

Senate Bill 509

Sponsored by Senator KNOPP

SUMMARY

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

Modifies review process for post-acknowledgment land use decisions.

A BILL FOR AN ACT

Relating to review of land use decisions; amending ORS 197.633 and 197.651.

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

SECTION 1. ORS 197.633 is amended to read:

197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review that address:

- (a) Initiating periodic review;
- (b) Citizen participation;
- (c) The participation of state agencies;
- (d) The preparation, review and approval of a work program; and
- (e) The preparation, review and approval of work tasks, including:
 - (A) The amendment of an urban growth boundary.
 - (B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:

(a) For evidentiary issues raised under ORS 197.626 (1)(b), (c) or (e), is whether there is evidence in the record to support the local government's decision.

[(a)] **(b)** For **all other** evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

[(b)] **(c)** For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

[(c)] **(d)** For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan

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 and land use regulations. The commission shall defer to a local government's interpretation of the
 2 comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes
 3 of this paragraph, "complies" has the meaning given the term "compliance" in the phrase "compli-
 4 ance with the goals" in ORS 197.747.

5 (4) A decision by the Director of the Department of Land Conservation and Development to
 6 approve a work program, that no work program is necessary or that no further work is necessary
 7 is final and not subject to appeal.

8 (5) The director:

9 (a) Shall take action on a work task not later than 120 days after the local government submits
 10 the work task for review unless the local government waives the 120-day deadline or the commission
 11 grants the director an extension. If the director does not take action within the time period required
 12 by this subsection, the work task is deemed approved. The department shall provide a letter to the
 13 local government certifying that the work task is approved unless an interested party has filed a
 14 timely objection to the work task consistent with administrative rules for conducting periodic re-
 15 view.

16 (b) May approve or remand a work task or refer the work task to the commission for a decision.
 17 A decision by the director to approve or remand a work task may be appealed to the commission.

18 (6) Except as provided in this subsection, the commission shall take action on the appeal or re-
 19 ferral of a work task within 90 days of the appeal or referral. Action by the commission in response
 20 to an appeal from a decision of the director or a referral is a final order subject to judicial review
 21 in the manner provided in ORS 197.650 and 197.651. The commission may extend the time for taking
 22 action on the appeal or referral if the commission finds that:

23 (a) The appeal or referral is appropriate for mediation;

24 (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable
 25 for the commission to give adequate consideration to the issues within the 90-day limit; or

26 (c) The parties to the appeal and the commission agree to an extension, not to exceed an addi-
 27 tional 90 days.

28 (7) The commission and a local government shall attempt to complete periodic review within
 29 three years after approval of a work program. To promote the timely completion of periodic review,
 30 the commission shall establish a system of incentives to encourage local government compliance
 31 with timelines in periodic review work programs.

32 **SECTION 2.** ORS 197.651 is amended to read:

33 197.651. (1) Judicial review of a final order of the Land Conservation and Development Com-
 34 mission under ORS 197.626 [*concerning the designation of urban reserves under ORS 195.145 (1)(b)*
 35 *or rural reserves under ORS 195.141*] is as provided in subsections (3) to (12) of this section.

36 (2) Judicial review of any other final order of the commission [*under ORS 197.626 or of a final*
 37 *order of the commission*] under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659,
 38 215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

39 (3) A proceeding for judicial review under this section may be instituted by filing a petition in
 40 the Court of Appeals. The petition must be filed within 21 days after the date the commission de-
 41 livered or mailed the order upon which the petition is based.

42 (4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-
 43 tion on the persons who submitted oral or written testimony in the proceeding before the commis-
 44 sion are jurisdictional and may not be waived or extended.

45 (5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies

1 of the petition must be served by registered or certified mail upon the commission and the persons
2 who submitted oral or written testimony in the proceeding before the commission.

3 (6) Within 21 days after service of the petition, the commission shall transmit to the Court of
4 Appeals the original or a certified copy of the entire record of the proceeding under review. How-
5 ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court
6 of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-
7 tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the
8 record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost
9 of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the
10 costs to a party that files a frivolous petition for judicial review.

11 (7) Petitions and briefs must be filed within time periods and in a manner established by the
12 Court of Appeals by rule.

13 (8) The Court of Appeals shall:

14 (a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court
15 of Appeals determines that the ends of justice served by holding oral argument on a later day out-
16 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold
17 oral argument more than 49 days after the date of transmittal of the record because of general
18 congestion of the court calendar or lack of diligent preparation or attention to the case by a member
19 of the court or a party.

20 (b) Set forth in writing and provide to the parties a determination to hear oral argument more
21 than 49 days from the date the record is transmitted, together with the reasons for the determi-
22 nation. The Court of Appeals shall schedule oral argument as soon as is practicable.

23 (c) Consider, in making a determination under paragraph (b) of this subsection:

24 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
25 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
26 the case and for the Court of Appeals to prepare for oral argument; and

27 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
28 riage of justice.

29 (9) The court:

30 (a) Shall limit judicial review of an order reviewed under this section to the record.

31 (b) May not substitute its judgment for that of the Land Conservation and Development Com-
32 mission as to an issue of fact.

33 (10)(a) The Court of Appeals may affirm, reverse or remand an order reviewed under this sec-
34 tion. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

35 [(a)] (A) Unlawful in substance or procedure. However, error in procedure is not cause for re-
36 versal or remand unless the Court of Appeals determines that substantial rights of the petitioner
37 were prejudiced.

38 [(b)] (B) Unconstitutional.

39 [(c)] (C) Not supported by substantial evidence in the whole record as to facts found by the
40 commission.

41 **(b) When the record contains substantial evidence to support the final decision, the ex-**
42 **istence of evidence in the record that supports a different decision is not cause for reversal**
43 **or remand of the order.**

44 (11) The Court of Appeals shall issue a final order on the petition for judicial review with the
45 greatest possible expediency.

1 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,
2 the commission shall respond to the court's appellate judgment within 30 days.
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