

SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 1037

By COMMITTEE ON RULES

July 5

1 On page 1 of the printed A-engrossed bill, line 2, after “197.825” delete the rest of the line and
2 lines 3 through 5 and insert “and 674.310 and chapter 1, Oregon Laws 2005; and declaring an
3 emergency.”.

4 Delete lines 7 through 23 and delete pages 2 through 38 and insert:

“BALLOT MEASURE 37 (2004)

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8 “**SECTION 1.** Chapter 1, Oregon Laws 2005, is amended to read:

9 “**SECTION 1.** The following provisions are added to and made a part of ORS chapter 197[:].

10 “**SECTION 2.** (1) If a public entity enacts or enforces a new land use regulation or enforces a
11 land use regulation enacted prior to [*the effective date of this amendment*] **December 2, 2004**, that
12 restricts the use of private real property or **of** any interest therein and has the effect of reducing
13 the fair market value of the property[,] or **of** any interest therein, then the owner of the property
14 shall be paid just compensation.

15 “(2) Just compensation [*shall be*] **is** equal to the reduction in the fair market value of the af-
16 fected property interest resulting from enactment or enforcement of the land use regulation as of
17 the date the owner makes written demand for compensation under this [*act*] **section**.

18 “(3) Subsection (1) of this [*act shall*] **section does** not apply to land use regulations:

19 “[*(A)*] **(a)** Restricting or prohibiting activities commonly and historically recognized as public
20 nuisances under common law. This subsection shall be construed narrowly in favor of a finding of
21 compensation under this [*act*] **section**;

22 “[*(B)*] **(b)** Restricting or prohibiting activities for the protection of public health and safety, such
23 as fire and building codes, health and sanitation regulations, solid or hazardous waste
24 regulations[,] and pollution control regulations;

25 “[*(C)*] **(c)** To the extent the land use regulation is required to comply with federal law;

26 “[*(D)*] **(d)** Restricting or prohibiting the use of a property for the purpose of selling pornography
27 or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter
28 rights provided by the Oregon or United States [*Constitutions*] **Constitution**; [*or*]

29 “[*(E)*] **(e)** Enacted [*prior to*] **before** the date of acquisition of the property by the owner or [*a*
30 *family member of the owner who owned the subject property prior to acquisition or inheritance by the*
31 *owner*], **if the property has been in continuous ownership by the owner and a family member,**
32 **before the date of acquisition by the first family member to own the property**, whichever oc-
33 curred first; **or**

34 “**(f) That apply to coastal shorelands west of the Oregon Coast Highway, as described in**
35 **ORS 366.235 (1975 Edition), and estuaries, beaches or dunes, as defined by the Land Conser-**

1 **vation and Development Commission as of the effective date of this 2005 Act.**

2 “(4) Just compensation under subsection (1) of this [*act shall be*] **section is** due the owner of the
3 property if the land use regulation continues to be enforced against the property 180 days after the
4 owner of the property makes written demand for compensation under this section to the public en-
5 tity enacting or enforcing the land use regulation.

6 “[*(5) For claims arising from land use regulations enacted prior to the effective date of this act,*
7 *written demand for compensation under subsection (4) shall be made within two years of the effective*
8 *date of this act, or the date the public entity applies the land use regulation as an approval criteria to*
9 *an application submitted by the owner of the property, whichever is later. For claims arising from land*
10 *use regulations enacted after the effective date of this act, written demand for compensation under*
11 *subsection (4) shall be made within two years of the enactment of the land use regulation, or the date*
12 *the owner of the property submits a land use application in which the land use regulation is an ap-*
13 *proval criteria, whichever is later.*]

14 “(5)(a) **This section applies only to claims for compensation that were filed with a public**
15 **entity before the effective date of this 2005 Act unless:**

16 “(A) **The public entity has issued a final decision on the claim; or**

17 “(B) **The 180-day period referred to in subsection (6) of this section has passed.**

18 “(b) **Claims filed on or after the effective date of this 2005 Act are deemed withdrawn.**

19 “(c) **A person who filed a claim before the effective date of this 2005 Act may withdraw**
20 **the claim within 60 days after the effective date of this 2005 Act without regard to whether**
21 **a public entity has issued a final decision on the claim. A person who withdraws a claim or**
22 **whose claim is deemed withdrawn pursuant to this subsection may file a new claim under**
23 **sections 2 to 6 of this 2005 Act without paying an additional fee for reviewing the refiled de-**
24 **mand.**

25 “(6)(a) If a land use regulation continues to apply to the subject property more than 180 days
26 after the present owner of the property has made written demand for compensation under this [*act*]
27 **section**, the present owner of the property[,] or of any interest therein[, *shall have*] **has** a cause of
28 action for compensation under this [*act*] **section** in the circuit court **for the county** in which the
29 real property is located[, *and the present owner of the real property shall be entitled to reasonable*
30 *attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the*
31 *compensation*].

32 “(b) **A person who is adversely affected by a final decision of a public entity under this**
33 **section has a cause of action in the circuit court for the county in which the real property**
34 **is located.**

35 “(c) **The circuit court has exclusive jurisdiction over a cause of action brought under this**
36 **section. A cause of action under paragraph (a) or (b) of this subsection must be tried to the**
37 **judge and must proceed as a declaratory judgment action under ORS chapter 28. An appeal**
38 **of a judgment of the circuit court proceeds as an appeal of a civil matter under ORS chapter**
39 **19.**

40 “(7) A metropolitan service district, city, [*or*] county[,] or state agency may adopt or apply pro-
41 cedures for the processing of claims under this [*act*] **section**, but in no event shall these procedures
42 act as a prerequisite to the filing of a compensation claim under subsection (6) of this [*act*]
43 **section**, nor shall the failure of an owner of property to file an application for a land use permit
44 with the local government serve as grounds for dismissal, abatement[,], or delay of a compensation
45 claim under subsection (6) of this [*act*] **section.**

1 “(8) Notwithstanding any other state statute or the availability of funds under subsection (10)
2 of this *[act]* **section**, in lieu of payment of just compensation under this *[act]* **section**, the *[governing*
3 *body]* **public entity** responsible for enacting the land use regulation may modify, remove[,] or not
4 *[to]* apply the land use regulation or land use regulations to allow the owner to use the property for
5 a use permitted *[at the time]* **when** the owner acquired the property **as follows:**

6 “(a) **If a valid claim for compensation is based on a state statute, the state agency that**
7 **administers the statute may decide not to apply the statute that is a basis for the claim to**
8 **the property.**

9 “(b) **If a valid claim for compensation is based on a state statute that is not administered**
10 **by a state agency, the Oregon Department of Administrative Services may decide not to ap-**
11 **ply the statute that is a basis for the claim to the property.**

12 “(9) A decision by a *[governing body]* **public entity** under this *[act shall]* **section** is not *[be*
13 *considered]* a land use decision as defined in ORS 197.015 *[(10)]*.

14 “(10) Claims made under this section *[shall]* **must** be paid from funds, if any, specifically allo-
15 cated by the *[legislature]* **Legislative Assembly**, city, county[,] or metropolitan service district for
16 payment of claims under this *[act]* **section**. Notwithstanding the availability of funds under this
17 subsection, a metropolitan service district, city, county[,] or state agency shall have discretion to
18 use available funds to pay claims or to modify, remove[,] or not apply a land use regulation or land
19 use regulations pursuant to subsection *[(6)]* **(8)** of this *[act]* **section**. If a claim has not been paid
20 within two years from the date *[on which it accrues]* **of a judgment of the circuit court awarding**
21 **compensation that is subject to no further appeal**, the owner *[shall be]* **is** allowed to use the
22 property as permitted at the time the owner acquired the property.

23 “(11) *[Definitions - for purposes of]* **As used in** this section:

24 “[*(A)*] **(a)** ‘Family member’ *[shall include]* **includes** the wife, husband, son, daughter, mother, fa-
25 ther, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-
26 in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner
27 of the property, an estate of any of the foregoing family members[,] or a legal entity owned by any
28 one or combination of these family members or the owner of the property.

29 “[*(B)*] **(b)** ‘Land use regulation’ *[shall include]* **includes:**

30 “[*(i)*] **(A)** Any statute regulating the use of land or **of** any interest therein;

31 “[*(ii)*] **(B)** Administrative rules and goals of the Land Conservation and Development Commis-
32 sion;

33 “[*(iii)*] **(C)** Local government comprehensive plans, zoning ordinances, land division
34 ordinances[,] and transportation ordinances;

35 “[*(iv)*] **(D)** Metropolitan service district regional framework plans, functional plans, planning
36 goals and objectives; and

37 “[*(v)*] **(E)** Statutes and administrative rules regulating farming and forest practices.

38 “[*(C)*] **(c)** ‘Owner’ is the present owner of the property[,] or **of** any interest therein.

39 “[*(D)*] **(d)** ‘Public entity’ *[shall include]* **includes** the state, a metropolitan service district, a
40 city[, or] **and** a county.

41 “(12) The remedy created by this *[act]* **section** is in addition to any other remedy under the
42 Oregon or United States *[Constitutions]* **Constitution**, and is not intended to modify or replace any
43 other remedy.

44 “(13) If any portion or portions of this *[act]* **section** are declared invalid by a court of competent
45 jurisdiction, the remaining portions of this *[act]* **section** shall remain in full force and effect.

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3 **“DEFINITIONS**

4 **“SECTION 2. As used in sections 2 to 11 of this 2005 Act:**

5 **“(1) ‘Family member’ means:**

6 **“(a) The wife, husband, son, daughter, mother, father, brother, brother-in-law, sister,**
7 **sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece,**
8 **nephew, stepparent, stepchild, grandparent or grandchild of the owner;**

9 **“(b) An estate of a family member described in paragraph (a) of this subsection;**

10 **“(c) A business entity wholly owned by a family member described in paragraph (a) of**
11 **this subsection; or**

12 **“(d) A business entity wholly owned by the owner.**

13 **“(2) ‘Land use regulation’ means:**

14 **“(a) A zoning ordinance, land division ordinance or transportation ordinance;**

15 **“(b) A comprehensive plan as defined in ORS 197.015;**

16 **“(c) The Metro regional framework plan as defined in ORS 197.015;**

17 **“(d) Metro planning goals and objectives as defined in ORS 197.015;**

18 **“(e) A functional plan of a metropolitan service district;**

19 **“(f) A statewide land use planning goal or administrative rule adopted by the Land Con-**
20 **servation and Development Commission;**

21 **“(g) A statute that establishes a minimum lot or parcel size;**

22 **“(h) Provisions in ORS 227.030 to 227.300, 227.350, 227.400, 227.450 and 227.500 and ORS**
23 **chapters 215 and 268 restricting the use of property;**

24 **“(i) Provisions in ORS 527.610 to 527.770, 527.990 and 527.992 restricting the use of prop-**
25 **erty and administrative rules of the State Board of Forestry implementing those provisions;**
26 **and**

27 **“(j) Provisions in ORS 568.900 to 568.933 restricting the use of property and administra-**
28 **tive rules of the State Department of Agriculture implementing those provisions.**

29 **“(3) ‘Lot’ has the meaning given the term in ORS 92.010.**

30 **“(4) ‘Owner’ means the current legal owner or owners of fee title of record to property**
31 **or, if a land sale contract is in force and is either notarized or of record, the purchaser or**
32 **purchasers of fee title to property under the contract.**

33 **“(5) ‘Parcel’ has the meaning given the term in ORS 92.010.**

34 **“(6) ‘Partition’ has the meaning given the term in ORS 92.010.**

35 **“(7) ‘Property’ means private real property that is the subject of a claim.**

36 **“(8) ‘Public entity’ means the state government, as defined in ORS 174.111, a metropol-**
37 **itan service district, a city or a county.**

38 **“(9) ‘Subdivision’ has the meaning given the term in ORS 92.010.**

39 **“(10) ‘Tract’ has the meaning given the term in ORS 215.010.**

40 **“(11) ‘Waive’ or ‘waiver’ means a decision by a public entity to:**

41 **“(a) Not apply a land use regulation to the use of the property to the extent necessary**
42 **to allow the owner to use the property for a use permitted when the owner acquired the**
43 **property; or**

44 **“(b) Modify the manner in which a land use regulation applies to the use of the property**
45 **to the extent necessary to allow the owner to use the property for a use permitted when the**
owner acquired the property.

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3 **“MEASURE 37 CLAIM**

4 **“SECTION 3. (1) Subject to subsection (3) of this section and section 4 (7) and (8) of this**
5 **2005 Act, an owner may make a claim against a public entity that:**

6 **“(a) Enacts a land use regulation on or after the effective date of this 2005 Act if the land**
7 **use regulation:**

8 **“(A) Restricts the use of property;**

9 **“(B) Reduces the fair market value of the property; and**

10 **“(C) Is not exempted by subsection (2) of this section; or**

11 **“(b) Enacted a land use regulation before the effective date of this 2005 Act if the land**
12 **use regulation:**

13 **“(A) Restricts the use of property;**

14 **“(B) Reduces the fair market value of the property; and**

15 **“(C) Is not exempted by subsection (2) of this section.**

16 **“(2) Subsection (1) of this section does not apply to land use regulations that:**

17 **“(a) Restrict or prohibit the use of property for the purpose of preventing or abating**
18 **activities commonly and historically recognized as a public nuisance under common law.**
19 **This paragraph must be construed narrowly in favor of a finding of compensation under this**
20 **section.**

21 **“(b) Restrict or prohibit the use of property for the purpose of protecting public health**
22 **or safety, including but not limited to fire codes, building codes, flood plain regulations,**
23 **erosion or landslide protection regulations, health or sanitation regulations, solid or hazard-**
24 **ous waste regulations and pollution control regulations.**

25 **“(c) Are required for the purpose of complying with federal law, a permit issued pursuant**
26 **to federal law or a consent decree based on federal law if entered by a court before the ef-**
27 **fective date of this 2005 Act.**

28 **“(d) Restrict or prohibit the use of property for the purpose of selling pornography or**
29 **performing nude dancing. Nothing in this paragraph affects or alters rights provided by the**
30 **Oregon or United States Constitution.**

31 **“(e) Are enacted before the date of acquisition of the property by the owner or, if the**
32 **owner and a family member have owned the property continuously, before the date of ac-**
33 **quisition by the first family member.**

34 **“(f) Apply to coastal shorelands west of the Oregon Coast Highway, as described in ORS**
35 **366.235 (1975 Edition), and estuaries, beaches or dunes, as defined by the Land Conservation**
36 **and Development Commission as of the effective date of this 2005 Act.**

37 **“(3) To make a claim under this section, an owner must file the claim:**

38 **“(a) If the claim is based on subsection (1)(a) of this section, within five years after the**
39 **date the land use regulation is enacted or within 21 days after the date of a land use decision**
40 **in which the regulation is used as an approval criterion, whichever is earlier. If an owner**
41 **files a claim following the issuance of the land use decision and a timely notice of intent to**
42 **appeal is filed pursuant to ORS 197.830, the Land Use Board of Appeals shall stay the filing**
43 **of the record and briefing until:**

44 **“(A) The claim is fully and finally resolved; or**

45 **“(B) The claim is withdrawn and the claimant notifies the board that it wants to proceed**
with the appeal.

1 **“(5) Except as provided in subsection (12) of this section, a public entity shall issue a final**
2 **decision on a claim filed under this section within 180 days after receiving a complete claim**
3 **as described in this section. If the decision is not issued within the time allowed by this**
4 **subsection, the claim is deemed denied.**

5 **“(6) If the claim is made against the state, the claim must be filed with the Oregon De-**
6 **partment of Administrative Services. If the claim is made against a city, county or metro-**
7 **politan service district, the claim must be filed with the chief administrative officer of the**
8 **city, county or district, or with an individual designated by ordinance, resolution or order**
9 **of the city, county or district.**

10 **“(7) A claim must be in writing and must include:**

11 **“(a) The name and address of each owner;**

12 **“(b) The address, if any, and tax lot number of the property;**

13 **“(c) For each owner, evidence of ownership of the property;**

14 **“(d) Evidence of the date each owner acquired the property;**

15 **“(e) If the claim is based on family relationship, evidence that the property has been**
16 **owned continuously by a family member as required by section 5 (6) of this 2005 Act;**

17 **“(f)(A) A list or description of the land use regulations that the owner claims restrict the**
18 **use of the property that is adequate to allow the public entity to identify the specific regu-**
19 **lations that are the basis for the claim; or**

20 **“(B) A description of the specific use of the property that the owner intends to carry out**
21 **but cannot because of a land use regulation enacted by the public entity to which the claim**
22 **is submitted;**

23 **“(g) For each land use regulation identified in paragraph (f) of this subsection, a de-**
24 **scription of the manner in which the land use regulation restricts the use of the property**
25 **and a description of the uses allowed when each owner or the relevant family member of**
26 **each owner acquired the property;**

27 **“(h) Evidence that the land use regulations identified in paragraph (f) of this subsection**
28 **have reduced the fair market value of the property, which may include a statement of re-**
29 **duction in fair market value prepared in a manner consistent with the rules of the Oregon**
30 **Department of Administrative Services and the Appraiser Certification and Licensure Board;**
31 **and**

32 **“(i) A description of the specific use of the property that the owner intends to carry out**
33 **if the public entity elects to waive a land use regulation in lieu of paying compensation. The**
34 **description required by this paragraph need not include engineering, survey or final design**
35 **information.**

36 **“(8) In addition to complying with the requirements of subsection (7) of this section, a**
37 **claim must include the fee, if any, imposed by the public entity pursuant to subsection (3)**
38 **of this section.**

39 **“(9) The public entity shall review a claim filed under this section to determine whether**
40 **the claim complies with subsections (7) and (8) of this section. If the claim is incomplete, the**
41 **public entity shall notify the owner in writing of the information or fee that is missing within**
42 **30 days after receiving the claim and allow the owner to submit the missing information or**
43 **fee. The claim is complete when the public entity receives the fee required by subsection (8)**
44 **of this section and:**

45 **“(a) The missing information;**

1 “(b) Part of the missing information and written notice from the owner that the re-
2 mainder of the missing information will not be provided; or

3 “(c) Written notice from the owner that none of the missing information will be provided.

4 “(10) If a public entity does not notify an owner within 30 days after receiving a claim
5 that information or the fee is missing from the claim, the claim is complete when the claim
6 is received.

7 “(11) A claim filed under this section is deemed withdrawn if the public entity gives no-
8 tice to the owner under subsection (9) of this section and the owner does not submit to the
9 public entity, within 180 days after the claim was filed, the fee required by subsection (8) of
10 this section and:

11 “(a) The missing information;

12 “(b) Part of the missing information and written notice that the remainder of the missing
13 information will not be provided; or

14 “(c) Written notice that none of the missing information will be provided.

15 “(12) A public entity may extend the 180-day period described in subsection (5) of this
16 section for specified periods of time at the written request of the owner.

17 “(13) If the owner dies after a claim is filed and before a final decision is made, the estate
18 of the owner may continue the claim in the name of the estate.

19 “SECTION 5. (1) A public entity that receives a complete claim as described in section 4
20 of this 2005 Act shall provide notice of the claim at least 10 days before a public hearing on
21 the claim or, if there will not be a public hearing, at least 15 days before the deadline for
22 submission of written comments to:

23 “(a) All owners of the property;

24 “(b) All persons described in ORS 197.763 (2);

25 “(c) The Oregon Department of Administrative Services, unless the claim was filed with
26 the state government, as defined in ORS 174.111; and

27 “(d) Other public entities that have enacted land use regulations that apply to the prop-
28 erty.

29 “(2) The notice required under subsection (1) of this section must describe the claim and
30 state:

31 “(a) Whether a public hearing will be held on the claim and the date, time and location
32 of the hearing or, if a public hearing will not be held, the location and final date for sub-
33 mission of written evidence and arguments relating to the claim;

34 “(b) That judicial review of the final decision of a public entity on the claim is limited to
35 the evidence and arguments submitted to the public entity; and

36 “(c) That judicial review is available only for issues that are raised with sufficient
37 specificity to afford the public entity an opportunity to respond.

38 “(3) Except as provided in subsection (4) of this section, evidence and arguments in pro-
39 ceedings on the claim must be submitted to the public entity not later than:

40 “(a) The close of the final public hearing on the claim; or

41 “(b) If a public hearing is not held, a date that is specified by the public entity in the
42 notice given under subsection (1) of this section.

43 “(4) The owner who filed the claim may request additional time to submit written evi-
44 dence or arguments. The request must be made before the close of the final public hearing
45 on the claim or before the final date established for submission of evidence and arguments.

1 If a public entity allows the owner additional time to submit evidence and arguments, the
2 public entity shall allow members of the public the same period of time to submit additional
3 written evidence and arguments. If a member of the public submits additional evidence or
4 arguments during this time, the public entity shall give the owner a final period of 14 addi-
5 tional calendar days in which to submit additional evidence or arguments. Additional time
6 provided under this subsection tolls the 180-day period described in section 4 (5) of this 2005
7 Act.

8 “(5) A public entity shall make the record on review of a claim, including any staff re-
9 ports, available to the public before the close of the record as described in subsection (3) or
10 (4) of this section.

11 “(6) A public entity may approve a claim under sections 2 to 6 of this 2005 Act only if:

12 “(a) The claim complies with section 4 (7) and (8);

13 “(b) A land use regulation specified in the claim imposes a restriction on the owner’s use
14 of the property that did not exist:

15 “(A) When the owner acquired the property; or

16 “(B) If the relief granted is compensation and the owner or a family member has owned
17 the property continuously, when the owner or a family member first acquired the property;

18 “(c) The restriction on the owner’s use of the property caused by the land use regulation
19 reduces the fair market value of the property; and

20 “(d) The land use regulation is not exempt under section 3 (2) of this 2005 Act.

21 “(7) For the purpose of determining that the use referenced in section 4 (7)(i) of this 2005
22 Act was permitted, the public entity shall apply the relevant land use regulations that gov-
23 erned the property when the owner acquired the property.

24 “(8) The decision to waive a land use regulation must specify the use of the property for
25 which the regulation is waived, subject to compliance with land use regulations that have
26 not been waived.

27 “(9) A public entity shall mail a copy of the final decision to the owner who filed the claim
28 and to the persons who submitted evidence or arguments before the close of the record. The
29 public entity shall record the memorandum of a final decision or a copy of the memorandum
30 that approves a claim in the deed records of the county in which the property is located. A
31 waiver becomes effective when the memorandum of a final decision or a copy of the memo-
32 randum is recorded.

33 “SECTION 6. (1) An owner may submit a land use application to a city or a county at the
34 same time the owner files a claim. The filing and review of the claim must comply with the
35 requirements of sections 4 and 5 of this 2005 Act. Submission and review of the land use
36 application must comply with the applicable laws.

37 “(2) A city or county may elect to exclude the time required to make a final decision on
38 the claim filed under this section from the 120-day or 150-day time limitation for taking final
39 action under ORS 215.427 or 227.178.

40 “(3) If the city or county elects to waive a land use regulation in lieu of paying compen-
41 sation when an owner submits a land use application and files a claim under this section, the
42 land use application must be approved or denied based on the waiver and land use regulations
43 that have not been waived. Notwithstanding section 7 of this 2005 Act:

44 “(a) A final decision to waive a land use regulation under this section is not subject to
45 judicial review until the city or county takes final action on the land use application; and

1 is final. The respondent's brief and the response brief of a person who intervenes in support
2 of the respondent must be filed with the court within 28 days after the date the petitioner's
3 opening brief is filed. The court may allow additional briefing.

4 "(7) Briefs filed under subsection (6) of this section must contain a statement indicating
5 whether the party requests oral argument. If a party requests oral argument, the court shall
6 set the case for argument as soon after the filing of the final brief as practicable. The court
7 must decide the case based on the record before the public entity, the briefing and the oral
8 argument made to the court, without further testimony or evidence.

9 "(8) Except as provided in section 9 (3) to (5) of this 2005 Act, judicial review of a public
10 entity's final decision on a claim under sections 2 to 6 of this 2005 Act is limited to the evi-
11 dence in the record of the public entity. Judicial review is available only for issues that are
12 raised before the public entity with sufficient specificity to afford the public entity an op-
13 portunity to respond.

14 "(9) If two or more petitions are filed under this section for judicial review of final deci-
15 sions issued by public entities that relate to property within a single tract, the court shall
16 consolidate the petitions into a single action when practicable.

17 "SECTION 8. The circuit court shall affirm the final decision of a public entity on a claim
18 filed under sections 2 to 6 of this 2005 Act unless the public entity:

19 "(1) Exceeded the jurisdiction of the public entity;

20 "(2) Failed to follow applicable procedures;

21 "(3) Applied the criteria in section 5 (7) of this 2005 Act to the evidence in the record
22 erroneously;

23 "(4) Improperly construed applicable law; or

24 "(5) Issued a decision that is unconstitutional.

25 "SECTION 9. (1) The circuit court shall issue:

26 "(a) A judgment affirming the final decision of the public entity;

27 "(b) A judgment reversing the final decision of the public entity because the court de-
28 termines that relief is not due under sections 2 to 6 of this 2005 Act; or

29 "(c) A judgment under subsection (3), (4) or (5) of this section after issuing an order re-
30 versing the final decision of the public entity, in whole or in part, that:

31 "(A) Concludes that the public entity erred in determining the amount of compensation,
32 if any, provided for in the final decision of the public entity;

33 "(B) Specifies the land use regulations that the court determines were improperly waived;
34 or

35 "(C) Specifies the land use regulations that the court determines must be waived if the
36 public entity elects to waive in lieu of paying compensation.

37 "(2) An order issued under subsection (1)(c) of this section is appealable only as part of
38 a judgment issued under subsection (3), (4) or (5) of this section.

39 "(3) Within 45 days after entry of an order under subsection (1)(c) of this section, the
40 public entity shall file notice with the court stating whether the public entity intends to pay
41 compensation or waive the land use regulations specified in the order. If the public entity
42 does not file notice under this subsection within 45 days after entry of the order:

43 "(a) The public entity is deemed to have waived the land use regulations specified in the
44 order; and

45 "(b) The circuit court shall enter a judgment accordingly.

1 tract on which the dwelling is allowed into one parcel.

2 “(5) The governing body of a county shall notify the State Department of Agriculture of
3 applications for dwellings that are allowed under this section. Notice must be provided in
4 accordance with the governing body’s land use regulations.

5
6 “MISCELLANEOUS

7
8 “**SECTION 12.** ORS 197.825 is amended to read:

9 “197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the
10 Land Use Board of Appeals [*shall have*] **has** exclusive jurisdiction to review [*any*] **in the manner**
11 **provided in ORS 197.830 to 197.845:**

12 “(a) A land use decision or limited land use decision of a local government, special district or
13 [a] state agency [*in the manner provided in ORS 197.830 to 197.845*]; **or**

14 “(b) **Except as provided in section 6 (5) of this 2005 Act, a final decision of a city or**
15 **county issued under section 6 of this 2005 Act.**

16 “(2) The jurisdiction of the board:

17 “(a) Is limited to those cases in which the petitioner has exhausted all remedies available by
18 right before petitioning the board for review;

19 “(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Ap-
20 peals;

21 “(c) Does not include those matters over which the Department of Land Conservation and De-
22 velopment or the Land Conservation and Development Commission has review authority under ORS
23 197.251, 197.430, 197.445, 197.450, 197.455 and 197.628 to 197.650;

24 “(d) Does not include those land use decisions of a state agency over which the Court of Appeals
25 has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

26 “(e) Does not include any rules, programs, decisions, determinations or activities carried out
27 under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

28 “(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the
29 Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River
30 Gorge National Scenic Area Act, P.L. 99-663; and

31 “(g) Does not include review of expedited land divisions under ORS 197.360.

32 “(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain juris-
33 diction:

34 “(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions
35 described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted
36 comprehensive plan or land use regulations; and

37 “(b) To enforce orders of the board in appropriate proceedings brought by the board or a party
38 to the board proceeding resulting in the order.

39 “**SECTION 13. For purposes of section 2, chapter 1, Oregon Laws 2005 (Ballot Measure**
40 **37 (2004)), the Oregon Department of Administrative Services shall adopt rules for appraisals**
41 **and other evidence of property value to establish whether a land use regulation, as defined**
42 **in section 2 of this 2005 Act, that restricts the use of property, as defined in section 2 of this**
43 **2005 Act, that is subject to a demand for compensation reduces the fair market value of the**
44 **property.**

45 “**SECTION 14.** ORS 674.310 is amended to read:

1 “674.310. (1) The Appraiser Certification and Licensure Board shall:

2 “(a) Have the power to do all things necessary and convenient to carry into effect the provisions
3 of this chapter and the federal Act and to regulate the activities of state licensed appraisers and
4 state certified appraisers to ensure that all real estate appraisals conform to the law in effect on
5 the date of the real estate appraisal activity.

6 “(b) Certify and license appraisers as necessary to carry out the federal Act and the purposes
7 set forth in ORS 674.010.

8 “(c) Supervise the activities of state certified and state licensed appraisers as provided in this
9 chapter, to ensure that they perform all real estate appraisal activity in strict conformance with the
10 provisions of this chapter and of the federal Act, and that they otherwise comply with the provisions
11 of this chapter in the conduct of their professional activities.

12 “(d) Establish, keep current and, no less than annually, transmit to the Appraisal Subcommittee
13 a roster listing state certified appraisers and state licensed appraisers.

14 “(e) Collect and remit annual registry fees as required by ORS 674.330.

15 “(2) All rules adopted by the board to govern real estate appraiser certification and licensure
16 shall conform in all respects with the requirements of the federal Act. The board shall adopt rules
17 including but not limited to:

18 “(a) Establishing programs for the certification and licensure of individuals who engage in real
19 estate appraisal activity.

20 “(b) Establishing educational requirements for certification and licensure of appraisers that en-
21 sure protection of the public interest and comply in all respects with the requirements of the federal
22 Act. Education requirements for state certified appraisers shall specifically meet the minimum cri-
23 teria established by the Appraiser Qualification Board of the Appraisal Foundation.

24 “(c) Establishing a professional code of responsibility for state certified appraisers and state li-
25 censed appraisers that is in conformance with the federal Act.

26 “(d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.

27 “(3) **For purposes of section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)),**
28 **or section 3 of this 2005 Act, the Appraiser Certification and Licensure Board shall adopt**
29 **rules authorizing the preparation and delivery of a statement of reduction in fair market**
30 **value by a state licensed appraiser or state certified appraiser consistent with the rules**
31 **adopted by the Oregon Department of Administrative Services under section 3 (4) or 13 of**
32 **this 2005 Act.**

33 “[3] (4) [No] **An individual [shall] may not** be a state certified appraiser unless the individual
34 has achieved a passing grade upon a suitable examination equivalent to the Uniform Certification
35 Examination issued or indorsed by the Appraisal Qualification Board of the Appraisal Foundation.

36 “[4] (5) The Appraiser Certification and Licensure Board, acting through the administrator,
37 may issue subpoenas to compel the attendance of witnesses and the production of papers, books,
38 records, correspondence, agreements, memoranda and other material or relevant documents in all
39 investigations or proceedings pertaining to the powers and duties of the board.

40 “[5] (6) In the case of a person who refuses to respond to a subpoena issued by the board, the
41 judge of the circuit court, on the application of the board administrator, shall order compliance with
42 the board subpoena in the same manner as a proceeding for contempt for failure to respond to a
43 subpoena of the court.

44 “**SECTION 15. Sections 2 to 11 of this 2005 Act and the amendments to ORS 197.825 and**
45 **674.310 by sections 12 and 14 of this 2005 Act apply to claims filed under sections 2 to 6 of**

1 this 2005 Act on or after the effective date of this 2005 Act.

2 “SECTION 16. The unit captions used in this 2005 Act are provided only for the conven-
3 ience of the reader and do not become part of the statutory law of this state or express any
4 legislative intent in the enactment of this 2005 Act.

5 “SECTION 17. This 2005 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
7 on its passage.”.

8
