

PROPOSED AMENDMENTS TO  
B-ENGROSSED HOUSE BILL 3540

1 On page 1 of the printed B-engrossed bill, line 3, after “ORS” delete the  
2 rest of the line and delete line 4 and insert “197.352; and declaring an  
3 emergency.”.

4 Delete lines 6 through 26 and delete pages 2 through 23 and insert:

5 **“SECTION 1. As used in sections 1 to 4 of this 2007 Act:**

6 **“(1) ‘Claimant’ means the person or persons who made the written**  
7 **demand for compensation to a public entity under ORS 197.352.**

8 **“(2) ‘Family member’ has the meaning given that term in ORS**  
9 **197.352.**

10 **“(3) ‘Land use regulation’ has the meaning given that term in ORS**  
11 **197.352.**

12 **“(4) ‘Owner’ has the meaning given that term in ORS 197.352.**

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

14 **“(6) ‘Public entity’ has the meaning given that term in ORS 197.352.**

15 **“(7) ‘Tract’ has the meaning given that term in ORS 215.010.**

16 **“(8) ‘Urban growth boundary’ has the meaning given that term in**  
17 **ORS 195.060.**

18 **“(9) ‘Waiver’ means an action or decision of a public entity under**  
19 **ORS 197.352 to modify, remove or not apply one or more land use**  
20 **regulations to allow an owner to use private real property for a use**  
21 **permitted when the owner acquired the property.**

22 **“SECTION 2. Section 3 of this 2007 Act does not apply to a written**

1 demand for compensation made under ORS 197.352 or to a use of pri-  
2 vate real property allowed based on a waiver if the following require-  
3 ments are met:

4 “(1) The private real property is located entirely outside an urban  
5 growth boundary.

6 “(2) The State of Oregon, the county in which the private real  
7 property is located and any other public entity to which the claim is  
8 made determine that the claimant is the owner of the private real  
9 property and that the use restricted according to the demand or au-  
10 thorized by a waiver was permitted when the claimant acquired the  
11 private real property.

12 “(3) The claimant provides a release to the county in which the  
13 private real property is located. The county must record the release  
14 if the public entities approve a waiver that authorizes the use de-  
15 scribed in section 3 (2) of this 2007 Act. The release must contain  
16 substantially the following language:

17 “

18 \_\_\_\_\_  
19 My name is \_\_\_\_\_. I am an owner of the following described real  
20 property in \_\_\_\_\_ County: [insert legal description of the tract that  
21 includes the private real property].

22 I have made a one-time election to establish one or more additional  
23 single-family dwellings, as provided by this section, on the above-  
24 described private real property in lieu of any other claim, demand or  
25 cause of action I may have for compensation under ORS 197.352. I  
26 hereby release any other claim, demand or cause of action that I may  
27 have against a public entity under ORS 197.352. This release runs with  
28 the land and binds my heirs, successors and assigns.

29 “

30 \_\_\_\_\_  
31 **“SECTION 3. (1) During the period beginning on the effective date  
32 of this 2007 Act and ending 180 days after the effective date of this 2007**

1 Act:

2 “(a) The 180-day periods under ORS 197.352 (4) and (6) stop running  
3 as to written demands for compensation under ORS 197.352 that are  
4 pending on or after the effective date of this 2007 Act. A public entity  
5 may continue to receive and review written demands for compensation  
6 under ORS 197.352, and the State of Oregon may, but is not required  
7 to, issue a final order, and a local government may, but is not required  
8 to, issue a decision concerning the demand during the 180-day exten-  
9 sion period described in this subsection.

10 “(b) A new judicial action or petition arising out of the action or  
11 failure to act of a public entity under ORS 197.352 may not be filed. A  
12 new notice of intent to appeal a land use decision related to an appli-  
13 cation of any kind based on a waiver may not be filed under ORS  
14 197.830. For a judicial action, petition or notice of intent to appeal that  
15 may not be filed under this paragraph, applicable time limits on the  
16 judicial action petition or notice of intent to appeal also stop running  
17 during the period in which the judicial action, petition or notice may  
18 not be filed.

19 “(c) The two-year period under ORS 197.352 (10) stops running as to  
20 a claim that may have accrued.

21 “(d) Except as provided in subsection (6)(a) of this section:

22 “(A) A person may not file, with a state agency or a local govern-  
23 ment, an application of any kind that is based on a waiver. If an ap-  
24 plication of any kind that is based on a waiver was filed before the  
25 effective date of this 2007 Act, the state agency may, but is not re-  
26 quired to, issue a final order, and the local government may, but is  
27 not required to, issue a decision on the application. All time limita-  
28 tions related to the applications covered by this subparagraph stop  
29 running.

30 “(B) A person may not use private real property based on a waiver.

1       “(2) A claimant is not required to establish that the land use regu-  
2 lations that restrict the use of private real property also reduce the  
3 fair market value if the claimant seeks a waiver to establish the fol-  
4 lowing use within the following limits:

5       “(a) Subject to subsections (3) and (4) of this section, if the tract  
6 is 10 acres or less, the establishment of up to five single-family  
7 dwellings and division of the tract to create separate lots or parcels,  
8 one-half acre or larger, on which each single-family dwelling author-  
9 ized in this paragraph or described in subsection (4) of this section will  
10 be located.

11       “(b) Subject to subsections (3) and (4) of this section, if the tract  
12 is larger than 10 acres, for each additional 10 acres, the establishment  
13 of one additional single-family dwelling and division of the tract to  
14 create a separate lot or parcel, 10 acres or larger, on which each ad-  
15 ditional single-family dwelling authorized in this paragraph or de-  
16 scribed in subsection (4) of this section will be located.

17       “(3) Notwithstanding subsection (2) of this section, a county and  
18 landowner may agree to a division of the tract that allows for clus-  
19 tering of dwellings.

20       “(4) When authorizing single-family dwellings under subsection (2)  
21 of this section, existing single-family dwellings must be counted in the  
22 total number of dwellings authorized and the tract must be divided to  
23 create lots or parcels for the dwellings as described in subsection (2)  
24 of this section.

25       “(5) The owner of the private property described in subsection (2)  
26 of this section, and the heirs, successors and assigns of the owner,  
27 may transfer title and interest in the dwellings, lots and parcels au-  
28 thorized by this section.

29       “(6) This section does not affect:

30       “(a) The legal rights of an owner of private real property to com-

1 plete or continue a use of private real property that was authorized  
2 by a building permit lawfully issued on or before January 1, 2007.

3 “(b) A judicial action, petition or notice of intent to appeal under  
4 ORS 197.830 that was filed before the effective date of this 2007 Act.

5 “SECTION 4. After a public entity grants a waiver, the rights to  
6 use private real property provided by the waiver run with the land and  
7 may be transferred with the property.

8 “SECTION 5. ORS 197.352 is amended to read:

9 “197.352. The following provisions are added to and made a part of ORS  
10 chapter 197:

11 “(1) **Subject to section 3 (2) of this 2007 Act**, if a public entity enacts  
12 or enforces a new land use regulation or enforces a land use regulation en-  
13 acted prior to December 2, 2004, that restricts the use of private real prop-  
14 erty or any interest therein and has the effect of reducing the fair market  
15 value of the property, or any interest therein, then the owner of the property  
16 shall be paid just compensation.

17 “(2) Just compensation shall be equal to the reduction in the fair market  
18 value of the affected property interest resulting from enactment or enforce-  
19 ment of the land use regulation as of the date the owner makes written de-  
20 mand for compensation under this section.

21 “(3) Subsection (1) of this section shall not apply to land use regulations:

22 “(A) Restricting or prohibiting activities commonly and historically re-  
23 cognized as public nuisances under common law. This subsection shall be  
24 construed narrowly in favor of a finding of compensation under this section;

25 “(B) Restricting or prohibiting activities for the protection of public  
26 health and safety, such as fire and building codes, health and sanitation  
27 regulations, solid or hazardous waste regulations, and pollution control reg-  
28 ulations;

29 “(C) To the extent the land use regulation is required to comply with  
30 federal law;

