the liability of the government entities for the
38 claim:

39 (A) Must be issued by the court within 60 days after the declaratory judgment action is
40 filed; and

41 (B) Is conclusive in a subsequent proceeding concerning the claim.

42 (7) If the state:

43 (a) Is wholly liable for the claim for compensation, the authority shall complete the
44 processing of the claim under section 11 of this 2005 Act.

45 (b) Is not liable for the claim, the government entity or entities liable for the claim shall

1 process the claim for compensation under section 10 of this 2005 Act.

2 (c) Shares liability for the claim with one or more other government entities, the state
3 shall review the claim under section 11 of this 2005 Act and each other government entity
4 shall review the claim under section 10 of this 2005 Act.

5 (8) In determining the reduction in fair market value of the property resulting from the
6 restriction pursuant to subsection (7)(c) of this section, the state and each other government
7 entity shall consider the full effect of the restriction on the fair market value of the real
8 property without regard to the percentage share of the liability held by any of the entities.
9 Unless a determination is appealed as provided in section 12 of this 2005 Act, each determi-
10 nation is final even if the determinations differ with regard to the extent of reduction in the
11 fair market value of the property resulting from the restriction or the overall amount of
12 compensation due.

13 **SECTION 10.** (1) Within five business days after the potential liability of government
14 entities is determined under section 9 of this 2005 Act, the local government with the largest
15 percentage share of the liability for the claim for compensation, if valid, shall mail the
16 written notice described in subsection (2) of this section to:

17 (a) The property owner;

18 (b) The other potentially liable government entities;

19 (c) The Compensation and Conservation Authority; and

20 (d) A metropolitan service district organized under ORS chapter 268, if the real property
21 is located within the district.

22 (2) The notice required in subsection (1) of this section must state the determination of
23 which government entities are liable and the percentage share of the liability applicable to
24 each entity.

25 (3) Within 60 days after notice is mailed under subsection (1) of this section:

26 (a) The local governments shall make a joint determination as to whether the claim is
27 valid and, if so, the amount of the reduction in fair market value caused by the restriction.
28 If the local governments are unable to reach a joint determination, each local government
29 shall adopt its own determination.

30 (b) The local governments shall mail copies of the joint determination or separate de-
31 terminations to:

32 (A) The property owner;

33 (B) The other potentially liable government entities;

34 (C) The Compensation and Conservation Authority; and

35 (D) A metropolitan service district organized under ORS chapter 268, if the real property
36 is located within the district.

37 (4) A determination under subsection (3) of this section must state whether the claim
38 qualifies for compensation under section 2 of this 2005 Act and, if so, the amount of re-
39 duction in fair market value that results from the restriction.

40 (5) If one or more of the local governments determine that the claim is not valid, the
41 property owner may file an appeal with the Oregon Tax Court as provided in section 12 of
42 this 2005 Act.

43 (6) If the local governments dispute the amount of reduction in fair market value based
44 on different assumptions as to the authorized uses for the private real property under the
45 comprehensive plan and land use regulations, the property owner may seek a binding deter-

1 mination with respect to the assumptions from the city or county with land use planning
 2 authority for the property.

3 (7) A binding determination issued pursuant to subsection (6) of this section:

4 (a) If appealed, must be appealed to the Land Use Board of Appeals as a land use decision.

5 (b) Is binding for six months from the date issued. If the property owner does not initiate
 6 the application process for a use the city or county determines is allowed within the six-
 7 month period:

8 (A) The binding determination expires; and

9 (B) The property owner is bound by subsequent land use requirements and is not eligible
 10 to receive compensation under sections 1 to 12 of this 2005 Act as a result of subsequent
 11 requirements that preclude uses allowed in the binding determination issued under sub-
 12 section (6) of this section.

13 (8) If a government entity determines that the claim is valid, the government entity shall
 14 mail written notice within five business days of the determination to:

15 (a) The property owner;

16 (b) The other potentially liable government entities;

17 (c) The Compensation and Conservation Authority; and

18 (d) A metropolitan service district organized under ORS chapter 268, if the real property
 19 is located within the district.

20 (9) The notice required by subsection (8) of this section must state:

21 (a) The determination by the government entity that the claim is valid;

22 (b) The amount of compensation that the government entity has determined it must
 23 provide; and

24 (c) The form of compensation that the government entity proposes to provide.

25 (10) Within 60 days after the notice required by subsection (8) of this section, the gov-
 26 ernment entity shall adopt a final decision specifying the amount of compensation owed by
 27 that government entity and the form of compensation to be provided by that government
 28 entity.

29 (11) The property owner may appeal the final decision to the Oregon Tax Court as pro-
 30 vided in section 11 of this 2005 Act.

31 (12) Before a government entity provides compensation to a property owner, the property
 32 owner shall record a deed restriction on the private real property corresponding to the re-
 33 striction, as defined in section 1 of this 2005 Act, consistent with rules adopted by the Com-
 34 pensation and Conservation Board pursuant to section 14 of this 2005 Act.

35 (13) Except as provided in this section, the governing body of a local government may
 36 specify how that local government processes a claim for compensation including, but not
 37 limited to, deciding which public official makes the final decision for the local government
 38 and whether the local government uses a hearings officer.

39 **SECTION 11.** (1) When a claim for compensation is filed with the Compensation and
 40 Conservation Authority under section 8 (1)(c) of this 2005 Act, or when the state has been
 41 determined to be partially or wholly liable for a claim under section 9 of this 2005 Act, the
 42 authority shall review the claim under rules adopted by the Compensation and Conservation
 43 Board. The rules must include provisions for:

44 (a) Notice of the proposed action of the authority with regard to the claim to:

45 (A) The property owner;

1 (B) The other potentially liable government entities; and

2 (C) A metropolitan service district organized under ORS chapter 268, if the real property
3 is located within the district;

4 (b) Issuance of a written decision on the claim within 60 days after the file is claimed;
5 and

6 (c) The filing for recordation by the property owner of a deed restriction corresponding
7 to the restriction, as defined in section 1 of this 2005 Act, before compensation is paid.

8 (2) After the authority issues a written decision on a claim, the property owner who
9 submitted the claim may appeal the decision to the Oregon Tax Court as provided in section
10 12 of this 2005 Act.

11 **SECTION 12.** (1) Except for a binding determination reviewable as a land use decision or
12 limited land use decision by the Land Use Board of Appeals under section 10 (7) of this 2005
13 Act:

14 (a) The Oregon Tax Court has jurisdiction over all disputes related to claims for com-
15 pensation filed under sections 1 to 12 of this 2005 Act and shall issue a final decision within
16 60 days after the action is filed with the court; and

17 (b) Review of a dispute is confined to the record before the government entities that may
18 be wholly or partially liable for a claim under section 9 of this 2005 Act unless the Oregon
19 Tax Court concludes that taking additional evidence is:

20 (A) Necessary for a full and fair review; and

21 (B) Authorized by rule of the court.

22 (2) When an appeal is authorized by section 8, 9, 10 or 11 of this 2005 Act, a notice of
23 appeal must be filed within 21 days after the date of the rejection, decision or determination
24 giving rise to the appeal. If the rejection, decision or determination is not appealed within
25 the 21-day period, the rejection, decision or determination is final and not subject to further
26 review or challenge in a future proceeding.

27 (3) If some but not all government entities with a share of the liability for a claim de-
28 termine that the claim is not valid, the property owner may file a notice of appeal of the
29 determinations that the claim is not valid within the time specified in subsection (2) of this
30 section. If a timely notice of appeal is filed, the appeal is stayed until final decisions have
31 been adopted by each government entity. The Oregon Tax Court shall consolidate an appeal
32 of all final decisions arising out of the same claim for compensation with a previously filed
33 appeal.

34 (4) When a final decision of a government entity is appealed to the Oregon Tax Court and
35 the appeal challenges the validity of a determination that constitutes a land use decision or
36 limited land use decision, the Oregon Tax Court shall certify to the Land Use Board of Ap-
37 peals the question of the validity of the land use decision or the limited land use decision.
38 After the Land Use Board of Appeals decides the question, the Oregon Tax Court shall in-
39 corporate the decision of the Land Use Board of Appeals into the ruling of the court. A
40 challenge to the decision of the Land Use Board of Appeals under this subsection may be
41 made only as part of an appeal of the Oregon Tax Court's ruling.

42 (5) The Oregon Tax Court has the authority to affirm, reverse or remand the decision
43 of a government entity. However, with respect to the form and amount of compensation, the
44 court:

45 (a) Shall determine only whether the value of the compensation offered by the govern-

1 ment entity is equal to the amount of compensation owed by that government entity.

2 (b) May not determine whether the government entity should provide a different form
3 of compensation.

4 (6) Notwithstanding ORS 305.445, an appeal from the Oregon Tax Court that involves a
5 claim for compensation under sections 1 to 12 of this 2005 Act must:

6 (a) Be filed with the Court of Appeals; and

7 (b) Proceed in the same manner as appeals from a circuit court.

8 **SECTION 13.** (1) The Compensation and Conservation Authority is established.

9 (2) The authority shall be governed by the Compensation and Conservation Board estab-
10 lished under section 14 of this 2005 Act.

11 (3) The Department of Land Conservation and Development shall provide administrative
12 services for the authority.

13 **SECTION 14.** (1) There is established the Compensation and Conservation Board, which
14 shall consist of five members appointed by the Governor.

15 (2) The term of office of each board member is four years, but a member serves at the
16 pleasure of the Governor. Before the expiration of the term of a member, the Governor shall
17 appoint a successor. A member is eligible for reappointment. If there is a vacancy for any
18 cause, the Governor shall make an appointment to become immediately effective for the
19 unexpired term.

20 (3) The appointment of the board members is subject to confirmation by the Senate in
21 the manner prescribed in ORS 171.562 and 171.565.

22 (4) A member of the board is entitled to compensation and expenses as provided in ORS
23 292.495.

24 (5) When making appointments to the board, the Governor shall consider the geographic
25 diversity of the state.

26 (6) The board shall select one of its members as chairperson and one of its members as
27 vice chairperson, for terms and with duties and powers necessary for the performance of the
28 functions of the offices as the board determines.

29 (7) A majority of the members of the board constitutes a quorum for the transaction of
30 business.

31 (8) The board shall:

32 (a) Direct the performance of the duties of the Director of the Compensation and Con-
33 servation Authority under sections 1 to 25 of this 2005 Act.

34 (b) In accordance with the provisions of ORS chapter 183, adopt rules that the board
35 considers necessary to accomplish the purposes of sections 1 to 25 of this 2005 Act.

36 (c) Establish by rule:

37 (A) One or more fees for the review by a government entity of a claim for compensation
38 under sections 1 to 12 of this 2005 Act, in an amount that is calculated to cover, as nearly
39 as possible, the cost of reviewing the claim. Fees established under this subparagraph may
40 correspond to different categories of claims or to different types of government entities and
41 are payable to the government entities that are wholly or partially liable for the claim, if
42 valid.

43 (B) Standards for an appraisal required by sections 1 to 12 of this 2005 Act or by rules
44 of the board. Prior to adopting rules under this subparagraph, the board shall:

45 (i) Appoint a committee to recommend appraisal standards, including the content and

1 methodology for appraisals; and

2 (ii) Consider the recommendations of that committee in adopting the rules.

3 (C) Requirements for additional information and documentation, if any, to be submitted
4 in connection with a claim under sections 1 to 12 of this 2005 Act.

5 (D) The specific form of the deed restriction required in connection with an award of
6 compensation under sections 1 to 12 of this 2005 Act to ensure that compensation is not
7 awarded more than once for the same or related restrictions on the use of the same private
8 real property. A deed restriction required by this subparagraph runs with the land and binds
9 successors, heirs and assigns of the property owner making the claim.

10 (E) Procedures for exchange and certification of transferable development credits and a
11 formula for calculating and allocating transferable development credits.

12 (F) The procedures for review by the Compensation and Conservation Authority of claims
13 under sections 1 to 12 of this 2005 Act.

14 (G) Consistent with the provisions of sections 1 to 12 of this 2005 Act, standards for de-
15 termining the fair market value and the reduction in fair market value of private real prop-
16 erty as a result of a restriction.

17 **SECTION 15.** Notwithstanding the term of office specified by section 14 of this 2005 Act,
18 of the members first appointed to the Compensation and Conservation Board:

19 (1) One shall serve for a term ending June 30, 2006.

20 (2) One shall serve for a term ending June 30, 2007.

21 (3) One shall serve for a term ending June 30, 2008.

22 (4) Two shall serve for terms ending June 30, 2009.

23 **SECTION 16.** (1) The Governor shall appoint the Director of the Compensation and Con-
24 servation Authority. The director holds office at the pleasure of the Governor. The salary
25 of the director is fixed by the Governor unless otherwise provided by law.

26 (2) The director must be an individual of recognized judgment, objectivity and integrity
27 who is qualified by training and experience to analyze problems of land use planning, real
28 property law and real property valuation.

29 **SECTION 17.** The Compensation and Conservation Authority may:

30 (1) Apply for, receive and accept gifts, grants or loans for purposes consistent with
31 sections 1 to 25 of this 2005 Act from any federal, state or other public or private source.

32 (2) Enter into agreements or contracts, execute instruments and perform acts necessary,
33 convenient or desirable to accomplish the purposes of sections 1 to 25 of this 2005 Act.

34 (3) Call for assistance and avail itself of the services of the employees of a public body,
35 as defined in ORS 174.109, as may be required and made available.

36 (4) Pursuant to rules adopted by the Compensation and Conservation Board, purchase,
37 sell, exchange, auction or otherwise convey transferable development credits, if any, acquired
38 under sections 1 to 25 of this 2005 Act.

39 (5) Purchase, sell, exchange, provide matching funds for or lease real property for the
40 purpose of establishing receiving districts for transferable development credits and ensuring
41 successful implementation of sections 1 to 25 of this 2005 Act.

42 (6) Serve as a clearinghouse and information source for buyers and sellers of transferable
43 development credits.

44 **SECTION 18.** (1) The Compensation and Conservation Authority shall establish and
45 maintain a program to create, purchase, sell, exchange or convey transferable development

1 credits for the purposes of:

2 (a) Compensating owners of private real property for disproportionate reduction in the
3 value of the real property that results from the application of land use requirements and
4 sustaining those requirements by offering alternate development opportunities to property
5 owners;

6 (b) Transferring development from locations within sending districts in which develop-
7 ment is inconsistent with local or state land use planning objectives to other locations within
8 receiving districts in which development will be compatible with those objectives;

9 (c) Enhancing the livability and suitability for particular purposes of sending districts and
10 receiving districts and their surrounding communities;

11 (d) Promoting development in economically distressed areas of this state; and

12 (e) Increasing revenues from state-owned districts receiving transferable development
13 credits.

14 (2) The authority shall establish and maintain a registry of transferable development
15 credits, including information that is necessary to manage and evaluate the effectiveness of
16 the transferable development credits program.

17 (3) After consultation with the affected government entities, the authority shall establish
18 sending districts and receiving districts within an urban growth boundary that are necessary
19 to accommodate the transferable development credits only after the government entity with
20 planning authority over the land designates the district in the comprehensive plan.

21 (4) The authority shall calculate, certify and allocate transferable development credits
22 pursuant to rules adopted by the Compensation and Conservation Board pursuant to section
23 14 of this 2005 Act.

24 **SECTION 19.** The Compensation and Conservation Board may establish a sending district
25 or a receiving district outside an urban growth boundary upon designation of the district as
26 an area of critical state concern pursuant to ORS 197.405. The board may establish a sending
27 district or a receiving district on state lands identified for that purpose by the Oregon De-
28 partment of Administrative Services. The board may not designate as a receiving district an
29 area with the characteristics set forth in ORS 197.455 (1)(b)(A), (c), (d) or (e).

30 **SECTION 20.** The Compensation and Conservation Board shall prepare a biennial report
31 assessing the implementation of sections 1 to 25 of this 2005 Act and submit the report to
32 the Governor and the Legislative Assembly. The report must include:

33 (1) An evaluation of the operation of the Compensation and Conservation Authority.

34 (2) A financial accounting and summary of expenditures or disbursements.

35 (3) Recommendations for appropriate legislative or administrative action necessary to
36 further the purposes of sections 1 to 25 of this 2005 Act.

37 **SECTION 21.** (1) The Compensation and Conservation Board shall appoint the Compens-
38 sation and Conservation Ombudsman. The ombudsman holds office at the pleasure of the
39 board.

40 (2) The ombudsman must be an individual of recognized judgment, objectivity and integ-
41 rity who is qualified by training and experience to analyze problems of land use planning, real
42 property law and real property valuation and to mediate or negotiate resolution of complex
43 disputes.

44 **SECTION 22.** (1) The Compensation and Conservation Ombudsman shall review a pro-
45 posed claim for compensation if requested by a property owner in anticipation of filing a

1 claim for compensation under sections 1 to 12 of this 2005 Act.

2 (2) At the request of a property owner, the ombudsman may mediate or negotiate issues
3 involving a claim for compensation pursuant to section 2 of this 2005 Act.

4 (3) A government entity involved in a claim for compensation shall provide the ombuds-
5 man with information or materials requested by the ombudsman to the extent required by
6 ORS 192.410 to 192.505 and shall cooperate fully with the ombudsman in the resolution of the
7 claim.

8 **SECTION 23.** (1) The Compensation and Conservation Fund is established in the State
9 Treasury, separate and distinct from the General Fund. Interest earnings on moneys in the
10 Compensation and Conservation Fund shall be credited to the fund. Moneys in the fund are
11 continuously appropriated to the Compensation and Conservation Authority for the purpose
12 of funding operations of the authority, the Compensation and Conservation Board and the
13 Compensation and Conservation Ombudsman, and for transfer to the Compensation Account
14 for the purposes described in subsection (2) of this section.

15 (2) The Compensation Account is established in the Compensation and Conservation
16 Fund. After payment of the operating expenses described in subsection (1) of this section,
17 the authority shall transfer moneys remaining in the fund to the account for the following
18 purposes:

19 (a) Sixty percent of moneys transferred into the account are available for the purpose
20 of paying qualifying claims for compensation under sections 1 to 12 of this 2005 Act; and

21 (b) Forty percent of moneys transferred into the account are available for the purpose
22 of making grants to local governments for public infrastructure improvements other than
23 public park infrastructure improvements.

24 **SECTION 24.** The Compensation and Conservation Board shall by rule establish proce-
25 dures and criteria for the review and award of public infrastructure improvement grants
26 from the Compensation Account of the Compensation and Conservation Fund.

27 **SECTION 25.** Notwithstanding any provision of sections 1 to 24 of this 2005 Act, if a
28 property owner receives compensation for a land use requirement under the Fifth Amend-
29 ment to the United States Constitution or section 18, Article I of the Oregon Constitution,
30 compensation may not be awarded under sections 1 to 12 of this 2005 Act unless the property
31 owner demonstrates that additional compensation is due for a different land use require-
32 ment.

33 **SECTION 26.** (1) There is appropriated to the Compensation and Conservation Authority,
34 for the biennium beginning July 1, 2005, out of the General Fund, the amount of \$_____ to
35 implement the provisions of sections 1 to 25 of this 2005 Act.

36 (2) The appropriation made pursuant to this section must be repaid by the authority, in
37 whole or in part, as soon as practicable, from the proceeds of the sale of transferable de-
38 velopment credits.

39 **SECTION 27.** Notwithstanding any other law limiting expenditures, the amount of
40 \$_____ is established for the biennium beginning July 1, 2005, as the maximum limit for
41 payment from the Compensation and Conservation Fund of claims under sections 1 to 12 of
42 this 2005 Act and of expenses of the Compensation and Conservation Authority, the Com-
43 pensation and Conservation Board and the Compensation and Conservation Ombudsman.

44 **SECTION 28.** (1) Prior to adopting a land use requirement, a local government may sub-
45 mit the proposed land use requirement to the Department of Land Conservation and Devel-

1 **opment for a determination of whether or to what extent the proposed land use requirement**
 2 **is necessary to carry out a state land use requirement.**

3 **(2) The Land Conservation and Development Commission shall adopt rules for making the**
 4 **determination authorized under subsection (1) of this section including, but not limited to,**
 5 **provisions for:**

6 **(a) Notice of the proposed determination to potentially affected public bodies, as defined**
 7 **in ORS 174.109, and persons;**

8 **(b) An opportunity for comment on the proposed determination; and**

9 **(c) A written determination with notice to a public body or person that submitted com-**
 10 **ments to the department concerning the proposed determination.**

11 **(3) The department shall extend a deadline, whether based on statute or administrative**
 12 **rule, applicable to the adoption of a proposed land use requirement submitted to the depart-**
 13 **ment under this section if necessary to allow the completion of the review and subsequent**
 14 **revision of the proposed land use requirement by the local government.**

15 **(4) A local government may appeal a determination of the department under this section**
 16 **to the commission in the manner provided under ORS 197.633 (3). A final written determi-**
 17 **nation of the commission under this subsection may be appealed to the Court of Appeals in**
 18 **the manner provided under ORS 197.650. If not appealed, the final determination of the**
 19 **commission is conclusive in a subsequent proceeding concerning a claim for compensation**
 20 **under sections 1 to 12 of this 2005 Act.**

21 **SECTION 29. (1) If a local government adopts a local land use requirement, land affected**
 22 **by the requirement becomes subject to compensation and conservation tax assessment.**

23 **(2) As soon as is practicable after the effective date of the requirement described in**
 24 **subsection (1) of this section, the county assessor shall:**

25 **(a) Determine the fair market value of all land affected by the requirement. Fair market**
 26 **value shall be determined as of the effective date of the requirement.**

27 **(b) Compute the net fair market value by reducing the fair market value of the land as**
 28 **determined under paragraph (a) of this subsection by the real market value of the land as**
 29 **of the most recent assessment date for which real market value has been recorded on the**
 30 **assessment and tax roll.**

31 **(3) If net fair market value as determined under subsection (2) of this section is a posi-**
 32 **tive number, the county assessor shall impose a compensation and conservation tax on the**
 33 **net fair market value of the land as determined under subsection (2) of this section, at a rate**
 34 **of \$20 per \$1,000 of net fair market value.**

35 **(4) The county assessor shall assess the tax determined under this section by sending a**
 36 **compensation and conservation tax statement to the owner of record for each property tax**
 37 **account containing land affected by the local land use requirement and subject to taxation**
 38 **under this section. The compensation and conservation tax statement shall accompany or**
 39 **be incorporated into the next succeeding property tax statement that is sent under ORS**
 40 **311.250, except that if the local land use requirement takes effect on or after October 1 of**
 41 **the property tax year, the compensation and conservation tax statement shall accompany**
 42 **or be incorporated into the property tax statement for the following property tax year.**

43 **SECTION 30. (1) A property owner, or other person, undertaking to pay compensation**
 44 **and conservation taxes assessed under section 29 of this 2005 Act shall pay the tax collector**
 45 **of the county in which the assessed property is located the amount of tax assessed and billed**

1 under section 29 of this 2005 Act at the same time and in the same manner as other property
 2 taxes set forth on the property tax statement are collected.

3 (2) Payments received by the tax collector under this section must be deposited as de-
 4 scribed in section 36 of this 2005 Act.

5 **SECTION 31.** (1) The county assessor’s determination under section 29 of this 2005 Act
 6 of the fair market value of land affected by the adoption of a local land use requirement may
 7 be appealed to the board of property tax appeals of the county in which the affected property
 8 is located.

9 (2) The appeal may be made to that session of the board at which appeals of real market
 10 or assessed values set forth on the property tax statement containing the compensation and
 11 conservation tax statement may be made.

12 (3) Except as otherwise provided in this section, an appeal to the board must be made in
 13 the manner in which appeals are brought under ORS 309.100, and may thereafter be appealed
 14 to the Oregon Tax Court in the manner in which other board of property tax appeals orders
 15 are appealed to the tax court.

16 (4) The assessor’s determination of fair market value under section 29 of this 2005 Act
 17 may be changed by order of the board or court only if the resulting net fair market value
 18 differs from the assessor’s determination of net fair market value under section 29 of this
 19 2005 Act by at least 10 percent.

20 **SECTION 32.** As used in sections 32 to 35 of this 2005 Act:

21 (1) “Exception value” means the real market value of the property as of the assessment
 22 date for a tax year in which one or more events described in section 33 of this 2005 Act are
 23 first taken into account for ad valorem property tax purposes minus the real market value
 24 of that property for the preceding tax year.

25 (2) “Real market value” has the meaning given that term in ORS 308.205.

26 **SECTION 33.** A compensation and conservation tax under sections 32 to 35 of this 2005
 27 Act shall be imposed for any tax year in which, as of the assessment date:

- 28 (1) The property constitutes new property or new improvements;
- 29 (2) The property is partitioned or subdivided;
- 30 (3) The property is rezoned and used consistently with the rezoning;
- 31 (4) The property is omitted property; or
- 32 (5) The property is disqualified from exemption, partial exemption or special assessment.

33 **SECTION 34.** If the exception value for a tax year is a positive number, a compensation
 34 and conservation tax shall be imposed on the exception value, at a rate of \$5 per \$1,000 of
 35 exception value.

36 **SECTION 35.** (1) A compensation and conservation tax imposed under section 34 of this
 37 2005 Act shall be extended on the assessment and tax roll for the tax year for which the tax
 38 is imposed, to be collected at the same time and in the same manner as other property taxes.

39 (2) Payments received by the tax collector under this section shall be deposited in the
 40 compensation and conservation tax account described in section 36 of this 2005 Act.

41 (3) A property owner or other person undertaking to pay the compensation and conser-
 42 vation tax may appeal:

- 43 (a) Exception value to the board of property tax appeals for the county in which the
- 44 property is located in the time and manner in which real market value is appealed to the
- 45 board of property tax appeals; and

1 (b) Any other matter related to the tax to the Oregon Tax Court under ORS 305.275.

2 **SECTION 36.** (1) The county tax collector shall deposit compensation and conservation
3 tax payments collected under sections 29 to 31 or 32 to 35 of this 2005 Act in a segregated
4 account in the county treasury that is called the compensation and conservation tax ac-
5 count. The county treasurer shall pay all refunds of compensation and conservation taxes
6 imposed under sections 29 to 31 or 32 to 35 of this 2005 Act from the account.

7 (2) On or before the 15th day following the completion of a calendar quarter, the county
8 treasurer shall transfer the balance of the account as of the last day of the calendar quarter
9 to the Department of Revenue.

10 (3) The department shall deposit all moneys transferred to the department pursuant to
11 subsection (2) of this section into the Compensation and Conservation Fund established un-
12 der section 23 of this 2005 Act.

13 **SECTION 37.** ORS 92.095 is amended to read:

14 92.095. (1) *[No subdivision or partition plat shall]* A subdivision or partition plat may not be
15 recorded unless:

16 (a) All ad valorem taxes, including additional taxes, interest and penalties imposed on land
17 disqualified for any special assessment and all special assessments, fees, or other charges required
18 by law to be placed upon the tax roll have been paid *[which]* **that** have become a lien upon the land
19 or *[which]* **that** will become a lien during the tax year; **and**

20 (b) **The compensation and conservation tax has been paid as provided in sections 29 to**
21 **31 or 32 to 35 of this 2005 Act and a certified receipt evidencing payment has been issued by**
22 **the county tax collector.**

23 (2) After July 1, and before the certification under ORS 311.105 of any year, the subdivider or
24 partitioner shall:

25 (a) If the exact amount of taxes, penalties, special assessments, fees and charges are able to be
26 computed by the assessor, pay *[such]* **the** amount to the tax collector. The assessor is authorized to
27 levy and the tax collector is authorized to collect *[such]* **the** amount.

28 (b) If the assessor is unable to compute *[such]* **the** amount at such time, either (A) pay the
29 amount estimated by the assessor to be needed to pay the taxes, penalties, special assessments, fees
30 and other charges to become due, or (B) deposit with the tax collector a bond or irrevocable letter
31 of credit with a good and sufficient undertaking in *[such]* **an** amount as the assessor considers ade-
32 quate to *[insure]* **ensure** payment of the taxes to become due. In no event shall the bond or irrev-
33 ovable letter of credit amount exceed twice the amount of the previous year's taxes, special
34 assessments, fees and other charges upon *[such]* **the** land.

35 (3) Taxes paid or for which security is given under subsection (2)(a) or (b) of this section shall
36 be entitled to the discount provided by ORS 311.505.

37 (4) ORS 311.370 shall apply to all taxes levied and collected under subsection (2) of this section,
38 except that any deficiency shall constitute a personal debt against the person subdividing or parti-
39 tioning the land and not a lien against the land, and shall be collected as provided by law for the
40 collection of personal property taxes.

41 (5) If a subdivision or partition plat is recorded, any additional taxes, interest or penalties im-
42 posed upon land disqualified for any special assessment shall become a lien upon the land on the
43 day before the plat was recorded.

44 **SECTION 38.** ORS 92.120 is amended to read:

45 92.120. (1) The plat of a subdivision described in ORS 92.050 when made and approved as re-

1 quired, and offered for record in the records of the county where the described land is situated,
2 shall, upon the payment of the fees provided by law, be recorded by the county recording officer.
3 The fact of recording and the date thereof shall be entered thereon, and it shall then be indexed in
4 the deed records by owner name and subdivision.

5 (2) The partition plat described in ORS 92.050, when made and approved as required and offered
6 for record in the records of the county where the described land is situated, shall, upon the payment
7 of the fees provided by law, be recorded by the county recording officer. The fact of recording and
8 the date thereof shall be entered thereon, and it shall then be indexed by owner name and plat type
9 or plat name. Partition plats shall be numbered by year and sequentially and be recorded in deed
10 records.

11 (3) At the time of recording such subdivision plat or partition plat, the person offering it for
12 recording shall also file with the county surveyor and with the county recording officer, if requested
13 by the county recording officer, an exact copy thereof, made on material that has such character-
14 istics of strength and permanency as may be required by the county surveyor. The surveyor who
15 made the subdivision or partition plat shall certify that the photocopy or tracing is an exact copy
16 of the subdivision or partition plat. The copy filed with the county recording officer shall be certi-
17 fied by that officer to be an exact copy. The subdivider shall provide without cost the number of
18 prints from such copy as may be required by the governing body of the county.

19 (4) For the purpose of preserving the record of subdivision or town plats or partition plats, any
20 such plats may be microfilmed or stored for safekeeping without folding or cutting. All such records
21 shall be created and stored in accordance with all applicable rules and regulations and in such a
22 manner as to ensure the permanent preservation of the record.

23 **(5) A subdivision or partition plat may not be recorded under this section unless the**
24 **compensation and conservation tax has been paid as provided in sections 29 to 31 or 32 to**
25 **35 of this 2005 Act and a certified receipt evidencing payment has been issued by the county**
26 **tax collector.**

27 **SECTION 39.** ORS 92.843 is amended to read:

28 92.843. (1) A declaration made pursuant to ORS 92.845, or an amendment to the declaration, may
29 not be recorded unless first approved by the tax collector for the county where the property is lo-
30 cated and the Real Estate Commissioner.

31 (2) A tax collector shall approve a declaration or amendment submitted under this section if:

32 (a) All ad valorem taxes, **compensation and conservation taxes**, special assessments, fees and
33 other charges required by law to be placed on the tax roll that are or will become a lien on the
34 property during the tax year have been paid as required by ORS 92.095; and

35 (b) Any additional taxes or penalties, and interest on taxes or penalties, resulting from a dis-
36 qualification of the property from special assessment have been paid.

37 (3) The commissioner shall approve a declaration or amendment submitted under this section if:

38 (a) The declaration or amendment complies with ORS 92.835, 92.845 and 94.580; and

39 (b) The plat executed by the declarant is in conformance with ORS 92.835 (2).

40 (4) The commissioner's approval of a declaration or amendment under this section expires after
41 two years if the declaration or amendment has not been recorded. The commissioner shall specify
42 the expiration date when approving the declaration or amendment. A declaration or amendment may
43 not be reapproved after an approval expires unless the declaration or amendment is resubmitted and
44 new determinations are made under subsections (2) and (3) of this section.

45 **SECTION 40.** ORS 100.110 is amended to read:

1 100.110. (1) Before a declaration, supplemental declaration or an amendment thereto may be re-
2 corded, it must be approved as provided in this section by the county assessor and the Real Estate
3 Commissioner. Before a declaration or supplemental declaration may be recorded, it must be ap-
4 proved by the tax collector of the county in which the property is located. A declaration or
5 amendment thereto may not be approved unless the requirements of subsections (2) to (6) of this
6 section are met. Approval shall be evidenced by execution of the declaration or amendment or by
7 a written approval attached thereto.

8 (2) The county assessor of the county in which the property is located shall approve a declara-
9 tion, supplemental declaration or amendment thereto if:

10 (a) The name complies with ORS 100.105 (5) and (6); and

11 (b) The plat and floor plans comply with the requirements of ORS 100.115.

12 (3) The tax collector of the county in which the property is located shall approve the declaration
13 or supplemental declaration, or an amendment that adds property to the condominium or changes
14 the boundary of a unit for which a plat is required under ORS 100.115 (9)(a), if:

15 (a) All ad valorem taxes, **compensation and conservation taxes**, special assessments, fees, or
16 other charges required by law to be placed upon the tax roll *[which]* **that** have or will become a lien
17 upon the property during the tax year have been paid;

18 (b) Advance payment of ad valorem taxes, special assessments, fees or other charges which are
19 not on the tax roll and for which payment is required under paragraph (a) of this subsection has
20 been made to the tax collector utilizing the procedures contained in ORS 92.095 and 311.370; and

21 (c) The additional taxes, penalty, and any interest attributable thereto, required because of dis-
22 qualification of the property from any special assessment have been paid.

23 (4) Subject to subsection (5) of this section, the commissioner shall approve the declaration or
24 amendment thereto if:

25 (a) The declaration or the amendment thereto complies with the requirements of ORS 100.105
26 and 100.135;

27 (b) The bylaws adopted under ORS 100.410 comply with the requirements of ORS 100.410 and
28 100.415;

29 (c) The plat and floor plans comply with the requirements of ORS 100.115;

30 (d) The declaration is for a conversion condominium and the declarant has submitted:

31 (A) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and
32 that the notice period has expired;

33 (B) An affidavit that the notice of conversion was given in accordance with ORS 100.305 and
34 copies of the written consent of any tenants who received the notice of conversion before expiration
35 of the notice; or

36 (C) Any applicable combination of the requirements of subparagraphs (A) and (B) of this para-
37 graph; and

38 (e) A paper copy of the plat executed by the declarant and prepared in conformance with ORS
39 100.115 and a certification of plat execution, on a form prescribed and furnished by the commis-
40 sioner, have been submitted stating that the paper copy is a true copy of the plat signed by the
41 declarant. The certification may be executed by the declarant, the professional land surveyor who
42 signed the surveyor's certificate on the plat, the attorney for the declarant, a representative of the
43 title insurance company that issued the information required under ORS 100.640 (5) or 100.660 (2)(d)
44 or another person authorized by the declarant in writing to execute the certification.

45 (5) Approval by the commissioner shall not be required for an amendment to a declaration

1 transferring the right of use of a limited common element pursuant to ORS 100.515 (5).

2 (6) Before the commissioner approves the declaration or amendment thereto under this section:

3 (a) The declarant shall pay to the commissioner a fee determined by the commissioner under
4 ORS 100.670; and

5 (b) For an amendment, the Condominium Information Report and the Annual Report described
6 in ORS 100.260 shall be designated current by the Real Estate Agency as provided in ORS 100.255
7 and the fee required under ORS 100.670 shall be paid.

8 (7) If the declaration or amendment thereto approved by the commissioner under subsection (4)
9 of this section is not recorded in accordance with ORS 100.115 within two years from the date of
10 approval by the commissioner, the approval shall automatically expire and the declaration or
11 amendment thereto must be resubmitted for approval in accordance with this section. The commis-
12 sioner's approval shall set forth the date on which the approval will expire.

13 **SECTION 41. This 2005 Act takes effect on the effective date of an amendment or re-**
14 **vision to the Oregon Constitution by _____ Joint Resolution _____ (2005) (LC _____)**
15 **to exempt:**

16 (1) **Compensation and conservation taxes from the limitations of section 11b, Article XI**
17 **of the Oregon Constitution; and**

18 (2) **The property taxes imposed under section 5 of this 2005 Act from the limitations im-**
19 **posed under sections 11 and 11b, Article XI of the Oregon Constitution.**

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