

Senate Bill 234

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Real Estate Land Use Section)

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**.

Authorizes service by first class mail of petition for judicial review of final order of Land Use Board of Appeals. Authorizes, by reference, service by first class mail of petition for judicial review of local government's expedited land division decision issued by referee.

Conforms language to legislative form and style.

A BILL FOR AN ACT

1
2 Relating to procedure for judicial review of land use decisions; creating new provisions; and
3 amending ORS 197.850.

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

5 **SECTION 1.** ORS 197.850 is amended to read:

6 197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830
7 to 197.845 may seek judicial review of a final order issued in those proceedings.

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

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

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

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

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

29 (6) Petitions and briefs [*shall*] **must** be filed within time periods and in a manner established

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 by the Court of Appeals by rule.

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

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

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

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

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

17 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
18 riage of justice.

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

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

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

26 (b) The order to be unconstitutional; or

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

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

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

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

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

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

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

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

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

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

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

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