

## HOUSE AMENDMENTS TO HOUSE BILL 2130

By COMMITTEE ON TRANSPORTATION AND ECONOMIC DEVELOPMENT

April 28

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions;”.

2 In line 3, before the period insert “; and declaring an emergency”.

3 Delete lines 5 through 16 and insert:

4 “**SECTION 1.** ORS 197.626 is amended to read:

5 “197.626. (1) A metropolitan service district that amends its urban growth boundary to include  
6 more than 100 **additional** acres, [*or that amends the district’s regional framework plan or land use*  
7 *regulations implementing the plan to establish urban reserves designated*] under ORS 195.145 [(1)(b),]  
8 a city with a population of 2,500 or more within its urban growth boundary that amends the urban  
9 growth boundary to include more than 50 **additional** acres or that designates, **or withdraws ter-**  
10 **ritory from, urban reserves** [*urban reserve*] under ORS 195.145, or a county that amends the  
11 county’s comprehensive plan or land use regulations implementing the plan to [*establish rural re-*  
12 *serves designated*] **designate, or withdraw territory from, rural reserves** under ORS 195.141[,]  
13 shall submit the amendment or designation to the Land Conservation and Development Commission  
14 in the manner provided for [*periodic review under ORS 197.628 to 197.650*] **review of a work task**  
15 **under ORS 197.633.**

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

18 In line 30, delete the period and insert “, including:

19 “(A) The amendment of an urban growth boundary.

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

21 On page 2, line 4, after the period insert “The commission shall confine its review of evidence  
22 to the local record. The commission’s standard of review:

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

25 “(b) For procedural issues, is whether the local government failed to follow the procedures ap-  
26 plicable to the matter before the local government in a manner that prejudiced the substantial rights  
27 of a party to the proceeding.

28 “(c) For issues concerning compliance with applicable laws, is whether the local government’s  
29 decision on the whole complies with applicable statutes, statewide land use planning goals, admin-  
30 istrative rules, the comprehensive plan, the regional framework plan, the functional plan and land  
31 use regulations. The commission shall defer to a local government’s interpretation of the compre-  
32 hensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this  
33 paragraph, ‘complies’ has the meaning given the term ‘compliance’ in the phrase ‘compliance with  
34 the goals’ in ORS 197.747.”.

35 In line 19, after the first “referral” insert “of a work task”.

1 In line 20, after “director” insert “or a referral”.

2 In line 21, after “197.650” insert “and 197.651”.

3 On page 3, line 2, delete “evaluation, work program and”.

4 In line 7, delete “(3)(a)” and insert “(3)”.

5 In line 8, delete “or” and insert “and” and delete “, whichever is applicable”.

6 Delete lines 9 through 11.

7 In line 23, delete “(2)” and insert “(2)(a)”.

8 Delete lines 44 and 45 and delete pages 4 and 5 and insert:

9 “**SECTION 5.** ORS 197.650 is amended to read:

10 “197.650. (1) A Land Conservation and Development Commission **final order issued pursuant**

11 **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**

12 **to 215.794** may be appealed to the Court of Appeals **by persons who participated in proceedings,**

13 **if any, that led to issuance of the final order being appealed.** [*in the manner provided in ORS*

14 *183.482 by the following persons:*]

15 “[*(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings*

16 *under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS*

17 *197.251 or 197.633, 197.636 or 197.644;*]

18 “[*(b) Persons who submitted comments or objections pursuant to procedures adopted by the com-*

19 *mission for certification of state agency coordination programs and are appealing a certification issued*

20 *under ORS 197.180 (7);*]

21 “[*(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition*

22 *was dismissed;*]

23 “[*(d) Persons who submitted comments or objections pursuant to ORS 197.659 and 215.788 to*

24 *215.794 or proceedings under ORS 197.659 and 215.788 to 215.794 and are appealing a commission*

25 *order issued under ORS 197.659 and 215.788 to 215.794;*]

26 “[*(e) Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and*

27 *197.659 or proceedings under ORS 197.652 to 197.658 and 197.659 and are appealing a commission*

28 *order issued under ORS 197.652 to 197.658 and 197.659; or*]

29 “[*(f) Persons who submitted oral or written testimony in a proceeding before the commission pur-*

30 *suant to ORS 215.780.*]

31 “[*(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state*

32 *the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or*

33 *objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636, 197.644 or 197.659.*]

34 “[*(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall*

35 *be served by registered or certified mail upon the Department of Land Conservation and Development,*

36 *the local government and all persons who filed comments or objections.*]

37 “**(2) Jurisdiction for judicial review of a final order of the commission issued pursuant**

38 **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**

39 **to 215.794 is conferred upon the Court of Appeals.**

40 “**SECTION 6.** ORS 197.651 is amended to read:

41 “197.651. [*(1) Notwithstanding ORS 197.650, a Land Conservation and Development Commission*

42 *order concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under*

43 *ORS 195.141 may be appealed to the Court of Appeals by the persons described in ORS 197.650.*]

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

45 *section.*]

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

4       “(2) **Judicial review of any other final order of the commission under ORS 197.626 or of**  
5 **a final order of the commission under 197.180, 197.251, 197.628 to 197.650, 197.652 to 197.658,**  
6 **197.659, 215,780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12)**  
7 **of this section.**

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

12       “(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a pe-  
13 tition on the persons who submitted oral or written testimony in the proceeding before the com-  
14 mission are jurisdictional and may not be waived or extended.

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

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

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

28       “(8) The Court of Appeals shall:

29       “(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court  
30 of Appeals determines that the ends of justice served by holding oral argument on a later day out-  
31 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold  
32 oral argument more than 49 days after the date of transmittal of the record because of general  
33 congestion of the court calendar or lack of diligent preparation or attention to the case by a member  
34 of the court or a party.

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

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

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

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

44       “(9) The court:

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

1 “(b) May not substitute its judgment for that of the Land Conservation and Development Com-  
2 mission as to an issue of fact.

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

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

8 “(b) Unconstitutional.

9 “(c) Not supported by substantial evidence in the whole record as to facts found by the com-  
10 mission.

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

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

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

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

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

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