

Enrolled Senate Bill 234

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CHAPTER

AN ACT

Relating to procedure for judicial review of land use decisions; creating new provisions; and amending ORS 197.850.

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

SECTION 1. ORS 197.850 is amended to read:

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

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 *[shall be]* **is** solely as provided in this section.

(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review *[shall be]* **are** instituted by filing a petition in the Court of Appeals. The petition *[shall]* **must** be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

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

(4) The petition *[shall]* **must** state the nature of the order the petitioner desires reviewed. Copies of the petition *[shall]* **must** be served by **first class**, registered or certified mail *[upon]* **on** the board[,] and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. *[Any]* **The court may tax a party that** unreasonably *[refusing]* **refuses** to stipulate to limit the record *[may be taxed by the court]* for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, **the court may not tax** the cost of the record *[shall not be taxed]* to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs *[shall]* **must** be filed within time periods and in a manner established by the Court of Appeals by rule.

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

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court shall not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

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

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

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

(8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

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

(a) The order to be unlawful in substance or procedure, but error in procedure [*shall not be*] **is not** cause for reversal or remand unless the court [*shall find*] **finds** that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835 (2).

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

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

(12) A party [*shall*] **must** file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

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

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

(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution.

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

SECTION 2. The amendments to ORS 197.850 by section 1 of this 2009 Act apply to:

(1) A petition for judicial review of a final order of the Land Use Board of Appeals that is filed with the Court of Appeals on or after the effective date of this 2009 Act.

(2) A petition for judicial review of a local government referee's decision on expedited land division that is filed with the Court of Appeals on or after the effective date of this 2009 Act.

Passed by Senate February 9, 2009

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Secretary of Senate

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President of Senate

Passed by House March 9, 2009

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Speaker of House

Received by Governor:

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Approved:

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Governor

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Secretary of State