

# House Bill 4032

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development)

## 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 own, or have ownership interest in, real property within \_\_\_\_\_ miles of real property that is object of decision and 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, a person **who owns, or has an ownership interest in,**  
10 **real property that is within \_\_\_\_\_ miles of real property that is an object of a land**  
11 **use decision or limited land use decision and who is adversely affected by the land use deci-**  
12 **sion or limited land use decision** may petition the board for review of [a] **the** land use decision  
13 or limited land use decision if the person:

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

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

17 (3) If a local government makes a land use decision without providing a hearing, except as  
18 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision  
19 that is different from the proposal described in the notice of hearing to such a degree that the notice  
20 of the proposed action did not reasonably describe the local government's final actions, a person  
21 **who owns, or has an ownership interest in, real property that is within \_\_\_\_\_ miles**  
22 **of real property that is an object of the land use decision and who is** adversely affected by the  
23 decision may appeal the decision to the board under this section:

24 (a) Within 21 days of actual notice [where] **when** notice is required; or

25 (b) Within 21 days of the date [a] **the** person knew or should have known of the decision [where  
26 no notice is] **when notice is not** required.

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

29 (a) A person who **owns, or has an ownership interest in, real property that is within**  
30 **\_\_\_\_\_ miles of real property that is an object of the decision and who** was not provided

**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 notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the deci-  
 2 sion to the board under this section within 21 days of receiving actual notice of the decision.

3 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who  
 4 **owns, or has an ownership interest in, real property that is within \_\_\_\_\_ miles of real**  
 5 **property that is an object of the decision and who** is adversely affected or aggrieved by the de-  
 6 cision may appeal the decision to the board under this section within 21 days after the expiration  
 7 of the period for filing a local appeal of the decision established by the local government under ORS  
 8 215.416 (11)(a) or 227.175 (10)(a).

9 (c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11)  
 10 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving  
 11 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe  
 12 the nature of the decision **and the person owns, or has an ownership interest in, real property**  
 13 **that is within \_\_\_\_\_ miles of real property that is an object of the decision and the**  
 14 **person is adversely affected or aggrieved by the decision.**

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

18 (5) If a local government makes a limited land use decision which is different from the proposal  
 19 described in the notice to such a degree that the notice of the proposed action did not reasonably  
 20 describe the local government's final actions, a person **who owns, or has an ownership interest**  
 21 **in, real property that is within \_\_\_\_\_ miles of real property that is an object of the**  
 22 **limited land use decision and who is** adversely affected by the decision may appeal the decision  
 23 to the board under this section:

24 (a) Within 21 days of actual notice [where] **when** notice is required; or

25 (b) Within 21 days of the date [a] **the** person knew or should have known of the decision [where  
 26 no notice is] **when notice is not** required.

27 (6) The appeal periods described in subsections (3), (4) and (5) of this section:

28 (a) May not exceed three years after the date of the decision, except as provided in paragraph  
 29 (b) of this subsection.

30 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-  
 31 trative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

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

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

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

40 (B) Persons who **own, or have an ownership interest in, real property that is within**  
 41 **\_\_\_\_\_ miles of real property that is an object of the land use decision or limited land**  
 42 **use decision and who** appeared before the local government, special district or state agency, orally  
 43 or in writing.

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

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

4 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed  
 5 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of  
 6 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to  
 7 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is  
 8 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a  
 9 statement identifying when, how and to whom notice was provided under ORS 197.615 does not  
 10 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local  
 11 government, special district or state agency and the applicant of record, if any, in the local gov-  
 12 ernment, special district or state agency proceeding. The notice shall be served and filed in the form  
 13 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a  
 14 deposit for costs to be established by the board. If a petition for review is not filed with the board  
 15 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded  
 16 to the local government, special district or state agency as cost of preparation of the record.

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

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

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

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

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

33 (b) The date of the decision.

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

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

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

1 changes.

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

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

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

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

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

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

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

22 **SECTION 2. The amendments to ORS 197.830 by section 1 of this 2012 Act apply to per-**  
23 **sons filing notices of intent to appeal on and after the effective date of this 2012 Act.**

24 **SECTION 3. This 2012 Act being necessary for the immediate preservation of the public**  
25 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**  
26 **on its passage.**

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