

**PROPOSED AMENDMENTS TO
SENATE BILL 77**

1 On page 1 of the printed bill, line 2, delete “196.115,”.

2 Delete line 3 and insert “197.830; and declaring an emergency.”.

3 Delete lines 5 through 29 and delete pages 2 through 13 and insert:

4 **“SECTION 1.** ORS 197.830 is amended to read:

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

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

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

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

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

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

22 “(b) Within 21 days of the date a person knew or should have known of

1 the decision where no notice is required.

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

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

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

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

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

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

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

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

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

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

3 “(b) May not exceed 10 years after the date of the decision if notice of a
4 hearing or an administrative decision made pursuant to ORS 197.195 or
5 197.763 is required but has not been provided.

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

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

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

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

17 “(c) Failure to comply with the deadline or to pay the filing fee set forth
18 in paragraph (a) of this subsection shall result in denial of a motion to in-
19 tervene.

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

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

1 how and to whom notice was provided under ORS 197.615 does not render the
2 notice defective. Copies of the notice of intent to appeal shall be served upon
3 the local government, special district or state agency and the applicant of
4 record, if any, in the local government, special district or state agency pro-
5 ceeding. The notice shall be served and filed in the form and manner pre-
6 scribed by rule of the board and shall be accompanied by a filing fee of \$200
7 and a deposit for costs to be established by the board. If a petition for review
8 is not filed with the board as required in subsections (10) and (11) of this
9 section, the filing fee and deposit shall be awarded to the local government,
10 special district or state agency as cost of preparation of the record.

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

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

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

28 “(12) The petition shall include a copy of the decision sought to be re-
29 viewed and shall state:

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

1 “(b) The date of the decision.

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

3 “(13)(a) The board shall adopt rules establishing deadlines for filing pe-
4 titions and briefs and for oral argument.

5 “(b) At any time subsequent to the filing of a notice of intent and prior
6 to the date set for filing the record, or, on appeal of a decision under ORS
7 197.610 to 197.625, prior to the filing of the respondent’s brief, the local
8 government or state agency may withdraw its decision for purposes of re-
9 consideration. If a local government or state agency withdraws an order for
10 purposes of reconsideration, it shall, within such time as the board may al-
11 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied
12 with the local government or agency action after withdrawal for purposes
13 of reconsideration, the petitioner may refile the notice of intent and the re-
14 view shall proceed upon the revised order. An amended notice of intent shall
15 not be required if the local government or state agency, on reconsideration,
16 affirms the order or modifies the order with only minor changes.

17 “(14) The board shall issue a final order within 77 days after the date of
18 transmittal of the record. If the order is not issued within 77 days the ap-
19 plicant may apply in Marion County or the circuit court of the county where
20 the application was filed for a writ of mandamus to compel the board to issue
21 a final order.

22 “(15)(a) Upon entry of its final order the board may, in its discretion,
23 award costs to the prevailing party including the cost of preparation of the
24 record if the prevailing party is the local government, special district or
25 state agency whose decision is under review. The **board shall apply the**
26 deposit required by subsection (9) of this section [*shall be applied*] to any
27 costs charged against the petitioner.

28 “(b) The board shall also award reasonable attorney fees and expenses to
29 the prevailing party against any other party who the board finds presented
30 a position without probable cause to believe the position was well-founded

1 in law or on factually supported information.

2 “(16) Orders issued under this section may be enforced in appropriate ju-
3 dicial proceedings.

4 “(17)(a) The board shall provide for the publication of its orders that are
5 of general public interest in the form it deems best adapted for public con-
6 venience. The publications shall constitute the official reports of the board.

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

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

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

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

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

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

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

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

6 “SECTION 3. (1) When a local government, a special district or a
7 state agency makes a final decision on an application and the local
8 government, the special district or the state agency determines that
9 it must make one or more subsequent quasi-judicial land use decisions
10 or limited land use decisions in relation to real property that is the
11 object of the application, the local government, the special district or
12 the state agency shall identify each subsequent quasi-judicial land use
13 decision or limited land use decision that is related to the final deci-
14 sion and that must be made by the local government, the special dis-
15 trict, the state agency or another public body, as defined in ORS
16 174.109, as a result of the final decision.

17 “(2) A person seeking Land Use Board of Appeals review of a
18 quasi-judicial land use decision or limited land use decision described
19 in subsection (1) of this section shall comply with all provisions of ORS
20 197.830 to 197.855, including the requirement to timely file a notice of
21 intent to appeal pursuant to ORS 197.830.

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

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

30 “(a) Toll the operation of timelines described in ORS 197.830, except

1 the timeline for other persons to file notices of intent to appeal, until
2 the local government, the special district or the state agency makes
3 subsequent quasi-judicial land use decisions or limited land use deci-
4 sions related to the real property that is the object of the application;

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

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

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

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

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

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

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

27 “SECTION 4. (1) The amendments to ORS 197.830 by section 1 of this
28 2013 Act apply to the review of land use decisions and limited land use
29 decisions for which a notice of intent to appeal is filed on or after the
30 effective date of this 2013 Act.

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

3 “SECTION 5. This 2013 Act being necessary for the immediate
4 preservation of the public peace, health and safety, an emergency is
5 declared to exist, and this 2013 Act takes effect on its passage.”.

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