

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 77**

1 On page 1 of the printed A-engrossed bill, line 2, after “197.830” insert
2 “and 197.835”.

3 On page 4, delete lines 32 through 45 and delete page 5 and insert:

4 **“SECTION 2.** ORS 197.835 is amended to read:

5 “197.835. (1) The Land Use Board of Appeals shall review the land use
6 decision or limited land use decision and prepare a final order affirming,
7 reversing or remanding, **in whole or in part**, the land use decision or lim-
8 ited land use decision. The board shall adopt rules defining the circum-
9 stances in which it will reverse rather than remand a land use decision or
10 limited land use decision that is not affirmed.

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

13 “(b) In the case of disputed allegations of standing, unconstitutionality
14 of the decision, ex parte contacts, actions described in subsection (10)(a)(B)
15 of this section or other procedural irregularities not shown in the record
16 that, if proved, would warrant reversal or remand, the board may take evi-
17 dence and make findings of fact on those allegations. The board shall be
18 bound by any finding of fact of the local government, special district or state
19 agency for which there is substantial evidence in the whole record.

20 “(3) Issues shall be limited to those raised by any participant before the
21 local hearings body as provided by ORS 197.195 or 197.763, whichever is ap-
22 plicable.

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

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

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

12 “(5) The board shall reverse or remand a land use decision not subject to
13 an acknowledged comprehensive plan and land use regulations if the decision
14 does not comply with the goals. The board shall reverse or remand a land
15 use decision or limited land use decision subject to an acknowledged com-
16 prehensive plan or land use regulation if the decision does not comply with
17 the goals and the Land Conservation and Development Commission has is-
18 sued an order under ORS 197.320 or adopted a new or amended goal under
19 ORS 197.245 requiring the local government to apply the goals to the type
20 of decision being challenged.

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

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

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

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

29 “(8) The board shall reverse or remand a decision involving the applica-
30 tion of a plan or land use regulation provision if the decision is not in

1 compliance with applicable provisions of the comprehensive plan or land use
2 regulations.

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

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

7 “(A) Exceeded its jurisdiction;

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

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

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

13 “(E) Made an unconstitutional decision; or

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

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

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

21 “(B) That the local government’s action was for the purpose of avoiding
22 the requirements of ORS 215.427 or 227.178.

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

26 “(11)(a) Whenever the findings, order and record are sufficient to allow
27 review, and to the extent possible consistent with the time requirements of
28 ORS 197.830 (14), the board shall decide all issues presented to it [*when re-*
29 *versing or remanding*] **when reviewing** a land use decision described in
30 subsections (2) to (9) of this section or limited land use decision described

1 in ORS 197.828 and 197.195 **and shall affirm, reverse or remand the de-**
2 **cision, in whole or in part.**

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

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

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

18 “(14) The board shall reverse or remand a land use decision or limited
19 land use decision which violates a commission order issued under ORS
20 197.328.

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

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

26 **“SECTION 3. The amendments to ORS 197.830 and 197.835 by**
27 **sections 1 and 2 of this 2013 Act apply to the review of land use deci-**
28 **sions and limited land use decisions for which a notice of intent to**
29 **appeal is filed on or after the effective date of this 2013 Act.**

30 **“SECTION 4. This 2013 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**
2 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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