

**PROPOSED AMENDMENTS TO
HOUSE BILL 4078**

1 On page 1 of the printed corrected bill, line 2, after the semicolon insert
2 “creating new provisions; amending ORS 197.626 and 197.651;”.

3 On page 2, delete lines 37 through 44 and insert:

4 **“SECTION 2.** ORS 197.626 is amended to read:

5 “197.626. (1) A local government shall submit for review and the Land
6 Conservation and Development Commission shall review the following final
7 land use decisions in the manner provided for review of a work task under
8 ORS 197.633:

9 “(a) An amendment of an urban growth boundary by a metropolitan ser-
10 vice district that adds more than 100 acres to the area within its urban
11 growth boundary;

12 “(b) An amendment of an urban growth boundary by a city with a popu-
13 lation of 2,500 or more within its urban growth boundary that adds more
14 than 50 acres to the area within the urban growth boundary;

15 “(c) A designation of an area as an urban reserve under ORS 195.137 to
16 195.145 by a metropolitan service district or by a city with a population of
17 2,500 or more within its urban growth boundary;

18 “(d) An amendment of the boundary of an urban reserve by a metropolitan
19 service district;

20 “(e) An amendment of the boundary of an urban reserve to add more than
21 50 acres to the urban reserve by a city with a population of 2,500 or more
22 within its urban growth boundary; and

1 “(f) A designation or an amendment to the designation of a rural reserve
2 under ORS 195.137 to 195.145 by a county, in coordination with a metropol-
3 itan service district, and the amendment of the designation.

4 “(2) When the commission reviews a final land use decision of a
5 metropolitan service district under subsection (1)(a), (c) or (d) of this
6 section, the commission shall issue a final order in writing within 120
7 days after the commission votes whether to approve the decision.

8 “[2)] (3) A final order of the commission under this section may be ap-
9 pealed to the Court of Appeals in the manner described in ORS 197.650 and
10 197.651.

11 “**SECTION 3.** ORS 197.651 is amended to read:

12 “197.651. (1) Judicial review [*of a final order of the Land Conservation and*
13 *Development Commission under ORS 197.626 concerning the designation of*
14 *urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS*
15 *195.141]* is **conducted** as provided in subsections (3) to (12) of this
16 section[.] **for a final order of the Land Conservation and Development**
17 **Commission concerning a final land use decision:**

18 “(a) Made by a metropolitan service district and described in ORS
19 197.626 (1)(a), (c) or (d).

20 “(b) Made by a county and described in ORS 197.626 (1)(f).

21 “(2) Judicial review [*of any other final order of the commission under ORS*
22 *197.626 or of a final order of the commission under 197.180, 197.251, 197.628*
23 *to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794]* is **con-**
24 **ducted** as provided in subsections (3) to (7), (9), (10) and (12) of this
25 section[.] **for:**

26 “(a) Any other final order of the commission described in ORS
27 197.626.

28 “(b) A final order of the “commission described in ORS 197.180,
29 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to
30 215.794.

1 “(3) A proceeding for judicial review under this section may be instituted
2 by filing a petition in the Court of Appeals. The petition must be filed within
3 21 days after the date the commission delivered or mailed the order upon
4 which the petition is based.

5 “(4) The filing of the petition, as set forth in subsection (3) of this section,
6 and service of a petition on the persons who submitted oral or written tes-
7 timony in the proceeding before the commission are jurisdictional and may
8 not be waived or extended.

9 “(5) The petition must state the nature of the order the petitioner seeks
10 to have reviewed. Copies of the petition must be served by registered or
11 certified mail upon the commission and the persons who submitted oral or
12 written testimony in the proceeding before the commission.

13 “(6) Within [21] 14 days after service of the petition, the commission shall
14 transmit to the Court of Appeals the original or a certified copy of the entire
15 record of the proceeding under review. However, by stipulation of the parties
16 to the review proceeding, the record may be shortened. The Court of Appeals
17 may tax a party that unreasonably refuses to stipulate to limit the record for
18 the additional costs. The Court of Appeals may require or permit subsequent
19 corrections or additions to the record. Except as specifically provided in this
20 subsection, the Court of Appeals may not tax the cost of the record to the
21 petitioner or an intervening party. However, the Court of Appeals may tax
22 the costs to a party that files a frivolous petition for judicial review.

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

25 “(8) The Court of Appeals shall:

26 “(a) Hear oral argument within [49] 56 days [of] **after** the date of trans-
27 mittal of the record unless the Court of Appeals determines that the ends
28 of justice served by holding oral argument on a later day outweigh the best
29 interests of the public and the parties. However, the Court of Appeals may
30 not hold oral argument more than [49] 56 days after the date of transmittal

1 of the record because of general congestion of the court calendar or lack of
2 diligent preparation or attention to the case by a member of the court or a
3 party.

4 “(b) Set forth in writing and provide to the parties a determination to
5 hear oral argument more than [49] 56 days from the date the record is
6 transmitted, together with the reasons for the determination. The Court of
7 Appeals shall schedule oral argument as soon as is practicable.

8 “(c) Consider, in making a determination under paragraph (b) of this
9 subsection:

10 “(A) Whether the case is so unusual or complex, due to the number of
11 parties or the existence of novel questions of law, that [49] 56 days is an
12 unreasonable amount of time for the parties to brief the case and for the
13 Court of Appeals to prepare for oral argument; and

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

16 “(9) The court:

17 “(a) Shall limit judicial review of an order reviewed under this section
18 to the record.

19 “(b) May not substitute its judgment for that of the Land Conservation
20 and Development Commission as to an issue of fact.

21 “(10) The Court of Appeals may affirm, reverse or remand an order re-
22 viewed under this section. The Court of Appeals shall reverse or remand the
23 order only if the court finds the order is:

24 “(a) Unlawful in substance or procedure. However, error in procedure is
25 not cause for reversal or remand unless the Court of Appeals determines that
26 substantial rights of the petitioner were prejudiced.

27 “(b) Unconstitutional.

28 “(c) Not supported by substantial evidence in the whole record as to facts
29 found by the commission.

30 “(11) The Court of Appeals shall issue a final order on the petition for

1 judicial review [*with the greatest possible expediency*] **within 105 days after**
2 **the court hears oral argument.**

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

6 **“SECTION 4. In the judicial review of Land Conservation and De-**
7 **velopment Commission Final Order No. 12-UGB-001826 in Court of Ap-**
8 **peals Case No. A153355, the Court of Appeals shall:**

9 **“(1) Hear oral argument within 14 days after the date all briefs are**
10 **filed; and**

11 **“(2) Issue a final order on the petition for judicial review within 105**
12 **days after the court hears oral argument.**

13 **“SECTION 5. (1) The amendments to ORS 197.626 by section 2 of this**
14 **2014 Act apply to a final land use decision of a metropolitan service**
15 **district that is submitted to the Land Conservation and Development**
16 **Commission for review on or after the effective date of this 2014 Act.**

17 **“(2) The amendments to ORS 197.651 by section 3 of this 2014 Act**
18 **apply to a petition for judicial review under ORS 197.651 that is filed**
19 **on or after the effective date of this 2014 Act.”.**

20 In line 45, delete “4” and insert “6”.

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