

House Bill 2764

Sponsored by Representative SMITH DB (Pre-session filed.)

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**.

Limits standing in appeals of land use decisions or limited land use decisions to persons that reside or maintain business within 25 miles of boundary of local government or special district and appeared before decision maker in person at hearing if available.

A BILL FOR AN ACT

1
2 Relating to standing in land use appeals; amending ORS 197.612, 197.620 and 197.830.

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

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

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

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

10 (a) **The person** filed a notice of intent to appeal the decision as provided in subsection (1) of
11 this section; [*and*]

12 **(b) If the decision was made by a local government or special district, the person resides**
13 **or maintains a place of business within 25 miles of the boundary of the local government's**
14 **or special district's jurisdiction; and**

15 [*(b)*] **(c)(A) If a hearing opportunity was not available, the person** appeared before the local
16 government, special district or state agency orally or in writing.

17 **(B) If a hearing opportunity was available, the person appeared orally before the local**
18 **government, special district or state agency at the hearing.**

19 (3) If a local government makes a land use decision without providing a hearing, except as
20 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
21 that is different from the proposal described in the notice of hearing to such a degree that the notice
22 of the proposed action did not reasonably describe the local government's final actions, a person
23 **who resides or maintains a place of business within 25 miles of the boundary of the local**
24 **government's jurisdiction and is** adversely affected by the decision may appeal the decision to the
25 board under this section:

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

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

29 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
30 (11) or 227.175 (10), **a person who resides or maintains a place of business within 25 miles of**
31 **the boundary of the local government's jurisdiction may appeal the decision to the board**

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 **under this section only:**

2 (a) [A person who was] **Within 21 days of receiving actual notice of the decision** if not pro-
 3 vided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) [*may appeal the*
 4 *decision to the board under this section within 21 days of receiving actual notice of the decision.*];

5 (b) [A person who is] **Within 21 days after the expiration of the period for filing a local**
 6 **appeal of the decision established by the local government under ORS 215.416 (11)(a) or**
 7 **227.175 (10)(a) if the person is** not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c)
 8 but [who] is adversely affected or aggrieved by the decision [*may appeal the decision to the board*
 9 *under this section within 21 days after the expiration of the period for filing a local appeal of the de-*
 10 *cision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).*]; **or**

11 (c) [A person who receives notice of a decision made without a hearing under ORS 215.416 (11)
 12 or 227.175 (10) may appeal the decision to the board under this section] Within 21 days of receiving
 13 actual notice of the nature of the decision[,] if the notice of the decision did not reasonably describe
 14 the nature of the decision.

15 [(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a de-
 16 cision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to
 17 the board under this section.]

18 (5) If a local government makes a limited land use decision [which] **that** is different from the
 19 proposal described in the notice to such a degree that the notice of the proposed action did not
 20 reasonably describe the local government’s final actions, a person **who resides or maintains a**
 21 **place of business within 25 miles of the boundary of the local government’s jurisdiction and**
 22 **who is** adversely affected by the decision may appeal the decision to the board under this section:

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

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

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

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

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

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

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

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

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

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

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

1 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
2 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
3 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
4 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
5 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
6 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
7 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
8 government, special district or state agency and the applicant of record, if any, in the local gov-
9 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
10 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
11 deposit for costs to be established by the board. If a petition for review is not filed with the board
12 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
13 to the local government, special district or state agency as cost of preparation of the record.

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

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

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

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

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

32 (b) The date of the decision.

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

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

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

45 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.

1 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
 2 court of the county where the application was filed for a writ of mandamus to compel the board to
 3 issue a final order.

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

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

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

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

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

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

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

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

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

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

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

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

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

41 **SECTION 2.** ORS 197.612 is amended to read:

42 197.612. (1) Notwithstanding contrary provisions of state and local law, a local government that
 43 proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the
 44 purpose of conforming the plan and regulations to new requirements in a land use statute, statewide
 45 land use planning goal or rule of the Land Conservation and Development Commission implementing

1 the statutes or goals may take action to change the comprehensive plan or the land use regulation
 2 without holding a public hearing if:

3 (a) The local government gives notice to the Department of Land Conservation and Development
 4 of the proposed change in the manner provided by ORS 197.610 and 197.615; and

5 (b) The department confirms in writing that the only effect of the proposed change is to conform
 6 the comprehensive plan or the land use regulations to the new requirements.

7 (2) Notwithstanding [*the requirement under*] ORS 197.830 (2)(c) [*that a person must have appeared*
 8 *before the local government orally or in writing*], a person [*that has not appeared*] **otherwise de-**
 9 **scribed in ORS 197.830 (2)(a) and (b)** may petition for review of the decision under subsection (1)
 10 of this section [*solely*] **only** to [*determine*] **challenge** whether the only effect of the local decision is
 11 to conform the comprehensive plan or the land use regulation to the new requirements.

12 **SECTION 3.** ORS 197.620 is amended to read:

13 197.620. (1) A decision to not adopt a legislative amendment or a new land use regulation is not
 14 appealable unless the amendment is necessary to address the requirements of a new or amended
 15 goal, rule or statute.

16 (2) Notwithstanding [*the requirements of*] ORS 197.830 (2)(c) [*that a person have appeared before*
 17 *the local government orally or in writing to seek review of a land use decision*], **any person otherwise**
 18 **described in ORS 197.830 (2)(a) and (b) or** the Director of the Department of Land Conservation
 19 and Development [*or any other person*] may appeal the decision to the Land Use Board of Appeals
 20 **only** if:

21 (a) The local government failed to submit all of the materials described in ORS 197.610 (3) or,
 22 if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced substantial rights
 23 of the Department of Land Conservation and Development or the person;

24 (b) Except as provided in subsection (3) of this section, the local government submitted the ma-
 25 terials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline specified in
 26 ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Commission, whichever
 27 is applicable; or

28 (c) The decision differs from the proposed changes submitted under ORS 197.610 to such an ex-
 29 tent that the materials submitted under ORS 197.610 do not reasonably describe the decision.

30 (3) Subsection (2)(b) of this section does not authorize an appeal if the local government cures
 31 an untimely submission of materials as provided in this subsection. A local government may cure the
 32 untimely submission of materials by either:

33 (a) Postponing the date for the final evidentiary hearing by the greater of 10 days or the number
 34 of days by which the submission was late; or

35 (b) Holding the evidentiary record open for an additional period of time equal to 10 days or the
 36 number of days by which the submission was late, whichever is greater. Additionally, the local
 37 government shall provide notice of the postponement or record extension to the Department of Land
 38 Conservation and Development.