

House Bill 3245

Sponsored by Representative SPRENGER; Representatives BERGER, ESQUIVEL, FREEMAN, GARRARD, HUFFMAN, KRIEGER, MCLANE, OLSON, THOMPSON, WHISNANT, Senators FERRIOLI, GIROD, MORSE

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**.

Requires that person seeking to appeal land use decision or limited land use decision to Land Use Board of Appeals must be adversely affected by decision.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to basis for appeal to Land Use Board of Appeals; creating new provisions; amending ORS
3 197.830; and declaring an emergency.

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

5 **SECTION 1.** ORS 197.830 is amended to read:

6 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
7 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
8 peals.

9 (2) Except as provided in ORS 197.620 (1) and (2), a person **adversely affected by a land use**
10 **decision or a limited land use decision** may petition the board for review of [*a land use decision*
11 *or limited land use*] **the** decision if the person:

12 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
13 and

14 (b) Appeared before the local government, special district or state agency orally or in writing.

15 (3) If a local government makes a land use decision without providing a hearing, except as
16 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
17 that is different from the proposal described in the notice of hearing to such a degree that the notice
18 of the proposed action did not reasonably describe the local government's final actions, a person
19 adversely affected by the decision may appeal the decision to the board under this section:

20 (a) Within 21 days of actual notice where notice is required; or

21 (b) Within 21 days of the date a person knew or should have known of the decision where no
22 notice is required.

23 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
24 (11) or 227.175 (10):

25 (a) A person who was not provided mailed notice of the decision as required under ORS 215.416
26 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of
27 receiving actual notice of the decision.

28 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
29 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
30 section within 21 days after the expiration of the period for filing a local appeal of the decision es-

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 established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

2 (c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416
3 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of re-
4 ceiving actual notice of the nature of the decision, if the mailed notice of the decision did not rea-
5 sonably describe the nature of the decision.

6 (d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice
7 of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the
8 decision to the board under this section.

9 (5) If a local government makes a limited land use decision which is different from the proposal
10 described in the notice to such a degree that the notice of the proposed action did not reasonably
11 describe the local government's final actions, a person adversely affected by the decision may appeal
12 the decision to the board under this section:

13 (a) Within 21 days of actual notice where notice is required; or

14 (b) Within 21 days of the date a person knew or should have known of the decision where no
15 notice is required.

16 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in
17 subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

18 (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763
19 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-
20 ply.

21 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under
22 subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene
23 in and be made a party to the review proceeding by filing a motion to intervene and by paying a
24 filing fee of \$100.

25 (b) Persons who may intervene in and be made a party to the review proceedings, as set forth
26 in subsection (1) of this section, are:

27 (A) The applicant who initiated the action before the local government, special district or state
28 agency; or

29 (B) Persons who appeared before the local government, special district or state agency, orally
30 or in writing.

31 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this
32 subsection shall result in denial of a motion to intervene.

33 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party
34 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
35 the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

36 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
37 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
38 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
39 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
40 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
41 certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective.
42 Copies of the notice of intent to appeal shall be served upon the local government, special district
43 or state agency and the applicant of record, if any, in the local government, special district or state
44 agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule
45 of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be estab-

1 lished by the board. If a petition for review is not filed with the board as required in subsections
 2 (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government,
 3 special district or state agency as cost of preparation of the record.

4 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
 5 cial district or state agency shall transmit to the board the original or a certified copy of the entire
 6 record of the proceeding under review. By stipulation of all parties to the review proceeding the
 7 record may be shortened. The board may require or permit subsequent corrections to the record;
 8 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
 9 ceiving the motion.

10 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice
 11 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.
 12 Any person moving to intervene shall be provided such notice within seven days after a motion to
 13 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that
 14 mediation information or assistance may be obtained from the Department of Land Conservation and
 15 Development.

16 (11) A petition for review of the land use decision or limited land use decision and supporting
 17 brief shall be filed with the board as required by the board under subsection (13) of this section.

18 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

19 (a) The facts that establish that the petitioner has standing.

20 (b) The date of the decision.

21 (c) The issues the petitioner seeks to have reviewed.

22 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for
 23 oral argument.

24 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
 25 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the
 26 respondent's brief, the local government or state agency may withdraw its decision for purposes of
 27 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
 28 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
 29 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
 30 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-
 31 ceed upon the revised order. An amended notice of intent shall not be required if the local govern-
 32 ment or state agency, on reconsideration, affirms the order or modifies the order with only minor
 33 changes.

34 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.
 35 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
 36 court of the county where the application was filed for a writ of mandamus to compel the board to
 37 issue a final order.

38 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-
 39 vailing party including the cost of preparation of the record if the prevailing party is the local
 40 government, special district or state agency whose decision is under review. The deposit required
 41 by subsection (9) of this section shall be applied to any costs charged against the petitioner.

42 (b) The board shall also award reasonable attorney fees and expenses to the prevailing party
 43 against any other party who the board finds presented a position without probable cause to believe
 44 the position was well-founded in law or on factually supported information.

45 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

1 (17)(a) The board shall provide for the publication of its orders that are of general public in-
2 terest in the form it deems best adapted for public convenience. The publications shall constitute
3 the official reports of the board.

4 (b) Any moneys collected or received from sales by the board shall be paid into the Board
5 Publications Account established by ORS 197.832.

6 (18) Except for any sums collected for publication of board opinions, all fees collected by the
7 board under this section that are not awarded as costs shall be paid over to the State Treasurer to
8 be credited to the General Fund.

9 **SECTION 2. The amendments to ORS 197.830 by section 1 of this 2011 Act apply to per-**
10 **sons that file notices of intent to appeal, seeking review by the Land Use Board of Appeals,**
11 **on and after the effective date of this 2011 Act.**

12 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
14 **on its passage.**

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