

# House Bill 3592

Sponsored by Representative SCHAUFLER

## 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**.

Establishes one year from date of completion of application as absolute deadline for city or county to take final action on application for permit, limited land use decision or zone change.

## A BILL FOR AN ACT

1  
2 Relating to time period for issuing local land use permits; creating new provisions; and amending  
3 ORS 215.427, 215.429, 227.178 and 227.179.

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

5 **SECTION 1.** ORS 215.427 is amended to read:

6 215.427. (1) **Notwithstanding any other exception to, or extension in ORS 215.402 to 215.438**  
7 **of, the 120-day or 150-day period described in this subsection, except as otherwise provided**  
8 **in subsection (7) of this section, the governing body of a county or its designee shall take**  
9 **final action on all applications for a permit, limited land use decision or zone change within**  
10 **one year after the application is deemed complete.** Except as provided in subsections (3), (5) and  
11 (10) of this section[,]:

12 (a) For land within an urban growth boundary and applications for mineral aggregate ex-  
13 traction, the governing body of a county or its designee shall take final action on an application for  
14 a permit, limited land use decision or zone change, including resolution of all appeals under ORS  
15 215.422, within 120 days after the application is deemed complete.

16 (b) The governing body of a county or its designee shall take final action on all other applica-  
17 tions for a permit, limited land use decision or zone change, including resolution of all appeals under  
18 ORS 215.422, within 150 days after the application is deemed complete[, *except as provided in sub-*  
19 *sections (3), (5) and (10) of this section*].

20 (2) If an application for a permit, limited land use decision or zone change is incomplete, the  
21 governing body or its designee shall notify the applicant in writing of exactly what information is  
22 missing within 30 days of receipt of the application and allow the applicant to submit the missing  
23 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-  
24 tion upon receipt by the governing body or its designee of:

25 (a) All of the missing information;

26 (b) Some of the missing information and written notice from the applicant that no other infor-  
27 mation will be provided; or

28 (c) Written notice from the applicant that none of the missing information will be provided.

29 (3)(a) If the application was complete when first submitted or the applicant submits additional  
30 information, as described in subsection (2) of this section, within 180 days of the date the application  
31 was first submitted and the county has a comprehensive plan and land use regulations acknowledged

**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 under ORS 197.251, approval or denial of the application shall be based upon the standards and  
 2 criteria that were applicable at the time the application was first submitted.

3 (b) If the application is for industrial or traded sector development of a site identified under  
 4 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,  
 5 approval or denial of the application must be based upon the standards and criteria that were ap-  
 6 plicable at the time the application was first submitted, provided the application complies with  
 7 paragraph (a) of this subsection.

8 (4) On the 181st day after first being submitted, the application is void if the applicant has been  
 9 notified of the missing information as required under subsection (2) of this section and has not sub-  
 10 mitted:

11 (a) All of the missing information;

12 (b) Some of the missing information and written notice that no other information will be pro-  
 13 vided; or

14 (c) Written notice that none of the missing information will be provided.

15 (5) The [*period*] **120-day or 150-day period** set in subsection (1) of this section may be extended  
 16 for a specified period of time at the written request of the applicant. The total of all extensions[,  
 17 *except as provided in subsection (10) of this section for mediation,*] may not exceed 215 days.

18 [*(6) The period set in subsection (1) of this section applies:*]

19 [*(a) Only to decisions wholly within the authority and control of the governing body of the county;*  
 20 *and]*

21 [*(b) Unless the parties have agreed to mediation as described in subsection (10) of this section or*  
 22 *ORS 197.319 (2)(b).]*

23 **(6) The 120-day, 150-day and one-year periods set in subsection (1) of this section apply**  
 24 **only to decisions wholly within the authority and control of the governing body of the county.**

25 (7) Notwithstanding subsection (6) of this section, the [*period*] **120-day, 150-day and one-year**  
 26 **periods** set in subsection (1) of this section [*does*] **do** not apply to an amendment to an acknowledged  
 27 comprehensive plan or land use regulation or adoption of a new land use regulation that was for-  
 28 warded to the Director of the Department of Land Conservation and Development under ORS  
 29 197.610 (1).

30 (8) Except when an applicant requests an extension under subsection (5) **or (10)** of this section,  
 31 if the governing body of the county or its designee does not take final action on an application for  
 32 a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after  
 33 the application is deemed complete, the county shall refund to the applicant either the unexpended  
 34 portion of any application fees or deposits previously paid or 50 percent of the total amount of such  
 35 fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees  
 36 incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible  
 37 for the costs of providing sufficient additional information to address relevant issues identified in  
 38 the consideration of the application.

39 (9) A county may not compel an applicant to waive the **120-day, 150-day or one-year** period  
 40 set in subsection (1) of this section or to waive the provisions of subsection (8) of this section or  
 41 ORS 215.429 as a condition for taking any action on an application for a permit, limited land use  
 42 decision or zone change except when such applications are filed concurrently and considered jointly  
 43 with a plan amendment.

44 (10) The [*periods set forth*] **120-day or 150-day period** set in subsection (1) of this section [*and*  
 45 *the period set forth in subsection (5) of this section*] may be extended by up to 90 additional days, if

1 the applicant and the county agree that a dispute concerning the application will be mediated.

2 **SECTION 2.** ORS 215.429 is amended to read:

3 215.429. (1) *[Except when an applicant requests an extension under ORS 215.427, if the governing*  
 4 *body of the county or its designee does not take final action on an application for a permit, limited land*  
 5 *use decision or zone change within 120 days or 150 days, as appropriate, after the application is*  
 6 *deemed complete, the]* **An applicant may file a petition for a writ of mandamus under ORS 34.130 in**  
 7 **the circuit court of the county [where] in which the application was submitted to compel the gov-**  
 8 **erning body or its designee to issue the approval if the governing body of the county or its**  
 9 **designee does not take final action on an application for a permit, limited land use decision**  
 10 **or zone change within:**

11 **(a) One hundred twenty days or 150 days, as appropriate, after the application is deemed**  
 12 **complete, plus any extension requested by an applicant under ORS 215.427; or**

13 **(b) One year after the application is deemed complete.**

14 (2) The governing body shall retain jurisdiction to make a land use decision on the application  
 15 until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction  
 16 for all decisions regarding the application, including settlement, shall be with the circuit court.

17 (3) A person who files a petition for a writ of mandamus under this section shall provide written  
 18 notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any  
 19 person who participated orally or in writing in any evidentiary hearing on the application held prior  
 20 to the filing of the petition. The notice shall be mailed or hand delivered on the same day the peti-  
 21 tion is filed.

22 (4) If the governing body does not take final action on an application within *[120 days or 150*  
 23 *days, as appropriate, of the date the application is deemed complete]* **the time period specified in**  
 24 **subsection (1) of this section**, the applicant may elect to proceed with the application according  
 25 to the applicable provisions of the county comprehensive plan and land use regulations or to file a  
 26 petition for a writ of mandamus under this section. If the applicant elects to proceed according to  
 27 the local plan and regulations, the applicant may not file a petition for a writ of mandamus within  
 28 14 days after the governing body makes a preliminary decision, provided a final written decision is  
 29 issued within 14 days of the preliminary decision.

30 (5) The court shall issue a peremptory writ unless the governing body or any intervenor shows  
 31 that the approval would violate a substantive provision of the county comprehensive plan or land  
 32 use regulations as those terms are defined in ORS 197.015. The writ may specify conditions of ap-  
 33 proval that would otherwise be allowed by the county comprehensive plan or land use regulations.

34 **SECTION 3.** ORS 227.178 is amended to read:

35 227.178. (1) **Notwithstanding any other exception to, or extension in ORS 227.160 to 227.186**  
 36 **of, the 120-day period described in this subsection, except as otherwise provided in subsection**  
 37 **(7) of this section, the governing body of a city or its designee shall take final action on all**  
 38 **applications for a permit, limited land use decision or zone change within one year after the**  
 39 **application is deemed complete.** Except as provided in subsections (3), (5) and (11) of this section,  
 40 the governing body of a city or its designee shall take final action on an application for a permit,  
 41 limited land use decision or zone change, including resolution of all appeals under ORS 227.180,  
 42 within 120 days after the application is deemed complete.

43 (2) If an application for a permit, limited land use decision or zone change is incomplete, the  
 44 governing body or its designee shall notify the applicant in writing of exactly what information is  
 45 missing within 30 days of receipt of the application and allow the applicant to submit the missing

1 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-  
 2 tion upon receipt by the governing body or its designee of:

3 (a) All of the missing information;

4 (b) Some of the missing information and written notice from the applicant that no other infor-  
 5 mation will be provided; or

6 (c) Written notice from the applicant that none of the missing information will be provided.

7 (3)(a) If the application was complete when first submitted or the applicant submits the re-  
 8 quested additional information within 180 days of the date the application was first submitted and  
 9 the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, ap-  
 10 proval or denial of the application shall be based upon the standards and criteria that were appli-  
 11 cable at the time the application was first submitted.

12 (b) If the application is for industrial or traded sector development of a site identified under  
 13 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,  
 14 approval or denial of the application must be based upon the standards and criteria that were ap-  
 15 plicable at the time the application was first submitted, provided the application complies with  
 16 paragraph (a) of this subsection.

17 (4) On the 181st day after first being submitted, the application is void if the applicant has been  
 18 notified of the missing information as required under subsection (2) of this section and has not sub-  
 19 mitted:

20 (a) All of the missing information;

21 (b) Some of the missing information and written notice that no other information will be pro-  
 22 vided; or

23 (c) Written notice that none of the missing information will be provided.

24 (5) The 120-day period set in subsection (1) of this section may be extended for a specified period  
 25 of time at the written request of the applicant. The total of all extensions[, *except as provided in*  
 26 *subsection (11) of this section for mediation,*] may not exceed 245 days.

27 [(6) *The 120-day period set in subsection (1) of this section applies:*]

28 [(a) *Only to decisions wholly within the authority and control of the governing body of the city;*  
 29 *and*]

30 [(b) *Unless the parties have agreed to mediation as described in subsection (11) of this section or*  
 31 *ORS 197.319 (2)(b).*]

32 **(6) The 120-day and one-year periods set in subsection (1) of this section apply only to**  
 33 **decisions wholly within the authority and control of the governing body of the city.**

34 (7) Notwithstanding subsection (6) of this section, the 120-day [*period*] **and one-year periods** set  
 35 in subsection (1) of this section [*does*] **do** not apply to an amendment to an acknowledged compre-  
 36 hensive plan or land use regulation or adoption of a new land use regulation that was forwarded to  
 37 the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

38 (8) Except when an applicant requests an extension under subsection (5) **or (11)** of this section,  
 39 if the governing body of the city or its designee does not take final action on an application for a  
 40 permit, limited land use decision or zone change within 120 days after the application is deemed  
 41 complete, the city shall refund to the applicant, subject to the provisions of subsection (9) of this  
 42 section, either the unexpended portion of any application fees or deposits previously paid or 50  
 43 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not li-  
 44 able for additional governmental fees incurred subsequent to the payment of such fees or deposits.  
 45 However, the applicant is responsible for the costs of providing sufficient additional information to

1 address relevant issues identified in the consideration of the application.

2 (9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

3 (A) Submit a written request for payment, either by mail or in person, to the city or its designee;

4 or

5 (B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall  
6 award an amount owed under this section in its final order on the petition.

7 (b) Within seven calendar days of receiving a request for a refund, the city or its designee shall  
8 determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made  
9 to the applicant within 30 calendar days of receiving the request. Any amount due and not paid  
10 within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of  
11 one percent per month, or a portion thereof.

12 (c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the  
13 city or its designee receives the refund request, the applicant may file an action for recovery of the  
14 unpaid refund. In an action brought by a person under this paragraph, the court shall award to a  
15 prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and  
16 costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable  
17 attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

18 (10) A city may not compel an applicant to waive the 120-day **or one-year** period set in sub-  
19 section (1) of this section or to waive the provisions of subsection (8) of this section or ORS 227.179  
20 as a condition for taking any action on an application for a permit, limited land use decision or zone  
21 change except when such applications are filed concurrently and considered jointly with a plan  
22 amendment.

23 (11) The **120-day** period set [forth] in subsection (1) of this section [and the period set forth in  
24 subsection (5) of this section] may be extended by up to 90 additional days, if the applicant and the  
25 city agree that a dispute concerning the application will be mediated.

26 **SECTION 4.** ORS 227.179 is amended to read:

27 227.179. (1) [Except when an applicant requests an extension under ORS 227.178 (5), if the gov-  
28 erning body of a city or its designee does not take final action on an application for a permit, limited  
29 land use decision or zone change within 120 days after the application is deemed complete, the] **An**  
30 applicant may file a petition for a writ of mandamus under ORS 34.130 in the circuit court of the  
31 county [where] **in which** the application was submitted to compel the governing body or its designee  
32 to issue the approval **if the governing body of the city or its designee does not take final action**  
33 **on an application for a permit, limited land use decision or zone change within:**

34 (a) **One hundred twenty days after the application is deemed complete, plus any extension**  
35 **requested by the applicant under ORS 227.178; or**

36 (b) **One year after the application is deemed complete.**

37 (2) The governing body shall retain jurisdiction to make a land use decision on the application  
38 until a petition for a writ of mandamus is filed. Upon filing a petition under ORS 34.130, jurisdiction  
39 for all decisions regarding the application, including settlement, shall be with the circuit court.

40 (3) A person who files a petition for a writ of mandamus under this section shall provide written  
41 notice of the filing to all persons who would be entitled to notice under ORS 197.763 and to any  
42 person who participated orally or in writing in any evidentiary hearing on the application held prior  
43 to the filing of the petition. The notice shall be mailed or hand delivered on the same day the peti-  
44 tion is filed.

45 (4) If the governing body does not take final action on an application within [120 days of the date

1 *the application is deemed complete]* **the time period specified in subsection (1) of this section**, the  
 2 applicant may elect to proceed with the application according to the applicable provisions of the  
 3 local comprehensive plan and land use regulations or to file a petition for a writ of mandamus under  
 4 this section. If the applicant elects to proceed according to the local plan and regulations, the ap-  
 5 plicant may not file a petition for a writ of mandamus within 14 days after the governing body  
 6 makes a preliminary decision, provided a final written decision is issued within 14 days of the pre-  
 7 liminary decision.

8 (5) The court shall issue a peremptory writ unless the governing body or any intervenor shows  
 9 that the approval would violate a substantive provision of the local comprehensive plan or land use  
 10 regulations as those terms are defined in ORS 197.015. The writ may specify conditions of approval  
 11 that would otherwise be allowed by the local comprehensive plan or land use regulations.

12 **SECTION 5. The amendments to ORS 215.427, 215.429, 227.178 and 227.179 by sections 1**  
 13 **to 4 of this 2011 Act apply to an application for a permit, limited land use decision or zone**  
 14 **change submitted on or after the effective date of this 2011 Act.**