

A-Engrossed
Senate Bill 77

Ordered by the Senate April 29
Including Senate Amendments dated April 29

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

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.

Requires appellate review of quasi-judicial land use decisions and limited land use decisions directly related to and made in response to land use application to be conducted in single proceeding in which Land Use Board of Appeals has joined all appeals.

Requires board to track and report on website data related to land use reviews and results of reviews.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to appellate review of land use decisions; creating new provisions; amending ORS 197.830;
3 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 may petition the board for review of a land use
10 decision or limited land use decision if the person:

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

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

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

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

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

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

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

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 actual notice of the decision.

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

6 (c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11)
7 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving
8 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe
9 the nature of the decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
41 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
42 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
43 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
44 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
45 statement identifying when, how and to whom notice was provided under ORS 197.615 does not

1 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
 2 government, special district or state agency and the applicant of record, if any, in the local gov-
 3 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
 4 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
 5 deposit for costs to be established by the board. If a petition for review is not filed with the board
 6 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
 7 to the local government, special district or state agency as cost of preparation of the record.

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

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

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

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

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

24 (b) The date of the decision.

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

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

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

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

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

1 the petitioner.

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

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

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

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

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

14 **(19) The board shall track and report on its website:**

15 **(a) The number of reviews commenced, as described in subsection (1) of this section, the**
16 **number of reviews commenced for which a petition is filed under subsection (2) of this sec-**
17 **tion and, in relation to each of those numbers, the rate at which the reviews result in a de-**
18 **cision of the board to uphold, reverse or remand the land use decision or limited land use**
19 **decision. The board shall track and report reviews under this paragraph in categories es-**
20 **tablished by the board.**

21 **(b) A list of petitioners, the number of reviews commenced and the rate at which the**
22 **petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the**
23 **land use decision or limited land use decision.**

24 **(c) A list of respondents, the number of reviews involving each respondent and the rate**
25 **at which reviews involving the respondent have resulted in decisions of the board to uphold,**
26 **reverse or remand the land use decision or limited land use decision. Additionally, when a**
27 **respondent is the local government that made the land use decision or limited land use de-**
28 **cision, the board shall track whether the local government appears before the board.**

29 **(d) A list of reviews, and a brief summary of the circumstances in each review, under**
30 **which the board exercises its discretion to require a losing party to pay the attorney fees**
31 **of the prevailing party.**

32 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS 197.830 to**
33 **197.845.**

34 **SECTION 3. (1) When a local government, a special district or a state agency makes a**
35 **final decision on an application and the local government, the special district or the state**
36 **agency determines that it must make one or more subsequent quasi-judicial land use deci-**
37 **sions or limited land use decisions in relation to real property that is the object of the ap-**
38 **plication, the local government, the special district or the state agency shall identify each**
39 **subsequent quasi-judicial land use decision or limited land use decision that is related to the**
40 **final decision and that must be made by the local government, the special district, the state**
41 **agency or another public body, as defined in ORS 174.109, as a result of the final decision.**

42 **(2) A person seeking Land Use Board of Appeals review of a quasi-judicial land use deci-**
43 **sion or limited land use decision described in subsection (1) of this section shall comply with**
44 **all provisions of ORS 197.830 to 197.855, including the requirement to timely file a notice of**
45 **intent to appeal pursuant to ORS 197.830.**

1 (3) When the local government, the special district or the state agency has identified one
2 or more subsequent quasi-judicial land use decisions or limited land use decisions that are
3 required as a result of the final decision on an application as provided in subsection (1) of
4 this section, the petitioner, respondent or any intervening party may file a motion requesting
5 that the board toll the timelines for review.

6 (4) Upon receipt of a motion to toll under subsection (3) of this section, the board shall:

7 (a) Toll the operation of timelines described in ORS 197.830, except the timeline for other
8 persons to file notices of intent to appeal, until the local government, the special district or
9 the state agency makes subsequent quasi-judicial land use decisions or limited land use de-
10 cisions related to the real property that is the object of the application;

11 (b) Consolidate all separate appeals of the related decisions made in direct response to
12 the application into one consolidated proceeding;

13 (c) Notify parties of the tolling of timelines as the parties are joined in the proceeding;
14 and

15 (d) Review in a single consolidated proceeding all related quasi-judicial land use decisions
16 and limited land use decisions made in direct response to the application.

17 (5) When a local government, a special district or a state agency has notice that a notice
18 of intent to appeal has been filed with respect to a quasi-judicial land use decision or limited
19 land use decision described in subsection (1) of this section:

20 (a) The local government, the special district or the state agency shall notify the board
21 and all parties joined in the single review proceeding that the local government, the special
22 district or the state agency has taken final action on all quasi-judicial land use decisions or
23 limited land use decisions that are the object of the application; and

24 (b) The board shall notify parties, as necessary, of adjustments to due dates under the
25 timelines based on the tolling of timelines pursuant to this section.

26 (6) The tolling of timelines for review under this section may not exceed two years. After
27 the passage of two years, the board shall proceed with the review using the timelines speci-
28 fied in ORS 197.830.

29 **SECTION 4.** (1) The amendments to ORS 197.830 by section 1 of this 2013 Act apply to the
30 review of land use decisions and limited land use decisions for which a notice of intent to
31 appeal is filed on or after the effective date of this 2013 Act.

32 (2) Section 3 of this 2013 Act applies to applications filed on or after the effective date
33 of this 2013 Act.

34 **SECTION 5.** This 2013 Act being necessary for the immediate preservation of the public
35 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
36 on its passage.