

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO  
SENATE BILL 8**

1 On page 1 of the printed bill, line 2, delete “197.311” and insert “197.830  
2 and 197.850”.

3 Delete lines 4 through 31 and delete page 2 and insert:

4 **“SECTION 1.** ORS 197.830 is amended to read:

5 “197.830. (1) Review of land use decisions or limited land use decisions  
6 under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent  
7 to appeal with the Land Use Board of Appeals.

8 “(2) Except as provided in ORS 197.620, a person may petition the board  
9 for review of a land use decision or limited land use decision if the person:

10 “(a) Filed a notice of intent to appeal the decision as provided in sub-  
11 section (1) of this section; and

12 “(b) Appeared before the local government, special district or state agency  
13 orally or in writing.

14 “(3) If a local government makes a land use decision without providing  
15 a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the  
16 local government makes a land use decision that is different from the pro-  
17 posal described in the notice of hearing to such a degree that the notice of  
18 the proposed action did not reasonably describe the local government’s final  
19 actions, a person adversely affected by the decision may appeal the decision  
20 to the board under this section:

21 “(a) Within 21 days of actual notice where notice is required; or

1       “(b) Within 21 days of the date a person knew or should have known of  
2 the decision where no notice is required.

3       “(4) If a local government makes a land use decision without a hearing  
4 pursuant to ORS 215.416 (11) or 227.175 (10):

5       “(a) A person who was not provided notice of the decision as required  
6 under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the  
7 board under this section within 21 days of receiving actual notice of the  
8 decision.

9       “(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or  
10 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may  
11 appeal the decision to the board under this section within 21 days after the  
12 expiration of the period for filing a local appeal of the decision established  
13 by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

14       “(c) A person who receives notice of a decision made without a hearing  
15 under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board  
16 under this section within 21 days of receiving actual notice of the nature of  
17 the decision, if the notice of the decision did not reasonably describe the  
18 nature of the decision.

19       “(d) Except as provided in paragraph (c) of this subsection, a person who  
20 receives notice of a decision made without a hearing under ORS 215.416 (11)  
21 or 227.175 (10) may not appeal the decision to the board under this section.

22       “(5) If a local government makes a limited land use decision which is  
23 different from the proposal described in the notice to such a degree that the  
24 notice of the proposed action did not reasonably describe the local  
25 government’s final actions, a person adversely affected by the decision may  
26 appeal the decision to the board under this section:

27       “(a) Within 21 days of actual notice where notice is required; or

28       “(b) Within 21 days of the date a person knew or should have known of  
29 the decision where no notice is required.

30       “(6) The appeal periods described in subsections (3), (4) and (5) of this

1 section:

2 “(a) May not exceed three years after the date of the decision, except as  
3 provided in paragraph (b) of this subsection.

4 “(b) May not exceed 10 years after the date of the decision if notice of a  
5 hearing or an administrative decision made pursuant to ORS 197.195 or  
6 197.763 is required but has not been provided.

7 “(7)(a) Within 21 days after a notice of intent to appeal has been filed  
8 with the board under subsection (1) of this section, any person described in  
9 paragraph (b) of this subsection may intervene in and be made a party to the  
10 review proceeding by filing a motion to intervene and by paying a filing fee  
11 of \$100.

12 “(b) Persons who may intervene in and be made a party to the review  
13 proceedings, as set forth in subsection (1) of this section, are:

14 “(A) The applicant who initiated the action before the local government,  
15 special district or state agency; or

16 “(B) Persons who appeared before the local government, special district  
17 or state agency, orally or in writing.

18 “(c) Failure to comply with the deadline or to pay the filing fee set forth  
19 in paragraph (a) of this subsection shall result in denial of a motion to in-  
20 tervene.

21 “(8) If a state agency whose order, rule, ruling, policy or other action is  
22 at issue is not a party to the proceeding, it may file a brief with the board  
23 as if it were a party. The brief shall be due on the same date the respondent’s  
24 brief is due and shall be accompanied by a filing fee of \$100.

25 “(9) A notice of intent to appeal a land use decision or limited land use  
26 decision shall be filed not later than 21 days after the date the decision  
27 sought to be reviewed becomes final. A notice of intent to appeal plan and  
28 land use regulation amendments processed pursuant to ORS 197.610 to  
29 197.625 shall be filed not later than 21 days after notice of the decision  
30 sought to be reviewed is mailed or otherwise submitted to parties entitled

1 to notice under ORS 197.615. Failure to include a statement identifying when,  
2 how and to whom notice was provided under ORS 197.615 does not render the  
3 notice defective. Copies of the notice of intent to appeal shall be served upon  
4 the local government, special district or state agency and the applicant of  
5 record, if any, in the local government, special district or state agency pro-  
6 ceeding. The notice shall be served and filed in the form and manner pre-  
7 scribed by rule of the board and shall be accompanied by a filing fee of \$200  
8 and a deposit for costs to be established by the board. If a petition for review  
9 is not filed with the board as required in subsections (10) and (11) of this  
10 section, the filing fee and deposit shall be awarded to the local government,  
11 special district or state agency as cost of preparation of the record.

12 “(10)(a) Within 21 days after service of the notice of intent to appeal, the  
13 local government, special district or state agency shall transmit to the board  
14 the original or a certified copy of the entire record of the proceeding under  
15 review. By stipulation of all parties to the review proceeding the record may  
16 be shortened. The board may require or permit subsequent corrections to the  
17 record; however, the board shall issue an order on a motion objecting to the  
18 record within 60 days of receiving the motion.

19 “(b) Within 10 days after service of a notice of intent to appeal, the board  
20 shall provide notice to the petitioner and the respondent of their option to  
21 enter into mediation pursuant to ORS 197.860. Any person moving to inter-  
22 vene shall be provided such notice within seven days after a motion to in-  
23 tervene is filed. The notice required by this paragraph shall be accompanied  
24 by a statement that mediation information or assistance may be obtained  
25 from the Department of Land Conservation and Development.

26 “(11) A petition for review of the land use decision or limited land use  
27 decision and supporting brief shall be filed with the board as required by the  
28 board under subsection (13) of this section.

29 “(12) The petition shall include a copy of the decision sought to be re-  
30 viewed and shall state:

1       “(a) The facts that establish that the petitioner has standing.

2       “(b) The date of the decision.

3       “(c) The issues the petitioner seeks to have reviewed.

4       “(13)(a) The board shall adopt rules establishing deadlines for filing pe-  
5 titions and briefs and for oral argument.

6       “(b) At any time subsequent to the filing of a notice of intent and prior  
7 to the date set for filing the record, or, on appeal of a decision under ORS  
8 197.610 to 197.625, prior to the filing of the respondent’s brief, the local  
9 government or state agency may withdraw its decision for purposes of re-  
10 consideration. If a local government or state agency withdraws an order for  
11 purposes of reconsideration, it shall, within such time as the board may al-  
12 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied  
13 with the local government or agency action after withdrawal for purposes  
14 of reconsideration, the petitioner may refile the notice of intent and the re-  
15 view shall proceed upon the revised order. An amended notice of intent  
16 [*shall*] **is** not [*be*] required if the local government or state agency, on re-  
17 consideration, affirms the order or modifies the order with only minor  
18 changes.

19       “(14) The board shall issue a final order within 77 days after the date of  
20 transmittal of the record. If the order is not issued within 77 days the ap-  
21 plicant may apply in Marion County or the circuit court of the county where  
22 the application was filed for a writ of mandamus to compel the board to issue  
23 a final order.

24       “(15)[*(a)*] Upon entry of its final order the board:

25       “(a) May, in its discretion, award costs to the prevailing party including  
26 the cost of preparation of the record if the prevailing party is the local  
27 government, special district or state agency whose decision is under review.  
28 The board shall apply the deposit required by subsection (9) of this section  
29 to any costs charged against the petitioner.

30       “(b) [*The board*] Shall [*also*] award reasonable attorney fees and expenses

1 to the prevailing party against any other party who the board finds presented  
2 a position without probable cause to believe the position was well-founded  
3 in law or on factually supported information.

4 **“(c) Upon affirming a quasi-judicial land use decision approving an**  
5 **application that is only for the development of publicly supported**  
6 **housing, as defined in ORS 456.250, shall award reasonable attorney**  
7 **fees and expenses to a prevailing respondent that is the applicant or**  
8 **local government.**

9 “(16) Orders issued under this section may be enforced in appropriate ju-  
10 dicial proceedings.

11 “(17)(a) The board shall provide for the publication of its orders that are  
12 of general public interest in the form it deems best adapted for public con-  
13 venience. The publications shall constitute the official reports of the board.

14 “(b) Any moneys collected or received from sales by the board shall be  
15 paid into the Board Publications Account established by ORS 197.832.

16 “(18) Except for any sums collected for publication of board opinions, all  
17 fees collected by the board under this section that are not awarded as costs  
18 shall be paid over to the State Treasurer to be credited to the General Fund.

19 “(19) The board shall track and report on its website:

20 “(a) The number of reviews commenced, as described in subsection (1) of  
21 this section, the number of reviews commenced for which a petition is filed  
22 under subsection (2) of this section and, in relation to each of those numbers,  
23 the rate at which the reviews result in a decision of the board to uphold,  
24 reverse or remand the land use decision or limited land use decision. The  
25 board shall track and report reviews under this paragraph in categories es-  
26 tablished by the board.

27 “(b) A list of petitioners, the number of reviews commenced and the rate  
28 at which the petitioner’s reviews have resulted in decisions of the board to  
29 uphold, reverse or remand the land use decision or limited land use decision.

30 “(c) A list of respondents, the number of reviews involving each respond-

1 ent and the rate at which reviews involving the respondent have resulted in  
2 decisions of the board to uphold, reverse or remand the land use decision or  
3 limited land use decision. Additionally, when a respondent is the local gov-  
4 ernment that made the land use decision or limited land use decision, the  
5 board shall track whether the local government appears before the board.

6 “(d) A list of reviews, and a brief summary of the circumstances in each  
7 review, under which the board exercises its discretion to require a losing  
8 party to pay the attorney fees of the prevailing party.

9 **“SECTION 2.** ORS 197.850 is amended to read:

10 “197.850. (1) Any party to a proceeding before the Land Use Board of  
11 Appeals under ORS 197.830 to 197.845 may seek judicial review of a final  
12 order issued in those proceedings.

13 “(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial  
14 review of orders issued under ORS 197.830 to 197.845 is solely as provided in  
15 this section.

16 “(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830  
17 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial  
18 review are instituted by filing a petition in the Court of Appeals. The peti-  
19 tion must be filed within 21 days following the date the board delivered or  
20 mailed the order upon which the petition is based.

21 “(b) Filing of the petition, as set forth in paragraph (a) of this subsection,  
22 and service of a petition on all persons identified in the petition as adverse  
23 parties of record in the board proceeding is jurisdictional and may not be  
24 waived or extended.

25 “(4) The petition must state the nature of the order the petitioner desires  
26 reviewed. Copies of the petition must be served by first class, registered or  
27 certified mail on the board and all other parties of record in the board pro-  
28 ceeding.

29 “(5) Within seven days after service of the petition, the board shall  
30 transmit to the court the original or a certified copy of the entire record of

1 the proceeding under review, but, by stipulation of all parties to the review  
2 proceeding, the record may be shortened. The court may tax a party that  
3 unreasonably refuses to stipulate to limit the record for the additional costs.  
4 The court may require or permit subsequent corrections or additions to the  
5 record when deemed desirable. Except as specifically provided in this sub-  
6 section, the court may not tax the cost of the record to the petitioner or any  
7 intervening party. However, the court may tax such costs and the cost of  
8 transcription of record to a party filing a frivolous petition for judicial re-  
9 view.

10 “(6) Petitions and briefs must be filed within time periods and in a man-  
11 ner established by the Court of Appeals by rule.

12 “(7)(a) The court shall hear oral argument within 49 days of the date of  
13 transmittal of the record.

14 “(b) The court may hear oral argument more than 49 days from the date  
15 of transmittal of the record provided the court determines that the ends of  
16 justice served by holding oral argument on a later day outweigh the best  
17 interests of the public and the parties. The court [*shall*] **may** not hold oral  
18 argument more than 49 days from the date of transmittal of the record be-  
19 cause of general congestion of the court calendar or lack of diligent prepa-  
20 ration or attention to the case by any member of the court or any party.

21 “(c) The court shall set forth in writing a determination to hear oral ar-  
22 gument more than 49 days from the date the record is transmitted, together  
23 with the reasons for its determination, and shall provide a copy to the par-  
24 ties. The court shall schedule oral argument as soon as practicable there-  
25 after.

26 “(d) In making a determination under paragraph (b) of this subsection, the  
27 court shall consider:

28 “(A) Whether the case is so unusual or complex, due to the number of  
29 parties or the existence of novel questions of law, that 49 days is an unrea-  
30 sonable amount of time for the parties to brief the case and for the court to



1 prepare for oral argument; and

2 “(B) Whether the failure to hold oral argument at a later date likely  
3 would result in a miscarriage of justice.

4 “(8) Judicial review of an order issued under ORS 197.830 to 197.845  
5 [shall] **must** be confined to the record. The court [shall] **may** not substitute  
6 its judgment for that of the board as to any issue of fact.

7 “(9) The court may affirm, reverse or remand the order. The court shall  
8 reverse or remand the order only if it finds:

9 “(a) The order to be unlawful in substance or procedure, but error in  
10 procedure is not cause for reversal or remand unless the court finds that  
11 substantial rights of the petitioner were prejudiced thereby;

12 “(b) The order to be unconstitutional; or

13 “(c) The order is not supported by substantial evidence in the whole re-  
14 cord as to facts found by the board under ORS 197.835 (2).

15 “(10) The Court of Appeals shall issue a final order on the petition for  
16 judicial review with the greatest possible expediency.

17 “(11) If the order of the board is remanded by the Court of Appeals or the  
18 Supreme Court, the board shall respond to the court’s appellate judgment  
19 within 30 days.

20 “(12) A party must file with the board an undertaking with one or more  
21 sureties insuring that the party will pay all costs, disbursements and attor-  
22 ney fees awarded against the party by the Court of Appeals if:

23 “(a) The party appealed a decision of the board to the Court of Appeals;  
24 and

25 “(b) In making the decision being appealed to the Court of Appeals, the  
26 board awarded attorney fees and expenses against that party under ORS  
27 197.830 (15)(b) **or** (c).

28 “(13) Upon entry of its final order, the court shall award attorney fees  
29 and expenses to a party who:

30 “(a) Prevails on a claim that an approval condition imposed by a local

1 government on an application for a permit pursuant to ORS 215.416 or  
2 227.175 is unconstitutional under section 18, Article I, Oregon Constitution,  
3 or the Fifth Amendment to the United States Constitution[.]; **or**

4 **“(b) Is entitled to attorney fees under ORS 197.830 (15)(c).**

5 “(14) The undertaking required in subsection (12) of this section must be  
6 filed with the board and served on the opposing parties within 10 days after  
7 the date the petition was filed with the Court of Appeals.

8 **“SECTION 3. The amendments to ORS 197.830 and 197.850 by  
9 sections 1 and 2 of this 2019 Act apply only to controversies for which  
10 a notice of intent to appeal was filed on or after the effective date of  
11 this 2019 Act.”.**

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