

Enrolled
House Bill 2130

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to periodic review of land use planning; creating new provisions; amending ORS 197.626, 197.633, 197.644, 197.646, 197.650 and 197.651; repealing section 2, chapter 150, Oregon Laws 2011 (Enrolled House Bill 2688); and declaring an emergency.

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

SECTION 1. ORS 197.626 is amended to read:

197.626. [A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 195.145 (1)(b), a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.]

(1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

(2) A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

SECTION 1a. If House Bill 2688 becomes law, section 2, chapter 150, Oregon Laws 2011 (Enrolled House Bill 2688) (amending ORS 197.626), is repealed.

SECTION 2. ORS 197.633 is amended to read:

197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review. *The rules shall provide a process for* **that address:**

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of *[an evaluation of a comprehensive plan and land use regulations;]* **a work program; and**

[(e) Review of a work program; and]

[(f)] **(e) The preparation, review and approval of *[completed]* work tasks[.], including:**

(A) The amendment of an urban growth boundary.

(B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:

(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.

(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, "complies" has the meaning given the term "compliance" in the phrase "compliance with the goals" in ORS 197.747.

[(3)] **(4) A decision by the Director of the Department of Land Conservation and Development to approve a work program, that no work program is necessary or that no further work is necessary is final and not subject to appeal.**

[(4)] **(5) The director:**

(a) Shall take action on a work task not later than 120 days after the local government submits the work task for review unless the local government waives the 120-day deadline or the commission grants the director an extension. If the director does not take action within the time period required by this subsection, the work task is deemed approved. The department shall provide a letter to the local government certifying that the work task is approved unless an interested party has filed a timely objection to the work task consistent with administrative rules for conducting periodic review. *[If a timely objection is filed, the director shall refer the work task to the commission.]*

(b) May approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.

[(5)] **(6) Except as provided in this subsection, the commission shall take action on the appeal or referral of a work task within 90 days of the appeal or referral. Action by the commission in**

response to an appeal from a decision of the director **or a referral** is a final order subject to judicial review in the manner provided in ORS 197.650 **and 197.651**. The commission may extend the time for taking action on the appeal or referral if the commission finds that:

- (a) The appeal or referral is appropriate for mediation;
- (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit; or
- (c) The parties to the appeal and the commission agree to an extension, not to exceed an additional 90 days.

~~[(6)]~~ (7) The commission and a local government shall attempt to complete periodic review within three years after approval of a work program. *[In order]* To promote the timely completion of periodic review, the commission shall establish a system of incentives to encourage local government compliance with timelines in periodic review work programs.

SECTION 3. ORS 197.644 is amended to read:

197.644. (1) *[The Land Conservation and Development Commission may direct or, upon request of the local government,]* The Director of the Department of Land Conservation and Development may authorize **or direct** a local government to modify an approved work program when:

- (a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;
- (b) Issues of goal compliance are raised as a result of completion of a work *[program]* task resulting in a need to undertake further review or revisions;
- (c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks, result in a need for further review or revision; or
- (d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) The **Land Conservation and Development** Commission shall have exclusive jurisdiction for review of the *[evaluation, work program and]* completed work *[program]* tasks as set forth in ORS 197.628 to 197.650. *[The commission shall adopt rules governing standing, the provision of notice, conduct of hearings, adoption of stays, extension of time periods and other matters related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416, 227.175 and 466.385.]*

~~[(3)(a)]~~ (3) Commission action pursuant to subsection ~~[(1) or]~~ (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650 **and 197.651**.

[(b) Action by the director pursuant to subsection (1) of this section may be appealed to the commission pursuant to rules adopted by the commission. Commission action under this paragraph is a final order subject to judicial review in the manner provided in ORS 197.650.]

SECTION 4. ORS 197.646 is amended to read:

197.646. (1) A local government shall amend its acknowledged comprehensive plan[,] **or acknowledged** regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with **a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals.***[.]*

[(a) A new statutory requirement; or]

[(b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission.]

[(2) Periodic review is not the implementation process for new statutory, land use planning goal or rule requirements.]

~~[(3)(a)]~~ (2)(a) The Department of Land Conservation and Development shall notify local governments when a new *[statutory]* requirement *[or a new land use planning goal or rule requirement adopted by the commission]* **in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals** requires changes to an acknowledged comprehensive plan,

[a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan.

(b) The **Land Conservation and Development** Commission shall establish, by rule, the time period within which an acknowledged comprehensive plan, [a] **an acknowledged** regional framework plan and land use regulations implementing either plan must be in compliance with:

(A) A new [statutory] requirement **in a land use statute**, if the legislation does not specify a time period for compliance; and

(B) A new **requirement in a** land use planning goal or rule [requirement] adopted by the commission.

[(4)] **(3)** When a local government does not adopt amendments to [a] **an acknowledged** comprehensive plan, [a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan, as required by subsection (1) of this section, the new [statutory, land use planning goal or rule] requirements apply directly to the local government's land use decisions. The failure to adopt amendments to [a] **an acknowledged** comprehensive plan, [a] **an acknowledged** regional framework plan [and] **or** land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

SECTION 5. ORS 197.650 is amended to read:

197.650. (1) A Land Conservation and Development Commission **final order issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794** may be appealed to the Court of Appeals **by persons who participated in proceedings, if any, that led to issuance of the final order being appealed.** [*in the manner provided in ORS 183.482 by the following persons:*]

[(a) *Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;*]

[(b) *Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (7);*]

[(c) *Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed;*]

[(d) *Persons who submitted comments or objections pursuant to ORS 197.659 and 215.788 to 215.794 or proceedings under ORS 197.659 and 215.788 to 215.794 and are appealing a commission order issued under ORS 197.659 and 215.788 to 215.794;*]

[(e) *Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and 197.659 or proceedings under ORS 197.652 to 197.658 and 197.659 and are appealing a commission order issued under ORS 197.652 to 197.658 and 197.659; or*]

[(f) *Persons who submitted oral or written testimony in a proceeding before the commission pursuant to ORS 215.780.*]

[(2) *Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636, 197.644 or 197.659.*]

[(3) *Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections.*]

(2) Jurisdiction for judicial review of a final order of the commission issued pursuant to ORS 197.180, 197.251, 197.626, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is conferred upon the Court of Appeals.

SECTION 6. ORS 197.651 is amended to read:

197.651. [(1) *Notwithstanding ORS 197.650, a Land Conservation and Development Commission order concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 may be appealed to the Court of Appeals by the persons described in ORS 197.650.*]

[*(2) Judicial review of orders described in subsection (1) of this section is as provided in this section.*]

(1) Judicial review of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141 is as provided in subsections (3) to (12) of this section.

(2) Judicial review of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.650, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

(3) [*Jurisdiction for judicial review is conferred upon the Court of Appeals.*] A proceeding for judicial review **under this section** may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

(6) Within 21 days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(8) The Court of Appeals shall:

(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court of Appeals 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. However, the Court of Appeals may not hold oral argument more than 49 days after 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 a member of the court or a party.

(b) Set forth in writing and provide to the parties a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

(c) Consider, in making a determination under paragraph (b) of this subsection:

(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 of Appeals 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.

(9) The court:

(a) Shall limit judicial review of an order reviewed under this section to the record.

(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

(b) Unconstitutional.

(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

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

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

SECTION 7. Notwithstanding any other provision of law, ORS 197.646, 197.649 and 197.650 are not considered to have been added to or made a part of ORS 197.628 to 197.650 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that series.

SECTION 8. ORS 197.646, 197.649, 197.650 and 197.651 are added to and made a part of ORS chapter 197.

SECTION 9. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House May 3, 2011

Received by Governor:

Repassed by House June 10, 2011

.....M.,....., 2011

Approved:

.....
Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

.....
Bruce Hanna, Speaker of House

.....
John Kitzhaber, Governor

.....
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2011

Passed by Senate June 8, 2011

.....
Peter Courtney, President of Senate

.....
Kate Brown, Secretary of State