

**PROPOSED AMENDMENTS TO  
SENATE BILL 77**

1 On page 1 of the printed bill, delete lines 5 through 29 and delete pages  
2 2 through 13 and insert:

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

4 “197.830. (1) Review of land use decisions or limited land use decisions  
5 under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent  
6 to appeal with the Land Use Board of Appeals.

7 “(2) Except as provided in ORS 197.620, a person may petition the board  
8 for review of a land use decision or limited land use decision if the person:

9 “(a) Filed a notice of intent to appeal the decision as provided in sub-  
10 section (1) of this section; and

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

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

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

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

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

3 “(a) A person who was not provided notice of the decision as required  
4 under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the  
5 board under this section within 21 days of receiving actual notice of the  
6 decision.

7 “(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or  
8 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may  
9 appeal the decision to the board under this section within 21 days after the  
10 expiration of the period for filing a local appeal of the decision established  
11 by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

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

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

20 “(5) If a local government makes a limited land use decision which is  
21 different from the proposal described in the notice to such a degree that the  
22 notice of the proposed action did not reasonably describe the local  
23 government’s final actions, a person adversely affected by the decision may  
24 appeal the decision to the board under this section:

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

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

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

30 “(a) May not exceed three years after the date of the decision, except as

1 provided in paragraph (b) of this subsection.

2 “(b) May not exceed 10 years after the date of the decision if notice of a  
3 hearing or an administrative decision made pursuant to ORS 197.195 or  
4 197.763 is required but has not been provided.

5 “(7)(a) Within 21 days after a notice of intent to appeal has been filed  
6 with the board under subsection (1) of this section, any person described in  
7 paragraph (b) of this subsection may intervene in and be made a party to the  
8 review proceeding by filing a motion to intervene and by paying a filing fee  
9 [of \$100] **as set forth in subsection (10) of this section.**

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

12 “(A) The applicant who initiated the action before the local government,  
13 special district or state agency; or

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

16 “(c) Failure to comply with the deadline or to pay the filing fee set forth  
17 in [paragraph (a) of this] subsection **(10) of this section** shall result in de-  
18 nial of a motion to intervene.

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

23 “(9) A notice of intent to appeal a land use decision or limited land use  
24 decision shall be filed not later than 21 days after the date the decision  
25 sought to be reviewed becomes final. A notice of intent to appeal plan and  
26 land use regulation amendments processed pursuant to ORS 197.610 to  
27 197.625 shall be filed not later than 21 days after notice of the decision  
28 sought to be reviewed is mailed or otherwise submitted to parties entitled  
29 to notice under ORS 197.615. Failure to include a statement identifying when,  
30 how and to whom notice was provided under ORS 197.615 does not render the

1 notice defective. Copies of the notice of intent to appeal shall be served upon  
2 the local government, special district or state agency and the applicant of  
3 record, if any, in the local government, special district or state agency pro-  
4 ceeding. *[The notice shall be served and filed in the form and manner pre-*  
5 *scribed by rule of the board and shall be accompanied by a filing fee of \$200*  
6 *and a deposit for costs to be established by the board. If a petition for review*  
7 *is not filed with the board as required in subsections (10) and (11) of this*  
8 *section, the filing fee and deposit shall be awarded to the local government,*  
9 *special district or state agency as cost of preparation of the record.]* **The no-**  
10 **tice must be served and filed in the form and manner prescribed by**  
11 **rule of the board and must be accompanied by a filing fee and a de-**  
12 **posit for costs as set forth in subsection (10) of this section. If a peti-**  
13 **tion for review is not filed with the board in the manner required in**  
14 **this section, the board shall award the filing fee and deposit to the**  
15 **local government, special district or state agency as cost of prepara-**  
16 **tion of the record.**

17 **“(10)(a) A person that files a notice of intent to appeal under sub-**  
18 **section (1) of this section shall submit a filing fee of \$500 and a deposit**  
19 **for costs of \$500.**

20 **“(b) A person that intervenes under subsection (7) of this section**  
21 **shall submit a filing fee of \$500.**

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

26 **“[(10)(a)] (11)(a) Within 21 days after service of the notice of intent to**  
27 **appeal, the local government, special district or state agency shall transmit**  
28 **to the board the original or a certified copy of the entire record of the pro-**  
29 **ceeding under review. By stipulation of all parties to the review proceeding**  
30 **the record may be shortened. The board may require or permit subsequent**

1 corrections to the record; however, the board shall issue an order on a mo-  
2 tion objecting to the record within 60 days of receiving the motion.

3 “(b) Within 10 days after service of a notice of intent to appeal, the board  
4 shall provide notice to the petitioner and the respondent of their option to  
5 enter into mediation pursuant to ORS 197.860. Any person moving to inter-  
6 vene shall be provided such notice within seven days after a motion to in-  
7 tervene is filed. The notice required by this paragraph shall be accompanied  
8 by a statement that mediation information or assistance may be obtained  
9 from the Department of Land Conservation and Development.

10 “[~~(11)~~] **(12)** A petition for review of the land use decision or limited land  
11 use decision and supporting brief shall be filed with the board as required  
12 by the board under subsection [~~(13)~~] **(14)** of this section.

13 “[~~(12)~~] **(13)** The petition shall include a copy of the decision sought to be  
14 reviewed and shall state:

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

16 “(b) The date of the decision.

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

18 “[~~(13)(a)~~] **(14)(a)** The board shall adopt rules establishing deadlines for  
19 filing petitions and briefs and for oral argument.

20 “(b) At any time subsequent to the filing of a notice of intent and prior  
21 to the date set for filing the record, or, on appeal of a decision under ORS  
22 197.610 to 197.625, prior to the filing of the respondent’s brief, the local  
23 government or state agency may withdraw its decision for purposes of re-  
24 consideration. If a local government or state agency withdraws an order for  
25 purposes of reconsideration, it shall, within such time as the board may al-  
26 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied  
27 with the local government or agency action after withdrawal for purposes  
28 of reconsideration, the petitioner may refile the notice of intent and the re-  
29 view shall proceed upon the revised order. An amended notice of intent shall  
30 not be required if the local government or state agency, on reconsideration,

1 affirms the order or modifies the order with only minor changes.

2 “[~~(14)~~] **(15)** The board shall issue a final order within 77 days after the  
3 date of transmittal of the record. If the order is not issued within 77 days  
4 the applicant may apply in Marion County or the circuit court of the county  
5 where the application was filed for a writ of mandamus to compel the board  
6 to issue a final order.

7 “[~~(15)(a)~~] **(16)(a)** Upon entry of its final order the board may, in its dis-  
8 cretion, award costs to the prevailing party including the cost of preparation  
9 of the record if the prevailing party is the local government, special district  
10 or state agency whose decision is under review. The **board shall apply the**  
11 deposit required by subsection [~~(9)~~] **(10)** of this section [*shall be applied*] to  
12 any costs charged against the petitioner.

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

17 “[~~(16)~~] **(17)** Orders issued under this section may be enforced in appropri-  
18 ate judicial proceedings.

19 “[~~(17)(a)~~] **(18)(a)** The board shall provide for the publication of its orders  
20 that are of general public interest in the form it deems best adapted for  
21 public convenience. The publications shall constitute the official reports of  
22 the board.

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

25 “[~~(18)~~] **(19)** Except for any sums collected for publication of board opin-  
26 ions, all fees collected by the board under this section that are not awarded  
27 as costs shall be paid over to the State Treasurer to be credited to the  
28 General Fund.

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

30 “**(a) The number of reviews commenced, as described in subsection**

1 (1) of this section, the number of reviews commenced for which a pe-  
2 tition is filed under subsection (2) of this section and, in relation to  
3 each of those numbers, the rate at which the reviews result in a de-  
4 cision of the board to uphold, reverse or remand the land use decision  
5 or limited land use decision. The board shall track and report reviews  
6 under this paragraph in categories established by the board.

7 “(b) A list of petitioners, the number of reviews commenced and the  
8 rate at which the petitioner’s reviews have resulted in decisions of the  
9 board to uphold, reverse or remand the land use decision or limited  
10 land use decision.

11 “(c) A list of respondents, the number of reviews involving each  
12 respondent and the rate at which reviews involving the respondent  
13 have resulted in decisions of the board to uphold, reverse or remand  
14 the land use decision or limited land use decision. Additionally, when  
15 a respondent is the local government that made the land use decision  
16 or limited land use decision, the board shall track whether the local  
17 government appears before the board.

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

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

23 **“SECTION 3. (1) When a local government, a special district or a  
24 state agency makes a final decision on an application and the local  
25 government, the special district or the state agency determines that  
26 it must make one or more subsequent quasi-judicial land use decisions  
27 or limited land use decisions in relation to real property that is the  
28 object of the application, the local government, the special district or  
29 the state agency shall identify each subsequent quasi-judicial land use  
30 decision or limited land use decision that is related to the final deci-**

1 sion and that must be made by the local government, the special dis-  
2 trict, the state agency or another public body, as defined in ORS  
3 174.109, as a result of the final decision.

4 “(2) A person seeking Land Use Board of Appeals review of a  
5 quasi-judicial land use decision or limited land use decision described  
6 in subsection (1) of this section shall comply with all provisions of ORS  
7 197.830 to 197.855, including the requirement to timely file a notice of  
8 intent to appeal pursuant to ORS 197.830.

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

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

17 “(a) Toll the operation of timelines described in ORS 197.830, except  
18 the timeline for other persons to file notices of intent to appeal, until  
19 the local government, the special district or the state agency makes  
20 subsequent quasi-judicial land use decisions or limited land use deci-  
21 sions related to the real property that is the object of the application;

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

24 “(c) Notify parties of the tolling of timelines as the parties are  
25 joined in the proceeding; and

26 “(d) Review in a single consolidated proceeding all related quasi-  
27 judicial land use decisions and limited land use decisions made in di-  
28 rect response to the application.

29 “(5) When a local government, a special district or a state agency  
30 has notice that a notice of intent to appeal has been filed with respect



1 to a quasi-judicial land use decision or limited land use decision de-  
2 scribed in subsection (1) of this section:

3 “(a) The local government, the special district or the state agency  
4 shall notify the board and all parties joined in the single review pro-  
5 ceeding that the local government, the special district or the state  
6 agency has taken final action on all quasi-judicial land use decisions  
7 or limited land use decisions that are the object of the application; and

8 “(b) The board shall notify parties, as necessary, of adjustments to  
9 due dates under the timelines based on the tolling of timelines pursu-  
10 ant to this section.

11 “(6) The tolling of timelines for review under this section may not  
12 exceed two years. After the passage of two years, the board shall pro-  
13 ceed with the review using the timelines specified in ORS 197.830.

14 “**SECTION 4.** ORS 197.832 is amended to read:

15 “197.832. The Board Publications Account is established in the General  
16 Fund. All moneys in the account are appropriated continuously to the Land  
17 Use Board of Appeals to be used for paying expenses incurred by the board  
18 under ORS 197.830 [(17)] (18). Disbursements of moneys from the account  
19 shall be approved by a member of the board.

20 “**SECTION 5.** ORS 197.835 is amended to read:

21 “197.835. (1) The Land Use Board of Appeals shall review the land use  
22 decision or limited land use decision and prepare a final order affirming,  
23 reversing or remanding the land use decision or limited land use decision.  
24 The board shall adopt rules defining the circumstances in which it will re-  
25 verse rather than remand a land use decision or limited land use decision  
26 that is not affirmed.

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

29 “(b) In the case of disputed allegations of standing, unconstitutionality  
30 of the decision, ex parte contacts, actions described in subsection (10)(a)(B)

1 of this section or other procedural irregularities not shown in the record  
2 that, if proved, would warrant reversal or remand, the board may take evi-  
3 dence and make findings of fact on those allegations. The board shall be  
4 bound by any finding of fact of the local government, special district or state  
5 agency for which there is substantial evidence in the whole record.

6 “(3) *[Issues shall be limited to those]* **Except as provided in subsection**  
7 **(4) of this section, the board shall limit the issues raised on review to**  
8 **issues** raised by any participant before the local hearings body as provided  
9 by ORS 197.195 or 197.763, whichever is applicable.

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

11 “(a) The local government failed to list the applicable criteria for a de-  
12 cision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner  
13 may raise new issues based upon applicable criteria that were omitted from  
14 the notice. However, the board may refuse to allow new issues to be raised  
15 if it finds that the issue could have been raised before the local government;

16 or

17 “(b) The local government made a land use decision or limited land use  
18 decision which is different from the proposal described in the notice to such  
19 a degree that the notice of the proposed action did not reasonably describe  
20 the local government’s final action.

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

30 “(6) The board shall reverse or remand an amendment to a comprehensive

1 plan if the amendment is not in compliance with the goals.

2 “(7) The board shall reverse or remand an amendment to a land use reg-  
3 ulation or the adoption of a new land use regulation if:

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

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

8 “(8) The board shall reverse or remand a decision involving the applica-  
9 tion of a plan or land use regulation provision if the decision is not in  
10 compliance with applicable provisions of the comprehensive plan or land use  
11 regulations.

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

15 “(a) The local government or special district:

16 “(A) Exceeded its jurisdiction;

17 “(B) Failed to follow the procedures applicable to the matter before it in  
18 a manner that prejudiced the substantial rights of the petitioner;

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

21 “(D) Improperly construed the applicable law; or

22 “(E) Made an unconstitutional decision; or

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

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

27 “(A) Based on the evidence in the record, that the local government de-  
28 cision is outside the range of discretion allowed the local government under  
29 its comprehensive plan and implementing ordinances; or

30 “(B) That the local government’s action was for the purpose of avoiding

1 the requirements of ORS 215.427 or 227.178.

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

5 “(11)(a) Whenever the findings, order and record are sufficient to allow  
6 review, and to the extent possible consistent with the time requirements of  
7 ORS 197.830 [(14)] (15), the board shall decide all issues presented to it when  
8 reversing or remanding a land use decision described in subsections (2) to (9)  
9 of this section or limited land use decision described in ORS 197.828 and  
10 197.195.

11 “(b) Whenever the findings are defective because of failure to recite ade-  
12 quate facts or legal conclusions or failure to adequately identify the stan-  
13 dards or their relation to the facts, but the parties identify relevant evidence  
14 in the record which clearly supports the decision or a part of the decision,  
15 the board shall affirm the decision or the part of the decision supported by  
16 the record and remand the remainder to the local government, with direction  
17 indicating appropriate remedial action.

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

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

26 “(14) The board shall reverse or remand a land use decision or limited  
27 land use decision which violates a commission order issued under ORS  
28 197.328.

29 “(15) In cases in which a local government provides a quasi-judicial land  
30 use hearing on a limited land use decision, the requirements of subsections

1 (12) and (13) of this section apply.

2 “(16) The board may decide cases before it by means of memorandum de-  
3 cisions and shall prepare full opinions only in such cases as it deems proper.

4 **“SECTION 6.** ORS 197.840 is amended to read:

5 “197.840. (1) The following periods of delay shall be excluded from the  
6 77-day period within which the board must make a final decision on a peti-  
7 tion under ORS 197.830 [(14)] **(15)**:

8 “(a) Any period of delay up to 120 days resulting from the board’s defer-  
9 ring all or part of its consideration of a petition for review of a land use  
10 decision or limited land use decision that allegedly violates the goals if the  
11 decision has been:

12 “(A) Submitted for acknowledgment under ORS 197.251; or

13 “(B) Submitted to the Department of Land Conservation and Development  
14 as part of a periodic review work program task pursuant to ORS 197.628 to  
15 197.651 and not yet acknowledged.

16 “(b) Any period of delay resulting from a motion, including but not lim-  
17 ited to, a motion disputing the constitutionality of the decision, standing, ex  
18 parte contacts or other procedural irregularities not shown in the record.

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

21 “(d) Any reasonable period of delay resulting from a continuance granted  
22 by a member of the board on the member’s own motion or at the request of  
23 one of the parties, if the member granted the continuance on the basis of  
24 findings that the ends of justice served by granting the continuance outweigh  
25 the best interest of the public and the parties in having a decision within  
26 77 days.

27 “(2) No period of delay resulting from a continuance granted by the board  
28 under subsection (1)(d) of this section shall be excludable under this section  
29 unless the board sets forth in the record, either orally or in writing, its  
30 reasons for finding that the ends of justice served by granting the contin-

1 uance outweigh the best interests of the public and the other parties in a  
2 decision within the 77 days. The factors the board shall consider in deter-  
3 mining whether to grant a continuance under subsection (1)(d) of this section  
4 in any case are as follows:

5 “(a) Whether the failure to grant a continuance in the proceeding would  
6 be likely to make a continuation of the proceeding impossible or result in a  
7 miscarriage of justice; or

8 “(b) Whether the case is so unusual or so complex, due to the number of  
9 parties or the existence of novel questions of fact or law, that it is unrea-  
10 sonable to expect adequate consideration of the issues within the 77-day time  
11 limit.

12 “(3) No continuance under subsection (1)(d) of this section shall be  
13 granted because of general congestion of the board calendar or lack of dili-  
14 gent preparation or attention to the case by any member of the board or any  
15 party.

16 “(4) The board may defer all or part of its consideration of a land use  
17 decision or limited land use decision described in subsection (1)(a) of this  
18 section until the Land Conservation and Development Commission has dis-  
19 posed of the acknowledgment proceeding described in subsection (1)(a) of this  
20 section. If the board deferred all or part of its consideration of a decision  
21 under this subsection, the board may grant a stay of the comprehensive plan  
22 provision, land use regulation, limited land use decision or land use decision  
23 under ORS 197.845.

24 **“SECTION 7.** ORS 197.845 is amended to read:

25 “197.845. (1) Upon application of the petitioner, the board may grant a  
26 stay of a land use decision or limited land use decision under review if the  
27 petitioner demonstrates:

28 “(a) A colorable claim of error in the land use decision or limited land  
29 use decision under review; and

30 “(b) That the petitioner will suffer irreparable injury if the stay is not

1 granted.

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

10 “(3) If the board affirms a quasi-judicial land use decision or limited land  
11 use decision for which a stay was granted under subsections (1) and (2) of  
12 this section, the board shall award reasonable attorney fees and actual  
13 damages resulting from the stay to the person who requested the land use  
14 decision or limited land use decision from the local government, special dis-  
15 trict or state agency, against the person requesting the stay in an amount  
16 not to exceed the amount of the undertaking.

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

25 **“SECTION 8.** ORS 197.850 is amended to read:

26 “197.850. (1) Any party to a proceeding before the Land Use Board of  
27 Appeals under ORS 197.830 to 197.845 may seek judicial review of a final  
28 order issued in those proceedings.

29 “(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial  
30 review of orders issued under ORS 197.830 to 197.845 is solely as provided in

1 this section.

2 “(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830  
3 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial  
4 review are instituted by filing a petition in the Court of Appeals. The peti-  
5 tion must be filed within 21 days following the date the board delivered or  
6 mailed the order upon which the petition is based.

7 “(b) Filing of the petition, as set forth in paragraph (a) of this subsection,  
8 and service of a petition on all persons identified in the petition as adverse  
9 parties of record in the board proceeding is jurisdictional and may not be  
10 waived or extended.

11 “(4) The petition must state the nature of the order the petitioner desires  
12 reviewed. Copies of the petition must be served by first class, registered or  
13 certified mail on the board and all other parties of record in the board pro-  
14 ceeding.

15 “(5) Within seven days after service of the petition, the board shall  
16 transmit to the court the original or a certified copy of the entire record of  
17 the proceeding under review, but, by stipulation of all parties to the review  
18 proceeding, the record may be shortened. The court may tax a party that  
19 unreasonably refuses to stipulate to limit the record for the additional costs.  
20 The court may require or permit subsequent corrections or additions to the  
21 record when deemed desirable. Except as specifically provided in this sub-  
22 section, the court may not tax the cost of the record to the petitioner or any  
23 intervening party. However, the court may tax such costs and the cost of  
24 transcription of record to a party filing a frivolous petition for judicial re-  
25 view.

26 “(6) Petitions and briefs must be filed within time periods and in a man-  
27 ner established by the Court of Appeals by rule.

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

30 “(b) The court may hear oral argument more than 49 days from the date



1 of transmittal of the record provided the court determines that the ends of  
2 justice served by holding oral argument on a later day outweigh the best  
3 interests of the public and the parties. The court shall not hold oral argu-  
4 ment more than 49 days from the date of transmittal of the record because  
5 of general congestion of the court calendar or lack of diligent preparation  
6 or attention to the case by any member of the court or any party.

7 “(c) The court shall set forth in writing a determination to hear oral ar-  
8 gument more than 49 days from the date the record is transmitted, together  
9 with the reasons for its determination, and shall provide a copy to the par-  
10 ties. The court shall schedule oral argument as soon as practicable there-  
11 after.

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

14 “(A) Whether the case is so unusual or complex, due to the number of  
15 parties or the existence of novel questions of law, that 49 days is an unrea-  
16 sonable amount of time for the parties to brief the case and for the court to  
17 prepare for oral argument; and

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

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

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

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

28 “(b) The order to be unconstitutional; or

29 “(c) The order is not supported by substantial evidence in the whole re-  
30 cord as to facts found by the board under ORS 197.835 (2).

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

3 “(11) If the order of the board is remanded by the Court of Appeals or the  
4 Supreme Court, the board shall respond to the court’s appellate judgment  
5 within 30 days.

6 “(12) A party must file with the board an undertaking with one or more  
7 sureties insuring that the party will pay all costs, disbursements and attor-  
8 ney fees awarded against the party by the Court of Appeals if:

9 “(a) The party appealed a decision of the board to the Court of Appeals;  
10 and

11 “(b) In making the decision being appealed to the Court of Appeals, the  
12 board awarded attorney fees and expenses against that party under ORS  
13 197.830 [(15)(b)] **(16)(b)**.

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

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

22 **“SECTION 9.** ORS 196.115 is amended to read:

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

27 “(2)(a) A final action or order by the commission in a review or appeal  
28 of any action of the commission pursuant to section 10(c) or 15(b)(4) of the  
29 Columbia River Gorge National Scenic Area Act, or a final action or order  
30 by the commission in a review or appeal of any action of a county pursuant

1 to section 15(a)(2) or 15(b)(4) of the Columbia River Gorge National Scenic  
2 Area Act, shall be reviewed by the Court of Appeals on a petition for judicial  
3 review filed and served as provided in subsections (3) and (4) of this section  
4 and ORS 183.482.

5 “(b) On a petition for judicial review under paragraph (a) of this sub-  
6 section the Court of Appeals also shall review the action of the county that  
7 is the subject of the commission’s order, if requested in the petition.

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

10 “(d) In lieu of judicial review under paragraphs (a) and (b) of this sub-  
11 section, a county action may be appealed to the Land Use Board of Appeals  
12 under ORS 197.805 to 197.855. A notice of intent to appeal the county’s action  
13 shall be filed not later than 21 days after the commission’s order on the  
14 county action becomes final.

15 “(e) Notwithstanding ORS 197.835, the scope of review in an appeal pur-  
16 suant to paragraph (d) of this subsection shall not include any issue relating  
17 to interpretation or implementation of the Columbia River Gorge National  
18 Scenic Area Act, P.L. 99-663, and any issue related to such interpretation or  
19 implementation shall be waived by the filing of an appeal under paragraph  
20 (d) of this subsection.

21 “(f) After county land use ordinances are approved pursuant to sections  
22 7(b) and 8(h) to (k) of the Columbia River Gorge National Scenic Area Act,  
23 P.L. 99-663, the Land Use Board of Appeals shall not review land use deci-  
24 sions within the general management area or special management area for  
25 compliance with the statewide planning goals. The limitation of this para-  
26 graph shall not apply if the Land Conservation and Development Commission  
27 decertifies the management plan pursuant to ORS 196.107.

28 “(3)(a) If a petition for judicial review of a commission order is filed  
29 pursuant to subsection (2)(a) of this section, the procedures to be followed  
30 by the parties, the commission and the court, and the court’s review, shall

1 be in accordance with ORS 183.480, 183.482 (1) to (7), 183.485, 183.486, 183.490  
2 and 183.497, except as this section or the Columbia River Gorge National  
3 Scenic Area Act, P.L. 99-663, otherwise provides.

4 “(b) Notwithstanding any provision of ORS 183.482:

5 “(A) The commission shall transmit the original record or the certified  
6 copy of the entire record within 21 days after service of a petition for judi-  
7 cial review is served on the commission; and

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

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

13 “(A) Set aside or modify the order; or

14 “(B) Remand the case to the agency for further action under a correct  
15 interpretation of the provision of law.

16 “(d) The court shall remand the order to the agency if the court finds the  
17 agency’s exercise of discretion to be:

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

19 “(B) Inconsistent with an agency rule, an officially stated agency position  
20 or a prior agency practice, unless the inconsistency is explained by the  
21 agency; or

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

23 “(e) The court shall set aside or remand the order if the court finds that  
24 the order is not supported by substantial evidence in the whole record.

25 “(f) Notwithstanding any other provision of this section, in any case  
26 where review of a county action as well as a commission order is sought  
27 pursuant to subsection (2)(a) and (b) of this section, the court shall accept  
28 any findings of fact by the commission which the court finds to be supported  
29 by substantial evidence in the whole record, and such findings by the com-  
30 mission shall prevail over any findings by the county concerning the same

1 or substantially the same facts.

2 “(4)(a) Except as otherwise provided by this section or the Columbia River  
3 Gorge National Scenic Area Act, P.L. 99-663, if review of a county action is  
4 sought pursuant to subsection (2)(b) of this section, the procedures to be  
5 followed by the parties, the county and the court, and the court’s review,  
6 shall be in accordance with those provisions governing review of county land  
7 use decisions by the Land Use Board of Appeals set forth in ORS 197.830 (2)  
8 to (8), [*(10), (15) and (16)*] **(11), (16) and (17)** and 197.835 (2) to (10), (12) and  
9 (13). As used in this section, ‘board’ as used in the enumerated provisions  
10 shall mean ‘court’ and the term ‘notice of intent to appeal’ in ORS 197.830  
11 [*(10)*] **(11)** shall refer to the petition described in subsection (2) of this sec-  
12 tion.

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

16 “(c) In accordance with subsection (3)(b)(B) of this section, a party to a  
17 review of both a commission order and a county action shall file only one  
18 brief with the court, which shall address both the commission order and the  
19 county action.

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

26 “(5) Approval of county land use ordinances by the commission pursuant  
27 to section 7 of the Columbia River Gorge National Scenic Area Act, P.L.  
28 99-663, may be reviewed by the Court of Appeals as provided in ORS 183.482.

29 “(6) Notwithstanding ORS 183.484, any proceeding filed in circuit court  
30 by or against the commission shall be filed with the circuit court for the

1 county in which the commission has a principal business office or in which  
2 the land involved in the proceeding is located.

3 **“SECTION 10.** ORS 197.796 is amended to read:

4 “197.796. (1) An applicant for a land use decision, limited land use deci-  
5 sion or expedited land division or for a permit under ORS 215.427 or 227.178  
6 may accept a condition of approval imposed under ORS 215.416 or 227.175 and  
7 file a challenge to the condition under this section. Acceptance by an appli-  
8 cant for a land use decision, limited land use decision, expedited land divi-  
9 sion or permit under ORS 215.427 or 227.178 of a condition of approval  
10 imposed under ORS 215.416 or 227.175 does not constitute a waiver of the  
11 right to challenge the condition of approval. Acceptance of a condition may  
12 include but is not limited to paying a fee, performing an act or providing  
13 satisfactory evidence of arrangements to pay the fee or to ensure compliance  
14 with the condition.

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

18 “(3)(a) A challenge filed pursuant to this section may not be dismissed  
19 on the basis that the applicant did not request a variance to the condition  
20 of approval or any other available form of reconsideration of the challenged  
21 condition. However, an applicant shall comply with ORS 197.763 (1) prior to  
22 appealing to the Land Use Board of Appeals or bringing an action for dam-  
23 ages in circuit court and must exhaust all local appeals provided in the local  
24 comprehensive plan and land use regulations before proceeding under this  
25 section.

26 “(b) In addition to the requirements of ORS 197.763 (5), at the com-  
27 mencement of the initial public hearing, a statement shall be made to the  
28 applicant that the failure of the applicant to raise constitutional or other  
29 issues relating to proposed conditions of approval with sufficient specificity  
30 to allow the local government or its designee to respond to the issue pre-

1 cludes an action for damages in circuit court.

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

6 “(4) In any challenge to a condition of approval that is subject to the  
7 Takings Clause of the Fifth Amendment to the United States Constitution,  
8 the local government shall have the burden of demonstrating compliance  
9 with the constitutional requirements for imposing the condition.

10 “(5) In a proceeding in circuit court under this section, the court shall  
11 award costs and reasonable attorney fees to a prevailing party. Notwith-  
12 standing ORS 197.830 [(15)] (16), in a proceeding before the Land Use Board  
13 of Appeals under this section, the board shall award costs and reasonable  
14 attorney fees to a prevailing party.

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

19 **“SECTION 11. (1) The amendments to ORS 196.115, 197.796, 197.830,  
20 197.832, 197.835, 197.840, 197.845 and 197.850 by sections 1 and 4 to 10 of  
21 this 2013 Act apply to the review of land use decisions and limited land  
22 use decisions for which a notice of intent to appeal is filed on or after  
23 the effective date of this 2013 Act.**

24 **“(2) Section 3 of this 2013 Act applies to applications filed on or after  
25 the effective date of this 2013 Act.**

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

29