

House Bill 2178

Sponsored by Representative HELFRICH (Presession 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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act limits LUBA appeals to locals. (Flesch Readability Score: 66.7).

Limits standing in appeals made to the Land Use Board of Appeals to those who reside or maintain a business in or within 25 miles of the boundary of the local government or special district and who have appeared before the decision maker in person at a 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 that:**

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 in or within 25 miles of the boundary of the local govern-**
14 **ment or special district; and**

15 [*(b)*] **(c) The person physically** appeared before [*the*] **any hearing of the** local government,
16 special district or state agency [*orally or in writing*].

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

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

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

27 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
28 (11) or 227.175 (10)[:],

29 [*(a)*] a person who **resides or maintains a place of business in or within 25 miles of the**
30 **boundary of the local government may appeal the decision to the board under this section**

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 **as follows:**

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

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

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

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

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

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

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

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

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

28 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-
 29 trative decision made pursuant to ORS 197.195 or 197.797 is required but has not been provided.

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

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

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

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

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

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

45 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed

1 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
 2 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
 3 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
 4 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
 5 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
 6 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
 7 government, special district or state agency and the applicant of record, if any, in the local gov-
 8 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
 9 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$300. If a
 10 petition for review is not filed with the board as required in subsections (10) and (11) of this section,
 11 the board shall award the filing fee to the local government, special district or state agency.

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

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

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

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

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

30 (b) The date of the decision.

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

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

34 (b) The local government or state agency may withdraw its decision for purposes of reconsid-
 35 eration at any time:

36 (A) Subsequent to the filing of a notice of intent; and

37 (B) Prior to:

38 (i) The date set for filing the record; or

39 (ii) On appeal of a decision under ORS 197.610 to 197.625 or relating to the development of a
 40 residential structure, the filing of the respondent's brief.

41 (c) If a local government or state agency withdraws an order for purposes of reconsideration,
 42 it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the
 43 petitioner is dissatisfied with the local government or agency action after withdrawal for purposes
 44 of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon
 45 the revised order. An amended notice of intent is not required if the local government or state

1 agency, on reconsideration, affirms the order or modifies the order with only minor changes.

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

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

7 (a) May, in its discretion, award costs to the prevailing party including the cost of preparation
8 of the record if the prevailing party is the local government, special district or state agency whose
9 decision is under review.

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

13 (c) Shall award costs and attorney fees to a party as provided in ORS 197.843.

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

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

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

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

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

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

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

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

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

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

41 197.612. (1) Notwithstanding contrary provisions of state and local law, a local government that
42 proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the
43 purpose of conforming the plan and regulations to new requirements in a land use statute, statewide
44 land use planning goal or rule of the Land Conservation and Development Commission implementing
45 the statutes or goals may take action to change the comprehensive plan or the land use regulation

1 without holding a public hearing if:

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

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

6 (2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have appeared
7 before the local government [*orally or in writing*] **to seek review of a land use decision**, a person
8 [*that*] **who resides or maintains a place of business in or within 25 miles of the boundary of**
9 **the local government and** has not appeared may petition for review of the decision under sub-
10 section (1) of this section solely to determine whether the only effect of the local decision is to
11 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) that a person have appeared before the
17 local government [*orally or in writing*] to seek review of a land use decision, the Director of the
18 Department of Land Conservation and Development or any [*other*] person **who resides or maintains**
19 **a place of business in or within 25 miles of the boundary of the local government** may appeal
20 the decision to the Land Use Board of Appeals 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.