

Senate Bill 77

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 **as introduced**.

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.

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 196.115,
3 197.796, 197.830, 197.832, 197.835, 197.840, 197.845 and 197.850; 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 **that includes assignments of**
8 **error upon which the petitioner intends to request review** with the Land Use Board of Appeals.

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
26 actual notice of the decision.

27 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
28 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
29 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 notice of a decision made without a hearing under ORS 215.416 (11)
 3 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving
 4 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe
 5 the nature of the decision.

6 (d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a
 7 decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision
 8 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) The appeal periods described in subsections (3), (4) and (5) of this section:

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

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

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]* **as set forth in subsection (10) of this section.**

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*
 32 *this]* subsection **(10) of this section** 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 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
 42 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
 43 government, special district or state agency and the applicant of record, if any, in the local gov-
 44 ernment, special district or state agency proceeding. *[The notice shall be served and filed in the form*
 45 *and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a*

1 *deposit for costs to be established by the board. If a petition for review is not filed with the board as*
 2 *required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the*
 3 *local government, special district or state agency as cost of preparation of the record.]* **The notice**
 4 **must be served and filed in the form and manner prescribed by rule of the board and must**
 5 **be accompanied by a filing fee and a deposit for costs as set forth in subsection (10) of this**
 6 **section. If a petition for review is not filed with the board as required in subsections (10), (11)**
 7 **and (12) of this section, the board shall award the filing fee and deposit to the local govern-**
 8 **ment, special district or state agency as cost of preparation of the record.**

9 **(10)(a) A person that petitions for review under subsection (2) of this section shall submit**
 10 **a filing fee of \$1,000 and a deposit for costs of \$1,000.**

11 **(b) A person that intervenes under subsection (7) of this section shall submit a filing fee**
 12 **of \$750.**

13 **(c) By rule the board may establish criteria under which a person that is directly affected**
 14 **by the land use decision or limited land use decision and that is unable to pay the fee may**
 15 **receive a partial fee waiver.**

16 *[(10)(a)]* **(11)(a)** Within 21 days after service of the notice of intent to appeal, the local govern-
 17 ment, special district or state agency shall transmit to the board the original or a certified copy of
 18 the entire record of the proceeding under review. By stipulation of all parties to the review pro-
 19 ceeding the record may be shortened. The board may require or permit subsequent corrections to
 20 the record; however, the board shall issue an order on a motion objecting to the record within 60
 21 days of receiving the motion.

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

28 *[(11)]* **(12)** A petition for review of the land use decision or limited land use decision and sup-
 29 porting brief shall be filed with the board as required by the board under subsection *[(13)]* **(14)** of
 30 this section.

31 *[(12)]* **(13)** 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)]* **(14)(a)** The board shall adopt rules establishing deadlines for filing petitions and briefs
 36 and for 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)] (15) The board shall issue a final order within 77 days after the date of transmittal of the
 3 record. If the order is not issued within 77 days the applicant may apply in Marion County or the
 4 circuit court of the county where the application was filed for a writ of mandamus to compel the
 5 board to issue a final order.

6 [(15)(a)] (16)(a) Upon entry of its final order the board may, in its discretion, award costs to the
 7 prevailing 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 **board shall apply**
 9 **the** deposit required by subsection [(9)] (10) of this section [*shall be applied*] to any costs charged
 10 against the petitioner.

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

14 [(16)] (17) Orders issued under this section may be enforced in appropriate judicial proceedings.

15 [(17)(a)] (18)(a) The board shall provide for the publication of its orders that are of general
 16 public interest in the form it deems best adapted for public convenience. The publications shall
 17 constitute the official reports of the board.

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

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

23 **(20) The board shall track and report on its website:**

24 **(a) The number of reviews commenced, as described in subsection (1) of this section, the**
 25 **number of reviews commenced for which a petition is filed under subsection (2) of this sec-**
 26 **tion and, in relation to each of those numbers, the rate at which the reviews result in a de-**
 27 **cision of the board to uphold, reverse or remand the land use decision or limited land use**
 28 **decision.**

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

32 **(c) The total cost incurred by petitioners, respondents and intervenors for participating**
 33 **in reviews.**

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

37 **SECTION 2.** ORS 197.832 is amended to read:

38 197.832. The Board Publications Account is established in the General Fund. All moneys in the
 39 account are appropriated continuously to the Land Use Board of Appeals to be used for paying ex-
 40 penses incurred by the board under ORS 197.830 [(17)] (18). Disbursements of moneys from the ac-
 41 count shall be approved by a member of the board.

42 **SECTION 3.** ORS 197.835 is amended to read:

43 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
 44 use decision and prepare a final order affirming, reversing or remanding the land use decision or
 45 limited land use decision. The board shall adopt rules defining the circumstances in which it will

1 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

2 (2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

3 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte
4 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities
5 not shown in the record that, if proved, would warrant reversal or remand, the board may take ev-
6 idence and make findings of fact on those allegations. The board shall be bound by any finding of
7 fact of the local government, special district or state agency for which there is substantial evidence
8 in the whole record.

9 (3) *[Issues shall be limited to those]* **Except as provided in subsection (4) of this section, the**
10 **board shall limit the issues raised on review to issues:**

11 (a) Raised by any participant before the local hearings body as provided by ORS 197.195 or
12 197.763, whichever is applicable; **and**

13 (b) **Identified in an assignment of error in a notice of intent to appeal filed under ORS**
14 **197.830 in relation to one or more of the multiple quasi-judicial land use decisions or limited**
15 **land use decisions that must be reviewed together pursuant to section 8 of this 2013 Act.**

16 (4) A petitioner may raise new issues to the board if:

17 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195
18 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable crite-
19 ria that were omitted from the notice. However, the board may refuse to allow new issues to be
20 raised if it finds that the issue could have been raised before the local government; or

21 (b) The local government made a land use decision or limited land use decision which is different
22 from the proposal described in the notice to such a degree that the notice of the proposed action
23 did not reasonably describe the local government's final action.

24 (5) The board shall reverse or remand a land use decision not subject to an acknowledged
25 comprehensive plan and land use regulations if the decision does not comply with the goals. The
26 board shall reverse or remand a land use decision or limited land use decision subject to an ac-
27 knowledged comprehensive plan or land use regulation if the decision does not comply with the
28 goals and the Land Conservation and Development Commission has issued an order under ORS
29 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to
30 apply the goals to the type of decision being challenged.

31 (6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment
32 is not in compliance with the goals.

33 (7) The board shall reverse or remand an amendment to a land use regulation or the adoption
34 of a new land use regulation if:

35 (a) The regulation is not in compliance with the comprehensive plan; or

36 (b) The comprehensive plan does not contain specific policies or other provisions which provide
37 the basis for the regulation, and the regulation is not in compliance with the statewide planning
38 goals.

39 (8) The board shall reverse or remand a decision involving the application of a plan or land use
40 regulation provision if the decision is not in compliance with applicable provisions of the compre-
41 hensive plan or land use regulations.

42 (9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse
43 or remand the land use decision under review if the board finds:

44 (a) The local government or special district:

45 (A) Exceeded its jurisdiction;

1 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-
 2 diced the substantial rights of the petitioner;

3 (C) Made a decision not supported by substantial evidence in the whole record;

4 (D) Improperly construed the applicable law; or

5 (E) Made an unconstitutional decision; or

6 (b) The state agency made a decision that violated the goals.

7 (10)(a) The board shall reverse a local government decision and order the local government to
 8 grant approval of an application for development denied by the local government if the board finds:

9 (A) Based on the evidence in the record, that the local government decision is outside the range
 10 of discretion allowed the local government under its comprehensive plan and implementing ordi-
 11 nances; or

12 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
 13 215.427 or 227.178.

14 (b) If the board does reverse the decision and orders the local government to grant approval of
 15 the application, the board shall award attorney fees to the applicant and against the local govern-
 16 ment.

17 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent
 18 possible consistent with the time requirements of ORS 197.830 [(14)] (15), the board shall decide all
 19 issues presented to it when reversing or remanding a land use decision described in subsections (2)
 20 to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

21 (b) Whenever the findings are defective because of failure to recite adequate facts or legal
 22 conclusions or failure to adequately identify the standards or their relation to the facts, but the
 23 parties identify relevant evidence in the record which clearly supports the decision or a part of the
 24 decision, the board shall affirm the decision or the part of the decision supported by the record and
 25 remand the remainder to the local government, with direction indicating appropriate remedial
 26 action.

27 (12) The board may reverse or remand a land use decision under review due to ex parte contacts
 28 or bias resulting from ex parte contacts with a member of the decision-making body, only if the
 29 member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever
 30 is applicable.

31 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision
 32 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

33 (14) The board shall reverse or remand a land use decision or limited land use decision which
 34 violates a commission order issued under ORS 197.328.

35 (15) In cases in which a local government provides a quasi-judicial land use hearing on a limited
 36 land use decision, the requirements of subsections (12) and (13) of this section apply.

37 (16) The board may decide cases before it by means of memorandum decisions and shall prepare
 38 full opinions only in such cases as it deems proper.

39 **SECTION 4.** ORS 197.840 is amended to read:

40 197.840. (1) The following periods of delay shall be excluded from the 77-day period within which
 41 the board must make a final decision on a petition under ORS 197.830 [(14)] (15):

42 (a) Any period of delay up to 120 days resulting from the board's deferring all or part of its
 43 consideration of a petition for review of a land use decision or limited land use decision that
 44 allegedly violates the goals if the decision has been:

45 (A) Submitted for acknowledgment under ORS 197.251; or

1 (B) Submitted to the Department of Land Conservation and Development as part of a periodic
 2 review work program task pursuant to ORS 197.628 to 197.651 and not yet acknowledged.

3 (b) Any period of delay resulting from a motion, including but not limited to, a motion disputing
 4 the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities
 5 not shown in the record.

6 (c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

7 (d) Any reasonable period of delay resulting from a continuance granted by a member of the
 8 board on the member's own motion or at the request of one of the parties, if the member granted
 9 the continuance on the basis of findings that the ends of justice served by granting the continuance
 10 outweigh the best interest of the public and the parties in having a decision within 77 days.

11 (2) No period of delay resulting from a continuance granted by the board under subsection (1)(d)
 12 of this section shall be excludable under this section unless the board sets forth in the record, either
 13 orally or in writing, its reasons for finding that the ends of justice served by granting the contin-
 14 uance outweigh the best interests of the public and the other parties in a decision within the 77
 15 days. The factors the board shall consider in determining whether to grant a continuance under
 16 subsection (1)(d) of this section in any case are as follows:

17 (a) Whether the failure to grant a continuance in the proceeding would be likely to make a
 18 continuation of the proceeding impossible or result in a miscarriage of justice; or

19 (b) Whether the case is so unusual or so complex, due to the number of parties or the existence
 20 of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the
 21 issues within the 77-day time limit.

22 (3) No continuance under subsection (1)(d) of this section shall be granted because of general
 23 congestion of the board calendar or lack of diligent preparation or attention to the case by any
 24 member of the board or any party.

25 (4) The board may defer all or part of its consideration of a land use decision or limited land
 26 use decision described in subsection (1)(a) of this section until the Land Conservation and Develop-
 27 ment Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of
 28 this section. If the board deferred all or part of its consideration of a decision under this subsection,
 29 the board may grant a stay of the comprehensive plan provision, land use regulation, limited land
 30 use decision or land use decision under ORS 197.845.

31 **SECTION 5.** ORS 197.845 is amended to read:

32 197.845. (1) Upon application of the petitioner, the board may grant a stay of a land use decision
 33 or limited land use decision under review if the petitioner demonstrates:

34 (a) A colorable claim of error in the land use decision or limited land use decision under review;
 35 and

36 (b) That the petitioner will suffer irreparable injury if the stay is not granted.

37 (2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision
 38 approving a specific development of land, it shall require the petitioner requesting the stay to give
 39 an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and
 40 deposit for costs required under ORS 197.830 [(9)] (10). The board may impose other reasonable
 41 conditions such as requiring the petitioner to file all documents necessary to bring the matter to
 42 issue within specified reasonable periods of time.

43 (3) If the board affirms a quasi-judicial land use decision or limited land use decision for which
 44 a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable
 45 attorney fees and actual damages resulting from the stay to the person who requested the land use

1 decision or limited land use decision from the local government, special district or state agency,
2 against the person requesting the stay in an amount not to exceed the amount of the undertaking.

3 (4) The board shall limit the effect of a stay of a legislative land use decision to the geographic
4 area or to particular provisions of the legislative decision for which the petitioner has demonstrated
5 a colorable claim of error and irreparable injury under subsection (1) of this section. The board may
6 impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or
7 other undertaking or a requirement that the petitioner file all documents necessary to bring the
8 matter to issue within a specified reasonable time period.

9 **SECTION 6.** ORS 197.850 is amended to read:

10 197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830
11 to 197.845 may seek judicial review of a final order issued in those proceedings.

12 (2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued
13 under ORS 197.830 to 197.845 is solely as provided in this section.

14 (3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred
15 upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the
16 Court of Appeals. The petition must be filed within 21 days following the date the board delivered
17 or mailed the order upon which the petition is based.

18 (b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a peti-
19 tion on all persons identified in the petition as adverse parties of record in the board proceeding is
20 jurisdictional and may not be waived or extended.

21 (4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the
22 petition must be served by first class, registered or certified mail on the board and all other parties
23 of record in the board proceeding.

24 (5) Within seven days after service of the petition, the board shall transmit to the court the
25 original or a certified copy of the entire record of the proceeding under review, but, by stipulation
26 of all parties to the review proceeding, the record may be shortened. The court may tax a party that
27 unreasonably refuses to stipulate to limit the record for the additional costs. The court may require
28 or permit subsequent corrections or additions to the record when deemed desirable. Except as spe-
29 cifically provided in this subsection, the court may not tax the cost of the record to the petitioner
30 or any intervening party. However, the court may tax such costs and the cost of transcription of
31 record to a party filing a frivolous petition for judicial review.

32 (6) Petitions and briefs must be filed within time periods and in a manner established by the
33 Court of Appeals by rule.

34 (7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

35 (b) The court may hear oral argument more than 49 days from the date of transmittal of the
36 record provided the court determines that the ends of justice served by holding oral argument on
37 a later day outweigh the best interests of the public and the parties. The court shall not hold oral
38 argument more than 49 days from the date of transmittal of the record because of general congestion
39 of the court calendar or lack of diligent preparation or attention to the case by any member of the
40 court or any party.

41 (c) The court shall set forth in writing a determination to hear oral argument more than 49 days
42 from the date the record is transmitted, together with the reasons for its determination, and shall
43 provide a copy to the parties. The court shall schedule oral argument as soon as practicable there-
44 after.

45 (d) In making a determination under paragraph (b) of this subsection, the court shall consider:

1 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
 2 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
 3 the case and for the court to prepare for oral argument; and

4 (B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

6 (8) Judicial review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

8 (9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

10 (a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

13 (b) The order to be unconstitutional; or

14 (c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835 (2).

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

18 (11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

20 (12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

23 (a) The party appealed a decision of the board to the Court of Appeals; and

24 (b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 [(15)(b)] **(16)(b)**.

26 (13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution.

30 (14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals.

33 **SECTION 7. Section 8 of this 2013 Act is added to and made a part of ORS 197.830 to 197.845.**

35 **SECTION 8. (1) When a local government, a special district or a state agency considers an application, the approval or denial of which requires the local government, the special district or the state agency to make multiple quasi-judicial land use decisions or limited land use decisions in relation to real property that is the object of the application, the local government, the special district or the state agency shall make findings that identify each quasi-judicial land use decision or limited land use decision that is related to and made, by the local government, the special district, the state agency or another public body, as defined in ORS 174.109, in direct response to the application.**

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

1 **intent to appeal pursuant to ORS 197.830.**

2 **(3) Upon receipt of a notice of intent to appeal a decision described in subsection (1) of**
 3 **this section, the board shall:**

4 **(a) Toll the operation of timelines described in ORS 197.830, except the timeline for other**
 5 **persons to file notices of intent to appeal, until the local government, the special district or**
 6 **the state agency grants final approval or denial to the application;**

7 **(b) Join in a single proceeding all separate appeals of the related decisions made in direct**
 8 **response to the application;**

9 **(c) Notify parties of the tolling of timelines as the parties are joined in the proceeding;**
 10 **and**

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

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

16 **(a) The local government, the special district or the state agency shall notify the board**
 17 **and all parties joined in the single review proceeding that the local government, the special**
 18 **district or the state agency has taken final action on the application; and**

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

21 **SECTION 9.** ORS 196.115 is amended to read:

22 196.115. (1) For purposes of judicial review, decisions of the Columbia River Gorge Commission
 23 shall be subject to review solely as provided in this section, except as otherwise provided by the
 24 Columbia River Gorge National Scenic Area Act, P.L. 99-663.

25 (2)(a) A final action or order by the commission in a review or appeal of any action of the
 26 commission pursuant to section 10(c) or 15(b)(4) of the Columbia River Gorge National Scenic Area
 27 Act, or a final action or order by the commission in a review or appeal of any action of a county
 28 pursuant to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic Area Act, shall
 29 be reviewed by the Court of Appeals on a petition for judicial review filed and served as provided
 30 in subsections (3) and (4) of this section and ORS 183.482.

31 (b) On a petition for judicial review under paragraph (a) of this subsection the Court of Appeals
 32 also shall review the action of the county that is the subject of the commission's order, if requested
 33 in the petition.

34 (c) The Court of Appeals shall issue a final order on review under this subsection within the
 35 time limits provided by ORS 197.855.

36 (d) In lieu of judicial review under paragraphs (a) and (b) of this subsection, a county action
 37 may be appealed to the Land Use Board of Appeals under ORS 197.805 to 197.855. A notice of intent
 38 to appeal the county's action shall be filed not later than 21 days after the commission's order on
 39 the county action becomes final.

40 (e) Notwithstanding ORS 197.835, the scope of review in an appeal pursuant to paragraph (d)
 41 of this subsection shall not include any issue relating to interpretation or implementation of the
 42 Columbia River Gorge National Scenic Area Act, P.L. 99-663, and any issue related to such inter-
 43 pretation or implementation shall be waived by the filing of an appeal under paragraph (d) of this
 44 subsection.

45 (f) After county land use ordinances are approved pursuant to sections 7(b) and 8(h) to (k) of the

1 Columbia River Gorge National Scenic Area Act, P.L. 99-663, the Land Use Board of Appeals shall
 2 not review land use decisions within the general management area or special management area for
 3 compliance with the statewide planning goals. The limitation of this paragraph shall not apply if the
 4 Land Conservation and Development Commission decertifies the management plan pursuant to ORS
 5 196.107.

6 (3)(a) If a petition for judicial review of a commission order is filed pursuant to subsection (2)(a)
 7 of this section, the procedures to be followed by the parties, the commission and the court, and the
 8 court's review, shall be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490
 9 and 183.497, except as this section or the Columbia River Gorge National Scenic Area Act, P.L.
 10 99-663, otherwise provides.

11 (b) Notwithstanding any provision of ORS 183.482:

12 (A) The commission shall transmit the original record or the certified copy of the entire record
 13 within 21 days after service of a petition for judicial review is served on the commission; and

14 (B) The parties shall file briefs with the court within the times allowed by rules of the court.

15 (c) The court may affirm, reverse or remand the order. If the court finds that the agency has
 16 erroneously interpreted a provision of law and that a correct interpretation compels a particular
 17 action, the court shall:

18 (A) Set aside or modify the order; or

19 (B) Remand the case to the agency for further action under a correct interpretation of the pro-
 20 vision of law.

21 (d) The court shall remand the order to the agency if the court finds the agency's exercise of
 22 discretion to be:

23 (A) Outside the range of discretion delegated to the agency by law;

24 (B) Inconsistent with an agency rule, an officially stated agency position or a prior agency
 25 practice, unless the inconsistency is explained by the agency; or

26 (C) Otherwise in violation of a constitutional or statutory provision.

27 (e) The court shall set aside or remand the order if the court finds that the order is not sup-
 28 ported by substantial evidence in the whole record.

29 (f) Notwithstanding any other provision of this section, in any case where review of a county
 30 action as well as a commission order is sought pursuant to subsection (2)(a) and (b) of this section,
 31 the court shall accept any findings of fact by the commission which the court finds to be supported
 32 by substantial evidence in the whole record, and such findings by the commission shall prevail over
 33 any findings by the county concerning the same or substantially the same facts.

34 (4)(a) Except as otherwise provided by this section or the Columbia River Gorge National Scenic
 35 Area Act, P.L. 99-663, if review of a county action is sought pursuant to subsection (2)(b) of this
 36 section, the procedures to be followed by the parties, the county and the court, and the court's re-
 37 view, shall be in accordance with those provisions governing review of county land use decisions
 38 by the Land Use Board of Appeals set forth in ORS 197.830 (2) to (8), [~~(10), (15) and (16)~~] **(11), (16)**
 39 **and (17)** and 197.835 (2) to (10), (12) and (13). As used in this section, "board" as used in the enu-
 40 merated provisions shall mean "court" and the term "notice of intent to appeal" in ORS 197.830
 41 [~~(10)~~] **(11)** shall refer to the petition described in subsection (2) of this section.

42 (b) In addition to the other requirements of service under this section, the petitioner shall serve
 43 the petition upon the persons and bodies described in ORS 197.830 (9), as a prerequisite to judicial
 44 review of the county action.

45 (c) In accordance with subsection (3)(b)(B) of this section, a party to a review of both a com-

1 mission order and a county action shall file only one brief with the court, which shall address both
2 the commission order and the county action.

3 (d) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. Subject
4 to subsection (3)(f) of this section, the court shall be bound by any finding of fact of the county for
5 which there is substantial evidence in the whole record. The court may appoint a master and follow
6 the procedures of ORS 183.482 (7) in connection with matters that the board may take evidence for
7 under ORS 197.835 (2).

8 (5) Approval of county land use ordinances by the commission pursuant to section 7 of the
9 Columbia River Gorge National Scenic Area Act, P.L. 99-663, may be reviewed by the Court of Ap-
10 peals as provided in ORS 183.482.

11 (6) Notwithstanding ORS 183.484, any proceeding filed in circuit court by or against the com-
12 mission shall be filed with the circuit court for the county in which the commission has a principal
13 business office or in which the land involved in the proceeding is located.

14 **SECTION 10.** ORS 197.796 is amended to read:

15 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-
16 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed
17 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance
18 by an applicant for a land use decision, limited land use decision, expedited land division or permit
19 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does
20 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-
21 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-
22 dence of arrangements to pay the fee or to ensure compliance with the condition.

23 (2) Any action for damages under this section shall be filed in the circuit court of the county
24 in which the application was submitted within 180 days of the date of the decision.

25 (3)(a) A challenge filed pursuant to this section may not be dismissed on the basis that the ap-
26 plicant did not request a variance to the condition of approval or any other available form of re-
27 consideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1)
28 prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit
29 court and must exhaust all local appeals provided in the local comprehensive plan and land use
30 regulations before proceeding under this section.

31 (b) In addition to the requirements of ORS 197.763 (5), at the commencement of the initial public
32 hearing, a statement shall be made to the applicant that the failure of the applicant to raise con-
33 stitutional or other issues relating to proposed conditions of approval with sufficient specificity to
34 allow the local government or its designee to respond to the issue precludes an action for damages
35 in circuit court.

36 (c) An applicant is not required to raise an issue under this subsection unless the condition of
37 approval is stated with sufficient specificity to enable the applicant to respond to the condition prior
38 to the close of the final local hearing.

39 (4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth
40 Amendment to the United States Constitution, the local government shall have the burden of dem-
41 onstrating compliance with the constitutional requirements for imposing the condition.

42 (5) In a proceeding in circuit court under this section, the court shall award costs and reason-
43 able attorney fees to a prevailing party. Notwithstanding ORS 197.830 [(15)] (16), in a proceeding
44 before the Land Use Board of Appeals under this section, the board shall award costs and reason-
45 able attorney fees to a prevailing party.

1 (6) This section applies to appeals by the applicant of a condition of approval and claims filed
2 in state court seeking damages for the unlawful imposition of conditions of approval in a land use
3 decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

4 **SECTION 11. (1) The amendments to 196.115, 197.796, 197.830, 197.832, 197.835, 197.840,**
5 **197.845 and 197.850 by sections 1 to 6, 9 and 10 of this 2013 Act apply to the review of land**
6 **use decisions and limited land use decisions for which a notice of intent to appeal is filed on**
7 **or after the effective date of this 2013 Act.**

8 (2) Section 8 of this 2013 Act applies to an application filed on or after the effective date
9 of this 2013 Act.

10 **SECTION 12. This 2013 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
12 **on its passage.**

13 _____