

## HOUSE AMENDMENTS TO HOUSE BILL 2129

By COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

April 20

1 On page 1 of the printed bill, line 3, delete “197.649.”  
2 Delete lines 6 through 31 and delete pages 2 through 6.  
3 On page 7, delete lines 1 through 40 and insert:  
4 “**SECTION 1.** ORS 197.610 is amended to read:  
5 “197.610. *[(1) A proposal to amend a local government acknowledged comprehensive plan or land*  
6 *use regulation or to adopt a new land use regulation shall be forwarded to the Director of the De-*  
7 *partment of Land Conservation and Development at least 45 days before the first evidentiary hearing*  
8 *on adoption. The proposal forwarded shall contain the text and any supplemental information that the*  
9 *local government believes is necessary to inform the director as to the effect of the proposal. The notice*  
10 *shall include the date set for the first evidentiary hearing. The director shall notify persons who have*  
11 *requested notice that the proposal is pending.]*  
12 “*[(2) When a local government determines that the goals do not apply to a particular proposed*  
13 *amendment or new regulation, notice under subsection (1) of this section is not required. In addition,*  
14 *a local government may submit an amendment or new regulation with less than 45 days’ notice if the*  
15 *local government determines that there are emergency circumstances requiring expedited review. In*  
16 *both cases:]*  
17 “*[(a) The amendment or new regulation shall be submitted after adoption as provided in ORS*  
18 *197.615 (1) and (2); and]*  
19 “*[(b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may*  
20 *appeal the decision to the board under ORS 197.830 to 197.845.]*  
21 “*[(3) When the Department of Land Conservation and Development participates in a local govern-*  
22 *ment proceeding, at least 15 days before the final hearing on the proposed amendment to the compre-*  
23 *hensive plan or land use regulation or the new land use regulation, the department shall notify the*  
24 *local government of:]*  
25 “*[(a) Any concerns the department has concerning the proposal; and]*  
26 “*[(b) Advisory recommendations on actions the department considers necessary to address the*  
27 *concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.]*  
28 “*[(4) The director shall report to the Land Conservation and Development Commission on whether*  
29 *the director:]*  
30 “*[(a) Believes the local government’s proposal violates the goals; and]*  
31 “*[(b) Is participating in the local government proceeding.]*  
32 “**(1) Before a local government adopts a change, including additions and deletions, to an**  
33 **acknowledged comprehensive plan or a land use regulation, the local government shall sub-**  
34 **mit the proposed change to the Director of the Department of Land Conservation and De-**  
35 **velopment. The Land Conservation and Development Commission shall specify, by rule, the**

1 deadline for submitting proposed changes, but in all cases the proposed change must be  
2 submitted at least 20 days before the local government holds the first evidentiary hearing  
3 on adoption of the proposed change. The commission may not require a local government to  
4 submit the proposed change more than 35 days before the first evidentiary hearing.

5 “(2) If a local government determines that emergency circumstances beyond the control  
6 of the local government require expedited review, the local government shall submit the  
7 proposed changes as soon as practicable, but may submit the proposed changes after the  
8 applicable deadline.

9 “(3) Submission of the proposed change must include all of the following materials:

10 “(a) The text of the proposed change to the comprehensive plan or land use regulation  
11 implementing the plan;

12 “(b) If a comprehensive plan map or zoning map is created or altered by the proposed  
13 change, a copy of the map that is created or altered;

14 “(c) A brief narrative summary of the proposed change and any supplemental information  
15 that the local government believes may be useful to inform the director or members of the  
16 public of the effect of the proposed change;

17 “(d) The date set for the first evidentiary hearing;

18 “(e) The form of notice or a draft of the notice to be provided under ORS 197.763, if ap-  
19 plicable; and

20 “(f) Any staff report on the proposed change or information describing when the staff  
21 report will be available, and how a copy of the staff report can be obtained.

22 “(4) The director shall cause notice of the proposed change to the acknowledged com-  
23 prehensive plan or the land use regulation to be provided to:

24 “(a) Persons that have requested notice of changes to the acknowledged comprehensive  
25 plan of the particular local government, using electronic mail, electronic bulletin board,  
26 electronic mailing list server or similar electronic method; and

27 “(b) Persons that are generally interested in changes to acknowledged comprehensive  
28 plans, by posting notices periodically on a public website using the Internet or a similar  
29 electronic method.

30 “(5) When a local government determines that the land use statutes, statewide land use  
31 planning goals and administrative rules of the commission that implement either the stat-  
32 utes or the goals do not apply to a proposed change to the acknowledged comprehensive plan  
33 and the land use regulations, submission of the proposed change under this section is not  
34 required.

35 “(6) If, after submitting the materials described in subsection (3) of this section, the  
36 proposed change is altered to such an extent that the materials submitted no longer rea-  
37 sonably describe the proposed change, the local government must notify the Department of  
38 Land Conservation and Development of the alterations to the proposed change and provide  
39 a summary of the alterations along with any alterations to the proposed text or map to the  
40 director at least 10 days before the final evidentiary hearing on the proposal. The director  
41 shall cause notice of the alterations to be given in the manner described in subsection (4)  
42 of this section. Circumstances requiring resubmission of a proposed change may include, but  
43 are not limited to, a change in the principal uses allowed under the proposed change or a  
44 significant change in the location at which the principal uses would be allowed, limited or  
45 prohibited.

1       **“(7) When the director determines that a proposed change to an acknowledged compre-**  
2 **hensive plan or a land use regulation may not be in compliance with land use statutes or the**  
3 **statewide land use planning goals, including administrative rules implementing either the**  
4 **statutes or the goals, the department shall notify the local government of the concerns at**  
5 **least 15 days before the final evidentiary hearing, unless there is only one hearing or the**  
6 **proposed change has been modified to the extent that resubmission is required under sub-**  
7 **section (6) of this section.**

8       **“(8) Notwithstanding subsection (7) of this section, the department may provide advisory**  
9 **recommendations to the local government concerning the proposed change to the acknowl-**  
10 **edged comprehensive plan or land use regulation.**

11       **“SECTION 2.** ORS 197.615 is amended to read:

12       *“197.615. [(1) A local government that amends an acknowledged comprehensive plan or land use*  
13 *regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the*  
14 *Department of Land Conservation and Development a copy of the adopted text of the comprehensive*  
15 *plan provision or land use regulation together with the findings adopted by the local government. The*  
16 *text and findings must be mailed or otherwise submitted not later than five working days after the final*  
17 *decision by the governing body. If the proposed amendment or new regulation that the director received*  
18 *under ORS 197.610 has been substantially amended, the local government shall specify the changes that*  
19 *have been made in the notice provided to the director. If the text and findings are mailed, they shall*  
20 *include a signed statement by the person mailing them indicating the date of deposit in the mail.]*

21       *“(2)(a) On the same day that the text and findings are mailed or delivered, the local government*  
22 *also shall mail or otherwise submit notice to persons who:]*

23       *“(A) Participated in the proceedings leading to the adoption of the amendment to the comprehen-*  
24 *sive plan or land use regulation or the new land use regulation; and]*

25       *“(B) Requested of the local government in writing that they be given such notice.]*

26       *“(b) The notice required by this subsection shall:]*

27       *“(A) Describe briefly the action taken by the local government;]*

28       *“(B) State the date of the decision;]*

29       *“(C) If delivered by mail, include a certificate of mailing containing a statement signed by the*  
30 *person mailing it indicating the date the notice was deposited in the mail;]*

31       *“(D) List the place where and the time when the amendment to the acknowledged comprehensive*  
32 *plan or land use regulation or the new land use regulation, and findings, may be reviewed; and]*

33       *“(E) Explain the requirements for appealing the action of the local government under ORS 197.830*  
34 *to 197.845.]*

35       *“(3) Not later than five working days after receipt of an amendment to an acknowledged compre-*  
36 *hensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this*  
37 *section, the director shall notify by mail or other submission any persons who have requested notifica-*  
38 *tion. The notice shall:]*

39       *“(a) Explain the requirements for appealing the action of the local government under ORS 197.830*  
40 *to 197.845; and]*

41       *“(b) List the locations where the comprehensive plan or land use regulation amendment or new*  
42 *land use regulation may be reviewed.]*

43       **“(1) When a local government adopts a proposed change to an acknowledged compre-**  
44 **hensive plan or a land use regulation, the local government shall submit the decision to the**  
45 **Director of the Department of Land Conservation and Development within 20 days after**

1 making the decision.

2 “(2) The submission must contain the following materials:

3 “(a) A copy of the signed decision, the findings and the text of the change to the com-  
4 prehensive plan or land use regulation;

5 “(b) If a comprehensive plan map or zoning map is created or altered by the proposed  
6 change, a copy of the map that is created or altered;

7 “(c) A brief narrative summary of the decision, including a summary of substantive dif-  
8 ferences from the proposed change submitted under ORS 197.610 and any supplemental in-  
9 formation that the local government believes may be useful to inform the director or  
10 members of the public of the effect of the actual change; and

11 “(d) A statement by the individual transmitting the submission, identifying the date of  
12 the decision and the date of the submission.

13 “(3) The director shall cause notice of the decision and an explanation of the require-  
14 ments for appealing the land use decision under ORS 197.830 to 197.845 to be provided to:

15 “(a) Persons that have requested notice of changes to the acknowledged comprehensive  
16 plan of the particular local government, using electronic mail, electronic bulletin board,  
17 electronic mailing list server or similar electronic method; and

18 “(b) Persons that are generally interested in changes to acknowledged comprehensive  
19 plans, by posting notices periodically on a public website using the Internet or a similar  
20 electronic method.

21 “(4) On the same day the local government submits the decision to the director, the local  
22 government shall mail, or otherwise deliver, notice to persons that:

23 “(a) Participated in the local government proceedings that led to the decision to adopt  
24 the change to the acknowledged comprehensive plan or the land use regulation; and

25 “(b) Requested in writing that the local government give notice of the change to the ac-  
26 knowledged comprehensive plan or the land use regulation.

27 “(5) The notice required by subsection (4) of this section must state how and where the  
28 materials described in subsection (2) of this section may be obtained and must:

29 “(a) Include a statement by the individual delivering the notice that identifies the date  
30 on which the notice was delivered and the individual delivering the notice;

31 “(b) List the locations and times at which the public may review the decision and  
32 findings; and

33 “(c) Explain the requirements for appealing the land use decision under ORS 197.830 to  
34 197.845.

35 “**SECTION 3.** ORS 197.620 is amended to read:

36 “197.620. (1) [Notwithstanding the requirements of ORS 197.830 (2), persons who participated either  
37 orally or in writing in the local government proceedings leading to the adoption of an amendment to  
38 an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal  
39 the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845.] A decision to not adopt  
40 a legislative amendment or a new land use regulation is not appealable [except where] **unless** the  
41 amendment is necessary to address the requirements of a new or amended goal, rule or statute.

42 “(2) Notwithstanding the requirements of ORS 197.830 (2)[, the Director of the Department of  
43 Land Conservation and Development or any other person may file an appeal of the local government’s  
44 decision under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or  
45 land use regulation or a new land use regulation differs from the proposal submitted under ORS

1 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of  
2 the local government final action.] **that a person have appeared before the local government**  
3 **orally or in writing to seek review of a land use decision, the Director of the Department of**  
4 **Land Conservation and Development or any other person may appeal the decision to the**  
5 **Land Use Board of Appeals if:**

6 **“(a) The local government failed to submit all of the materials described in ORS 197.610**  
7 **(3) or, if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced sub-**  
8 **stantial rights of the Department of Land Conservation and Development or the person;**

9 **“(b) Except as provided in subsection (3) of this section, the local government submitted**  
10 **the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline**  
11 **specified in ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Com-**  
12 **mission, whichever is applicable; or**

13 **“(c) The decision differs from the proposed changes submitted under ORS 197.610 to such**  
14 **an extent that the materials submitted under ORS 197.610 do not reasonably describe the**  
15 **decision.**

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

19 **“(a) Postponing the date for the final evidentiary hearing by the greater of 10 days or the**  
20 **number of days by which the submission was late; or**

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

25 **“SECTION 4.** ORS 197.625 is amended to read:

26 *“197.625. [(1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS*  
27 *197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new*  
28 *land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An*  
29 *amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowl-*  
30 *edged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director*  
31 *of the Department of Land Conservation and Development and:]*

32 *“[(a) The 21-day appeal period has expired; or]*

33 *“[(b) If an appeal is timely filed, the board affirms the decision or the appellate courts affirm the*  
34 *decision.]*

35 *“[(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use*  
36 *regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the*  
37 *amendment or new regulation shall be considered acknowledged upon the date the appellate decision*  
38 *becomes final.]*

39 *“[(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land*  
40 *use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time*  
41 *specified by local government charter or ordinance and is applicable to land use decisions, expedited*  
42 *land divisions and limited land use decisions if the amendment was adopted in substantial compliance*  
43 *with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.]*

44 *“[(b) Any approval of a land use decision, expedited land division or limited land use decision*  
45 *subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include*

1 *findings of compliance with those land use goals applicable to the amendment.]*

2 *“(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land*  
3 *use regulation shall not be relied upon to justify retention of improvements so permitted if the compre-*  
4 *hensive plan provision or land use regulation does not gain acknowledgment.]*

5 *“(d) The provisions of this subsection apply to applications for land use decisions, expedited land*  
6 *divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan*  
7 *and land use regulation amendments adopted.:]*

8 *“(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and*  
9 *197.636;]*

10 *“(B) After June 1, 1991, to meet the requirements of ORS 197.646; and]*

11 *“(C) After November 4, 1993.]*

12 *“(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from*  
13 *the board stating either:]*

14 *“(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (9); or]*

15 *“(b) The date the appellate decision affirming the adoption of the amendment or new regulation*  
16 *became final.]*

17 *“(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five*  
18 *days of receiving a valid request from the local government.]*

19 *“(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the*  
20 *Land Conservation and Development Commission from entering an order pursuant to ORS 197.633,*  
21 *197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.]*

22 **“(1) A local decision adopting a change to an acknowledged comprehensive plan or a land**  
23 **use regulation is deemed to be acknowledged when the local government has complied with**  
24 **the requirements of ORS 197.610 and 197.615 and either:**

25 **“(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent**  
26 **to appeal has not been filed; or**

27 **“(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local**  
28 **decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms**  
29 **the decision.**

30 **“(2) If the local decision adopting a change to an acknowledged comprehensive plan or a**  
31 **land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive**  
32 **plan or the land use regulation, as modified, is deemed to be acknowledged upon the date the**  
33 **decision of the board or the decision of an appellate court becomes final.**

34 **“(3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a**  
35 **land use regulation:**

36 **“(a) The change is effective at the time specified by local government charter or ordi-**  
37 **nance; and**

38 **“(b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615,**  
39 **the local government shall apply the change to land use decisions, expedited land divisions**  
40 **and limited land use decisions unless a stay is granted under ORS 197.845.**

41 **“(4) Approval of a land use decision, expedited land division or limited land use decision**  
42 **that is subject to an effective but unacknowledged provision of a comprehensive plan or a**  
43 **land use regulation must include findings of compliance with land use statutes, statewide**  
44 **land use planning goals and administrative rules of the Land Conservation and Development**  
45 **Commission implementing the statutes or goals that apply to the decision and that the un-**

1 **acknowledged provision implements.**

2 **“(5) If an effective but unacknowledged provision of a comprehensive plan or a land use**  
3 **regulation fails to gain acknowledgment, a permit or zone change approved, in whole or in**  
4 **part, on the basis of the change does not justify retention of the improvements that were**  
5 **authorized by the permit or zone change.**

6 **“(6) If requested by a local government, the Director of the Department of Land Con-**  
7 **servation and Development shall issue certification of the acknowledgment upon receipt of**  
8 **an affidavit from:**

9 **“(a) The local government, attesting that the change to the acknowledged comprehensive**  
10 **plan or the land use regulation was accomplished in compliance with ORS 197.610 and 197.615;**  
11 **and**

12 **“(b) The Land Use Board of Appeals, stating either:**

13 **“(A) That no notice of appeal was filed within the 21 days allowed under ORS 197.830 (9);**  
14 **or**

15 **“(B) The date the decision of the board or the decision of an appellate court affirming**  
16 **the change to the acknowledged comprehensive plan or the land use regulation became final.**

17 **“(7) The board shall issue an affidavit for the purposes of subsection (6) of this section**  
18 **within five days after receiving a valid request from the local government.**

19 **“SECTION 5. Section 6 of this 2011 Act is added to and made a part of ORS 197.610 to**  
20 **197.625.**

21 **“SECTION 6. (1) Notwithstanding contrary provisions of state and local law, a local gov-**  
22 **ernment that proposes a change to an acknowledged comprehensive plan or a land use reg-**  
23 **ulation solely for the purpose of conforming the plan and regulations to new requirements**  
24 **in a land use statute, statewide land use planning goal or rule of the Land Conservation and**  
25 **Development Commission implementing the statutes or goals may take action to change the**  
26 **comprehensive plan or the land use regulation without holding a public hearing if:**

27 **“(a) The local government gives notice to the Department of Land Conservation and De-**  
28 **velopment of the proposed change in the manner provided by ORS 197.610 and 197.615; and**

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

31 **“(2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have**  
32 **appeared before the local government orally or in writing, a person that has not appeared**  
33 **may petition for review of the decision under subsection (1) of this section solely to deter-**  
34 **mine whether the only effect of the local decision is to conform the comprehensive plan or**  
35 **the land use regulation to the new requirements.”.**

36 On page 8, delete lines 23 through 27.

37 In line 28, delete “9” and insert “8”.

38 In line 29, delete “10” and insert “9”.

39 On page 11, line 18, delete “11” and insert “10”.

40 On page 12, line 19, delete “a governing body of a local”.

41 In line 20, delete “government” and insert “the county”.

42 In line 39, delete “12” and insert “11”.

43 On page 13, line 13, delete “a governing body of a local government” and insert “the county”.

44 In line 16, delete “13” and insert “12”.

45 On page 14, line 13, delete “a governing body of”.

1 In line 14, delete “a local government” and insert “the city”.  
2 On page 15, line 4, delete “14” and insert “13”.  
3 In line 23, delete “a governing body of a local government” and insert “the city”.  
4 Delete lines 26 through 30 and insert:  
5 **“SECTION 14. Section 6 of this 2011 Act and the amendments to ORS 197.254, 197.610,**  
6 **197.615, 197.620, 197.625, 197.830, 215.427, 215.435, 227.178 and 227.181 by sections 1 to 4, 7 and**  
7 **9 to 13 of this 2011 Act apply to proposed changes to an acknowledged comprehensive plan**  
8 **or a land use regulation that is first submitted to the Director of the Department of Land**  
9 **Conservation and Development on or after the effective date of this 2011 Act.”.**  
10 \_\_\_\_\_