

## HOUSE AMENDMENTS TO B-ENGROSSED SENATE BILL 1037

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 25

1 On page 1 of the printed B-engrossed bill, line 2, delete “ORS 197.825 and 674.310 and”.  
2 Delete lines 5 through 25 and delete pages 2 through 15 and insert:

### “BALLOT MEASURE 37 (2004)

3  
4  
5  
6 “**SECTION 1.** Chapter 1, Oregon Laws 2005, is amended to read:

7 “**SECTION 1.** *[The following provisions are]* **Section 2, chapter 1, Oregon Laws 2005, is added**  
8 to and made a part of ORS chapter 197[:].

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

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

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

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

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

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

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

28 “[*(E)*] **(e)** Enacted prior to the date of acquisition of the property by the owner or a family  
29 member of the owner who owned the subject property prior to acquisition or inheritance by the  
30 owner, whichever occurred first.

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

35 “(5) For claims arising from land use regulations enacted prior to *[the effective date of this act,]*

1 **December 2, 2004, the owner of the property shall make a** written demand for compensation  
2 under subsection (4) [*shall be made*] **of this section** within two years of [*the effective date of this*  
3 *act*] **December 2, 2004**, or the date the public entity applies the land use regulation as an approval  
4 [*criteria*] **criterion** to an application submitted by the owner of the property, whichever is later. For  
5 claims arising from land use regulations enacted [*after the effective date of this act,*] **on or after**  
6 **December 2, 2004, the owner of the property shall make a** written demand for compensation  
7 under subsection (4) [*shall be made*] **of this section** within two years of the enactment of the land  
8 use regulation, or the date the owner of the property submits a land use application in which the  
9 land use regulation is an approval [*criteria*] **criterion**, whichever is later.

10 “(6) If a land use regulation continues to apply to the subject property more than 180 days after  
11 the present owner of the property has made written demand for compensation under this [*act*] **sec-**  
12 **tion**, the present owner of the property[,] or **of** any interest therein[, *shall have*] **has** a cause of  
13 action for compensation under this [*act*] **section** in the circuit court **for the county** in which the  
14 real property is located, and the present owner of the real property shall be entitled to reasonable  
15 attorney fees, expenses, costs[,] and other disbursements reasonably incurred to collect the com-  
16 pensation.

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

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

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

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

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

36 “(10) Claims made under this section [*shall*] **must** be paid from funds, if any, specifically allo-  
37 cated by the [*legislature*] **Legislative Assembly**, city, county[,] or metropolitan service district for  
38 payment of claims under this [*act*] **section**. Notwithstanding the availability of funds under this  
39 subsection, a metropolitan service district, city, county[,] or state agency shall have discretion to  
40 use available funds to pay claims or to modify, remove[,] or not apply a land use regulation or land  
41 use regulations pursuant to subsection [(6)] **(8)** of this [*act*] **section**. If a claim has not been paid  
42 within two years from the date on which [*it*] **the claim** accrues, the owner [*shall be*] **is** allowed to  
43 use the property as permitted at the time the owner acquired the property.

44 “(11) **For purposes of subsections (8) and (10) of this section, if property owned by a**  
45 **business entity was conveyed to the business entity by a shareholder, partner or member of**

1 **the business entity, the date of acquisition of the property is the date the property was first**  
2 **acquired by a shareholder, partner or member of the business entity, if the business entity**  
3 **is owned by the shareholder, partner or member who first acquired the property and, if ap-**  
4 **licable, family members of the shareholder, partner or member.**

5 **“(12) The uses granted under subsections (8) and (10) of this section:**

6 **“(a) Are uses allowed outright;**

7 **“(b) Run with the land; and**

8 **“(c) May be transferred freely by the owner or the owner’s successors in interest.**

9 **“[(11)] (13) [Definitions - for purposes of] As used in this section:**

10 **“[(A)] (a) ‘Business entity’ means a corporation, partnership or limited liability company.**

11 **“(b) ‘Family member’ [shall include] includes** the wife, husband, son, daughter, mother, father,  
12 brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law,  
13 aunt, uncle, niece, nephew, stepparent, stepchild, grandparent[,] or grandchild of the owner of the  
14 property, an estate of any of the foregoing family members[,] or a [legal] **business** entity owned by  
15 any one or combination of these family members or the owner of the property.

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

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

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

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

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

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

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

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

28 **“[(12)] (14) The remedy created by this [act] section is in addition to any other remedy under**  
29 **the Oregon or United States [Constitutions] Constitution, and is not intended to modify or replace**  
30 **any other remedy.**

31 **“[(13)] (15) If any portion or portions of this [act] section are declared invalid by a court of**  
32 **competent jurisdiction, the remaining portions of this [act] section shall remain in full force and**  
33 **effect.**

## 34 35 **“CLAIMS PROCESS**

36  
37 **“SECTION 2. (1) An owner who files a claim for compensation under section 2, chapter**  
38 **1, Oregon Laws 2005 (Ballot Measure 37 (2004)), shall file the claim in the manner provided**  
39 **by this section. If the property has more than one owner, the claim must be signed by all**  
40 **owners or the claim must include a signed statement of consent from each owner who does**  
41 **not sign the claim.**

42 **“(2) An owner who files a claim shall file the claim with each public entity that enacted**  
43 **a land use regulation that is a basis for the claim. For each lot or parcel of land owned, an**  
44 **owner may file only one claim with each public entity for all land use regulations enacted**  
45 **by the public entity and in effect when the claim is filed.**

1       “(3) A public entity may impose a fee for the filing of a claim in an amount not to exceed  
2 \$1,000.

3       “(4) An owner may withdraw a claim for compensation at any time before the issuance  
4 of a final decision on the claim or the expiration of the 180-day period described in subsection  
5 (5) of this section, whichever is earlier.

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

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

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

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

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

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

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

20       “(e) If the claim is based on family relationship, evidence that the property has been  
21 owned continuously by a family member as required by section 3 (6) of this 2005 Act;

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

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

28       “(g) For each land use regulation identified in paragraph (f) of this subsection, a de-  
29 scription of the manner in which the land use regulation restricts the use of the property  
30 and a description of the uses allowed when each owner or the relevant family member of  
31 each owner acquired the property if:

32       “(A) The public entity maintains a copy or archive of the land use regulations that were  
33 in effect when the property was acquired or otherwise maintains a record of the date of  
34 enactment and amendment of land use regulations; and

35       “(B) The public entity makes the copy, archive or other record of the date of enactment  
36 and amendment of land use regulations available to the claimant;

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

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

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

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

10       “(a) The missing information;

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

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

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

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

21       “(a) The missing information;

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

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

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

27       “(13) If the owner dies after a claim is filed and before a final decision is made, a suc-  
28 cessor in interest of the owner may continue the claim.

29       “SECTION 3. (1) A public entity that receives a complete claim for compensation as de-  
30 scribed in section 2 of this 2005 Act shall provide notice of the claim at least 10 days before  
31 a public hearing on the claim or, if there will not be a public hearing, at least 15 days before  
32 the deadline for submission of written comments to:

33       “(a) All owners of the property;

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

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

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

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

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

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

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

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

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

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

8       “(4) The owner who filed the claim may request additional time to submit written evi-  
9 dence or arguments. The request must be made before the close of the final public hearing  
10 on the claim or before the final date established for submission of evidence and arguments.  
11 If a public entity allows the owner additional time to submit evidence and arguments, the  
12 public entity shall allow members of the public the same period of time to submit additional  
13 written evidence and arguments. If a member of the public submits additional evidence or  
14 arguments during this time, the public entity shall give the owner a final period of 14 addi-  
15 tional calendar days in which to submit additional evidence or arguments. Additional time  
16 provided under this subsection tolls the 180-day period described in section 2 (5) of this 2005  
17 Act.

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

21       “(6) A public entity may approve a claim under section 2, chapter 1, Oregon Laws 2005  
22 (Ballot Measure 37 (2004)), only if:

23           “(a) The claim complies with section 2 (7) and (8) of this 2005 Act;

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

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

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

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

31           “(d) The land use regulation is not exempt under section 2, chapter 1, Oregon Laws 2005  
32 (Ballot Measure 37 (2004)).

33       “(7) For the purpose of determining that the use referenced in section 2 (7)(i) of this 2005  
34 Act was permitted, the public entity shall apply the relevant land use regulations that gov-  
35 erned the property when the owner acquired the property.

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

39       “(9) A public entity shall mail a copy of the final decision to the owner who filed the claim  
40 and to the persons who submitted evidence or arguments before the close of the record. The  
41 public entity shall record the memorandum of a final decision or a copy of the memorandum  
42 that approves a claim for compensation in the deed records of the county in which the  
43 property is located. A waiver becomes effective when the memorandum of a final decision  
44 or a copy of the memorandum is recorded.

1  
2  
3 **“JUDICIAL REVIEW**

4 **“SECTION 4. (1) The circuit court has exclusive jurisdiction to review a final decision by**  
5 **a public entity on a claim for compensation filed under section 2, chapter 1, Oregon Laws**  
6 **2005 (Ballot Measure 37 (2004)).**

7 **“(2) A person who is adversely affected by a final decision of a public entity under section**  
8 **2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), and who participated in the claim**  
9 **proceedings conducted by the public entity may seek judicial review of the final decision by**  
10 **filing a petition in the circuit court for the county in which the property is located and**  
11 **-serving a copy of the petition on the public entity in the manner provided by ORCP 7. If the**  
12 **petitioner is not the claimant, the petitioner shall name and serve both the public entity and**  
13 **the claimant. The petition must be filed and served within 60 days after a written final de-**  
14 **cision is mailed by the public entity.**

15 **“(3) On the same day the petitioner serves the petition under subsection (2) of this sec-**  
16 **tion, the petitioner shall mail notice of the petition to the persons entitled to receive notice**  
17 **under section 3 (9) of this 2005 Act. A person who is adversely affected by the final decision**  
18 **of a public entity and who participated in the claim proceeding conducted by the public entity**  
19 **may intervene by filing a motion pursuant to ORCP 33 B with the court within 21 days after**  
20 **the date the notice is mailed to the person.**

21 **“(4) A public entity shall file a certified copy of the record with the court within 21 days**  
22 **after the date the public entity is served with a copy of the petition. The record must contain**  
23 **the decision, the application and all other evidence and arguments submitted to the public**  
24 **entity before the close of the hearing or the final date for submission of written evidence and**  
25 **arguments. The court may extend the period for filing the record upon motion by the public**  
26 **entity. Discovery is not allowed.**

27 **“(5) When a public entity files the record with the court under subsection (4) of this**  
28 **section, the public entity shall provide a certified copy of the record to the petitioner and,**  
29 **if the petitioner is not the claimant, to the claimant. The petitioner and, if the petitioner is**  
30 **not the claimant, the claimant may object to the record by motion filed with the court within**  
31 **14 days after receipt of the copy of the record from the public entity. The public entity may**  
32 **file a response to the objection within 14 days after the date the objection is filed with the**  
33 **court. The court may extend the deadlines under this subsection or request additional**  
34 **briefing on the objection. The court shall resolve objections to the record and notify the**  
35 **parties of the date the record is final.**

36 **“(6) The petitioner’s opening brief must be filed with the court within 28 days after the**  
37 **date the record is final. The respondent’s brief and the response brief of a person who in-**  
38 **tervenes in support of the respondent must be filed with the court within 28 days after the**  
39 **date the petitioner’s opening brief is filed. The court may allow additional briefing.**

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

45 **“(8) Except as provided in section 6 (3) to (5) of this 2005 Act, judicial review of a public**  
**entity’s final decision on a claim under section 2, chapter 1, Oregon Laws 2005 (Ballot**

1 Measure 37 (2004)), is limited to the evidence in the record of the public entity. Judicial re-  
2 view is available only for issues that are raised before the public entity with sufficient  
3 specificity to afford the public entity an opportunity to respond.

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

7 “SECTION 5. The circuit court shall affirm the final decision of a public entity on a claim  
8 filed under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), unless the  
9 public entity:

10 “(1) Exceeded the jurisdiction of the public entity;

11 “(2) Failed to follow applicable procedures;

12 “(3) Applied the criteria in section 3 (6) of this 2005 Act to the evidence in the record  
13 erroneously;

14 “(4) Improperly construed applicable law; or

15 “(5) Issued a decision that is unconstitutional.

16 “SECTION 6. (1) The circuit court shall issue:

17 “(a) A judgment affirming the final decision of the public entity;

18 “(b) A judgment reversing the final decision of the public entity because the court de-  
19 termines that relief is not due under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure  
20 37 (2004)); or

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

23 “(A) Concludes that the public entity erred in determining the amount of compensation,  
24 if any, provided for in the final decision of the public entity;

25 “(B) Specifies the land use regulations that the court determines were improperly waived;  
26 or

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

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

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

35 “(a) The public entity is deemed to have waived the land use regulations specified in the  
36 order; and

37 “(b) The court shall enter a judgment accordingly.

38 “(4) Within 90 days after the public entity files notice with the court under subsection  
39 (3) of this section stating that the public entity intends to pay compensation, the public en-  
40 tity shall obtain an appraisal of the reduction in the fair market value of the property and  
41 provide a copy of the appraisal to the owner. If the owner files notice with the court ac-  
42 cepting the appraisal, the court shall enter a judgment accordingly. If the owner files notice  
43 with the court objecting to the appraisal:

44 “(a) The owner shall obtain an appraisal and provide a copy to the public entity within  
45 90 days after the date the owner received the public entity’s appraisal; and

