

# House Bill 2110

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Land Use Board of Appeals)

## 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 costs for petitioners filing notice of petition with Land Use Board of Appeals.  
Declares emergency, effective July 1, 2021.

## A BILL FOR AN ACT

1  
2 Relating to payments by petitioners to Land Use Board of Appeals petitions; amending ORS 197.830  
3 and 197.845; and declaring an emergency.

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

5 **SECTION 1.** ORS 197.830 is amended to read:

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

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

11 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;  
12 and

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

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

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

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

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

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

27 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who  
28 is adversely affected or aggrieved by the decision may appeal the decision to the board under this  
29 section within 21 days after the expiration of the period for filing a local appeal of the decision es-  
30 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

31 (c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11)

**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 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving  
 2 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe  
 3 the nature of the decision.

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

7 (5) If a local government makes a limited land use decision which is different from the proposal  
 8 described in the notice to such a degree that the notice of the proposed action did not reasonably  
 9 describe the local government's final actions, a person adversely affected by the decision may appeal  
 10 the decision to the board under this section:

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

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

14 (6) The appeal periods described in subsections (3), (4) and (5) of this section:

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

17 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-  
 18 trative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

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

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

25 (A) The applicant who initiated the action before the local government, special district or state  
 26 agency; or

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

29 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this  
 30 subsection shall result in denial of a motion to intervene.

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

34 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed  
 35 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of  
 36 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to  
 37 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is  
 38 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a  
 39 statement identifying when, how and to whom notice was provided under ORS 197.615 does not  
 40 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local  
 41 government, special district or state agency and the applicant of record, if any, in the local gov-  
 42 ernment, special district or state agency proceeding. The notice shall be served and filed in the form  
 43 and manner prescribed by rule of the board and shall be accompanied by a filing fee of [~~\$200 and~~  
 44 ~~a deposit for costs to be established by the board~~] **\$300**. If a petition for review is not filed with the  
 45 board as required in subsections (10) and (11) of this section, the [~~filing fee and deposit shall be~~

1 *awarded to] board shall award the filing fee to the local government, special district or state*  
 2 *agency [as cost of preparation of the record].*

3 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-  
 4 cial district or state agency shall transmit to the board the original or a certified copy of the entire  
 5 record of the proceeding under review. By stipulation of all parties to the review proceeding the  
 6 record may be shortened. The board may require or permit subsequent corrections to the record;  
 7 however, the board shall issue an order on a motion objecting to the record within 60 days of re-  
 8 ceiving the motion. If the board denies a petitioner's objection to the record, the board may establish  
 9 a new deadline for the petition for review to be filed that may not be less than 14 days from the  
 10 later of the original deadline for the brief or the date of denial of the petitioner's record objection.

11 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice  
 12 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.  
 13 Any person moving to intervene shall be provided such notice within seven days after a motion to  
 14 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that  
 15 mediation information or assistance may be obtained from the Department of Land Conservation and  
 16 Development.

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

19 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

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

21 (b) The date of the decision.

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

23 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for  
 24 oral argument.

25 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing  
 26 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the  
 27 respondent's brief, the local government or state agency may withdraw its decision for purposes of  
 28 reconsideration. If a local government or state agency withdraws an order for purposes of recon-  
 29 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.  
 30 If the petitioner is dissatisfied with the local government or agency action after withdrawal for  
 31 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-  
 32 ceed upon the revised order. An amended notice of intent is not required if the local government  
 33 or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

34 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.  
 35 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit  
 36 court of the county where the application was filed for a writ of mandamus to compel the board to  
 37 issue a final order.

38 (15) Upon entry of its final order, the board:

39 (a) May, in its discretion, award costs to the prevailing party including the cost of preparation  
 40 of the record if the prevailing party is the local government, special district or state agency whose  
 41 decision is under review. *[The board shall apply the deposit required by subsection (9) of this section*  
 42 *to any costs charged against the petitioner.]*

43 (b) Shall award reasonable attorney fees and expenses to the prevailing party against any other  
 44 party who the board finds presented a position or filed any motion without probable cause to believe  
 45 the position or motion was well-founded in law or on factually supported information.

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

4 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

5 (17)(a) The board shall provide for the publication of its orders that are of general public in-  
 6 terest in the form it deems best adapted for public convenience. The publications shall constitute  
 7 the official reports of the board.

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

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

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

14 (a) The number of reviews commenced, as described in subsection (1) of this section, the number  
 15 of reviews commenced for which a petition is filed under subsection (2) of this section and, in re-  
 16 lation to each of those numbers, the rate at which the reviews result in a decision of the board to  
 17 uphold, reverse or remand the land use decision or limited land use decision. The board shall track  
 18 and report reviews under this paragraph in categories established by the board.

19 (b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's  
 20 reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision  
 21 or limited land use decision.

22 (c) A list of respondents, the number of reviews involving each respondent and the rate at which  
 23 reviews involving the respondent have resulted in decisions of the board to uphold, reverse or re-  
 24 mand the land use decision or limited land use decision. Additionally, when a respondent is the local  
 25 government that made the land use decision or limited land use decision, the board shall track  
 26 whether the local government appears before the board.

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

30 **SECTION 2.** ORS 197.845 is amended to read:

31 197.845. (1) Upon application of the petitioner, the board may grant a stay of a land use decision  
 32 or limited land use decision under review if the petitioner demonstrates:

33 (a) A colorable claim of error in the land use decision or limited land use decision under review;  
 34 and

35 (b) That the petitioner will suffer irreparable injury if the stay is not granted.

36 (2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision  
 37 approving a specific development of land, it shall require the petitioner requesting the stay to give  
 38 an undertaking in the amount of \$5,000[. *The undertaking shall be*] in addition to the filing fee [*and*  
 39 *deposit for costs required*] under ORS 197.830 (9). The board may impose other reasonable conditions  
 40 such as requiring the petitioner to file all documents necessary to bring the matter to issue within  
 41 specified reasonable periods of time.

42 (3) If the board affirms a quasi-judicial land use decision or limited land use decision for which  
 43 a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable  
 44 attorney fees and actual damages resulting from the stay to the person who requested the land use  
 45 decision or limited land use decision from the local government, special district or state agency,

1 against the person requesting the stay in an amount not to exceed the amount of the undertaking.

2 (4) The board shall limit the effect of a stay of a legislative land use decision to the geographic  
3 area or to particular provisions of the legislative decision for which the petitioner has demonstrated  
4 a colorable claim of error and irreparable injury under subsection (1) of this section. The board may  
5 impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or  
6 other undertaking or a requirement that the petitioner file all documents necessary to bring the  
7 matter to issue within a specified reasonable time period.

8 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**  
9 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
10 **July 1, 2021.**

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