

C-Engrossed
Senate Bill 1037

Ordered by the House July 25
Including Senate Amendments dated May 26 and July 5 and House
Amendments dated July 25

Sponsored by Senator RINGO, Representative GARRARD

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes claim process and judicial review process for Ballot Measure 37 (2004) claims. [*Authorizes establishment of dwelling on certain lands located in farm zones.*]

Modifies provisions under which owner of property may claim right to compensation for land use regulation that restricts use of property and reduces value of property. Allows transfer of right to use property pursuant to waiver of land use regulations granted in lieu of compensation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to land use; creating new provisions; amending chapter 1, Oregon Laws 2005; and declaring
3 an emergency.

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

5
6 **BALLOT MEASURE 37 (2004)**

7
8 **SECTION 1.** Chapter 1, Oregon Laws 2005, is amended to read:

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

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

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

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

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

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

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

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

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

5 [(E)] (e) Enacted prior to the date of acquisition of the property by the owner or a family
6 member of the owner who owned the subject property prior to acquisition or inheritance by the
7 owner, whichever occurred first.

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

12 (5) For claims arising from land use regulations enacted prior to [the effective date of this act,]
13 **December 2, 2004, the owner of the property shall make a** written demand for compensation
14 under subsection (4) [shall be made] **of this section** within two years of [the effective date of this
15 act] **December 2, 2004**, or the date the public entity applies the land use regulation as an approval
16 [criteria] **criterion** to an application submitted by the owner of the property, whichever is later. For
17 claims arising from land use regulations enacted [after the effective date of this act,] **on or after**
18 **December 2, 2004, the owner of the property shall make a** written demand for compensation
19 under subsection (4) [shall be made] **of this section** within two years of the enactment of the land
20 use regulation, or the date the owner of the property submits a land use application in which the
21 land use regulation is an approval [criteria] **criterion**, whichever is later.

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

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

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

40 (a) **If a valid claim for compensation is based on a state statute, the state agency that**
41 **administers the statute may decide not to apply the statute that is a basis for the claim to**
42 **the property.**

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

1 (9) A decision by a *[governing body]* **public entity** under this *[act shall]* **section is** not *[be con-*
2 *sidered]* a land use decision as defined in ORS 197.015 *[(10)]*.

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

11 **(11) For purposes of subsections (8) and (10) of this section, if property owned by a busi-**
12 **ness entity was conveyed to the business entity by a shareholder, partner or member of the**
13 **business entity, the date of acquisition of the property is the date the property was first**
14 **acquired by a shareholder, partner or member of the business entity, if the business entity**
15 **is owned by the shareholder, partner or member who first acquired the property and, if ap-**
16 **licable, family members of the shareholder, partner or member.**

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

18 **(a) Are uses allowed outright;**

19 **(b) Run with the land; and**

20 **(c) May be transferred freely by the owner or the owner's successors in interest.**

21 *[(11)]* **(13) [Definitions - for purposes of] As used in** this section:

22 *[(A)]* **(a) "Business entity" means a corporation, partnership or limited liability company.**

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

28 *[(B)]* **(c) "Land use regulation" [shall include] includes:**

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

30 *[(ii)]* **(B)** Administrative rules and goals of the Land Conservation and Development Commission;

31 *[(iii)]* **(C)** Local government comprehensive plans, zoning ordinances, land division ordinances[,]
32 and transportation ordinances;

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

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

36 *[(C)]* **(d) "Owner"** is the present owner of the property[,] or **of** any interest therein.

37 *[(D)]* **(e) "Public entity" [shall include] includes** the state, a metropolitan service district, a
38 city[, or] **and** a county.

39 *[(12)]* **(14)** The remedy created by this *[act]* **section** is in addition to any other remedy under the
40 Oregon or United States *[Constitutions]* **Constitution**, and is not intended to modify or replace any
41 other remedy.

42 *[(13)]* **(15)** If any portion or portions of this *[act]* **section** are declared invalid by a court of
43 competent jurisdiction, the remaining portions of this *[act]* **section** shall remain in full force and
44 effect.

45

CLAIMS PROCESS

1
2
3 **SECTION 2.** (1) An owner who files a claim for compensation under section 2, chapter
4 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), shall file the claim in the manner provided
5 by this section. If the property has more than one owner, the claim must be signed by all
6 owners or the claim must include a signed statement of consent from each owner who does
7 not sign the claim.

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

12 (3) A public entity may impose a fee for the filing of a claim in an amount not to exceed
13 \$1,000.

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

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

21 (6) If the claim is made against the state, the claim must be filed with the Oregon De-
22 partment of Administrative Services. If the claim is made against a city, county or metro-
23 politan service district, the claim must be filed with the chief administrative officer of the
24 city, county or district, or with an individual designated by ordinance, resolution or order
25 of the city, county or district.

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

27 (a) The name and address of each owner;

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

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

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

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

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

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

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

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

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

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

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

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

15 **(9) The public entity shall review a claim filed under this section to determine whether**
16 **the claim complies with subsections (7) and (8) of this section. If the claim is incomplete, the**
17 **public entity shall notify the owner in writing of the information or fee that is missing within**
18 **30 days after receiving the claim and allow the owner to submit the missing information or**
19 **fee. The claim is complete when the public entity receives the fee required by subsection (8)**
20 **of this section and:**

21 **(a) The missing information;**

22 **(b) Part of the missing information and written notice from the owner that the remain-**
23 **der of the missing information will not be provided; or**

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

25 **(10) If a public entity does not notify an owner within 30 days after receiving a claim that**
26 **information or the fee is missing from the claim, the claim is complete when the claim is**
27 **received.**

28 **(11) A claim filed under this section is deemed withdrawn if the public entity gives notice**
29 **to the owner under subsection (9) of this section and the owner does not submit to the public**
30 **entity, within 180 days after the claim was filed, the fee required by subsection (8) of this**
31 **section and:**

32 **(a) The missing information;**

33 **(b) Part of the missing information and written notice that the remainder of the missing**
34 **information will not be provided; or**

35 **(c) Written notice that none of the missing information will be provided.**

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

38 **(13) If the owner dies after a claim is filed and before a final decision is made, a successor**
39 **in interest of the owner may continue the claim.**

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

44 **(a) All owners of the property;**

45 **(b) All persons described in ORS 197.763 (2);**

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

3 (d) Other public entities that have enacted land use regulations that apply to the prop-
4 erty.

5 (2) The notice required under subsection (1) of this section must describe the claim and
6 state:

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

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

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

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

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

17 (b) If a public hearing is not held, a date that is specified by the public entity in the no-
18 tice given under subsection (1) of this section.

19 (4) The owner who filed the claim may request additional time to submit written evidence
20 or arguments. The request must be made before the close of the final public hearing on the
21 claim or before the final date established for submission of evidence and arguments. If a
22 public entity allows the owner additional time to submit evidence and arguments, the public
23 entity shall allow members of the public the same period of time to submit additional written
24 evidence and arguments. If a member of the public submits additional evidence or arguments
25 during this time, the public entity shall give the owner a final period of 14 additional calendar
26 days in which to submit additional evidence or arguments. Additional time provided under
27 this subsection tolls the 180-day period described in section 2 (5) of this 2005 Act.

28 (5) A public entity shall make the record on review of a claim, including any staff reports,
29 available to the public before the close of the record as described in subsection (3) or (4) of
30 this section.

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

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

34 (b) A land use regulation specified in the claim imposes a restriction on the owner's use
35 of the property that did not exist:

36 (A) When the owner acquired the property; or

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

39 (c) The restriction on the owner's use of the property caused by the land use regulation
40 reduces the fair market value of the property; and

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

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

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

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

10
11 **JUDICIAL REVIEW**
12

13 **SECTION 4.** (1) The circuit court has exclusive jurisdiction to review a final decision by
14 a public entity on a claim for compensation filed under section 2, chapter 1, Oregon Laws
15 2005 (Ballot Measure 37 (2004)).

16 (2) A person who is adversely affected by a final decision of a public entity under section
17 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), and who participated in the claim
18 proceedings conducted by the public entity may seek judicial review of the final decision by
19 filing a petition in the circuit court for the county in which the property is located and
20 serving a copy of the petition on the public entity in the manner provided by ORCP 7. If the
21 petitioner is not the claimant, the petitioner shall name and serve both the public entity and
22 the claimant. The petition must be filed and served within 60 days after a written final de-
23 cision is mailed by the public entity.

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

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

36 (5) When a public entity files the record with the court under subsection (4) of this sec-
37 tion, the public entity shall provide a certified copy of the record to the petitioner and, if the
38 petitioner is not the claimant, to the claimant. The petitioner and, if the petitioner is not the
39 claimant, the claimant may object to the record by motion filed with the court within 14 days
40 after receipt of the copy of the record from the public entity. The public entity may file a
41 response to the objection within 14 days after the date the objection is filed with the court.
42 The court may extend the deadlines under this subsection or request additional briefing on
43 the objection. The court shall resolve objections to the record and notify the parties of the
44 date the record is final.

45 (6) The petitioner's opening brief must be filed with the court within 28 days after the

1 date the record is final. The respondent's brief and the response brief of a person who in-
 2 tervenes in support of the respondent must be filed with the court within 28 days after the
 3 date the petitioner's 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 6 (3) to (5) of this 2005 Act, judicial review of a public
 10 entity's final decision on a claim under section 2, chapter 1, Oregon Laws 2005 (Ballot
 11 Measure 37 (2004)), is limited to the evidence in the record of the public entity. Judicial re-
 12 view is available only for issues that are raised before the public entity with sufficient
 13 specificity to afford the public entity an opportunity 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 5.** The circuit court shall affirm the final decision of a public entity on a claim
 18 filed under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure 37 (2004)), unless the
 19 public entity:

20 (1) Exceeded the jurisdiction of the public entity;

21 (2) Failed to follow applicable procedures;

22 (3) Applied the criteria in section 3 (6) of this 2005 Act to the evidence in the record er-
 23 roneously;

24 (4) Improperly construed applicable law; or

25 (5) Issued a decision that is unconstitutional.

26 **SECTION 6.** (1) The circuit court shall issue:

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

28 (b) A judgment reversing the final decision of the public entity because the court deter-
 29 mines that relief is not due under section 2, chapter 1, Oregon Laws 2005 (Ballot Measure
 30 37 (2004)); or

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

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

35 (B) Specifies the land use regulations that the court determines were improperly waived;
 36 or

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

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

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

45 (a) The public entity is deemed to have waived the land use regulations specified in the

1 order; and

2 (b) The court shall enter a judgment accordingly.

3 (4) Within 90 days after the public entity files notice with the court under subsection (3)
4 of this section stating that the public entity intends to pay compensation, the public entity
5 shall obtain an appraisal of the reduction in the fair market value of the property and pro-
6 vide a copy of the appraisal to the owner. If the owner files notice with the court accepting
7 the appraisal, the court shall enter a judgment accordingly. If the owner files notice with the
8 court objecting to the appraisal:

9 (a) The owner shall obtain an appraisal and provide a copy to the public entity within 90
10 days after the date the owner received the public entity's appraisal; and

11 (b) If the public entity files notice with the court accepting the appraisal, the court shall
12 enter a judgment in the amount identified by the appraisal provided by the owner.

13 (5) If the parties are unable to agree on an amount of compensation after exchanging
14 appraisals as required under subsection (4) of this section, upon motion of either party, the
15 court shall schedule the matter for a hearing. The court shall determine the amount of
16 compensation due based on the appraisals and other evidence received by the court. If the
17 court determines that the amount of compensation due exceeds the amount identified in the
18 public entity's appraisal:

19 (a) The public entity shall file notice with the court electing to pay the amount of com-
20 pensation determined by the court or to waive the land use regulations specified in sub-
21 section (1)(c)(C) of this section; and

22 (b) The court shall enter a judgment accordingly.

23 **SECTION 7.** An appeal from a judgment entered pursuant to sections 4 to 7 of this 2005
24 Act must be filed in the manner provided in ORS chapter 19.

25
26 MISCELLANEOUS

27
28 **SECTION 8.** The unit captions used in this 2005 Act are provided only for the convenience
29 of the reader and do not become part of the statutory law of this state or express any leg-
30 islative intent in the enactment of this 2005 Act.

31 **SECTION 9.** This 2005 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect
33 on its passage.