

**PROPOSED AMENDMENTS TO
CORRECTED 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 In line 10, after “approved” insert “legislative” and delete “2002” and in-
4 sert “2005”.

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

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

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

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

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

17 “(c) A designation of an area as an urban reserve under ORS 195.137 to
18 195.145 by a metropolitan service district or by a city with a population of
19 2,500 or more within its urban growth boundary;

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

22 “(e) An amendment of the boundary of an urban reserve to add more than

1 50 acres to the urban reserve by a city with a population of 2,500 or more
2 within its urban growth boundary; and

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

6 “(2) When the commission reviews a final land use decision of a
7 metropolitan service district under subsection (1)(a), (c), (d) or (f) of
8 this section, the commission shall issue a final order in writing within
9 180 days after the commission votes whether to approve the decision.

10 “[2] (3) A final order of the commission under this section may be ap-
11 pealed to the Court of Appeals in the manner described in ORS 197.650 and
12 197.651.

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

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

20 “(a) Made by a metropolitan service district and described in ORS
21 197.626 (1)(a), (c) or (d).

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

23 “(2) Judicial review *[of any other final order of the commission under ORS*
24 *197.626 or of a final order of the commission under 197.180, 197.251, 197.628*
25 *to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794]* is **con-**
26 **ducted** as provided in subsections (3) to (7), (9), (10) and [(12)] (15) of this
27 section[.] **for:**

28 “(a) Any other final order of the commission described in ORS
29 197.626.

30 “(b) A final order of the commission described in ORS 197.180,

1 **197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to**
2 **215.794.**

3 “(3) A proceeding for judicial review under this section may be instituted
4 by filing a petition in the Court of Appeals. The petition must be filed within
5 21 days after the date the commission delivered or mailed the order upon
6 which the petition is based.

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

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

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

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

27 “(8) The Court of Appeals shall:

28 “(a) Hear oral argument within [49] **56** days [of] **after** the date of trans-
29 mittal of the record unless the Court of Appeals determines that the ends
30 of justice served by holding oral argument on a later day outweigh the best

1 interests of the public and the parties. However, the Court of Appeals may
2 not hold oral argument more than [49] **56** days after the date of transmittal
3 of the record because of general congestion of the court calendar or lack of
4 diligent preparation or attention to the case by a member of the court or a
5 party.

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

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

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

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

18 “(9) The court:

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

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

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

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

29 “(b) Unconstitutional.

30 “(c) Not supported by substantial evidence in the whole record as to facts

1 found by the commission.

2 “(11) The Court of Appeals shall issue a final order on the petition for
3 judicial review [*with the greatest possible expediency.*] **within 140 days after**
4 **the court hears oral argument.**

5 “(12) The 140-day period described in subsection (11) of this section
6 **does not include:**

7 “(a) A period of delay that results from a motion properly before
8 the Court of Appeals; or

9 “(b) Except as provided in subsection (13) of this section, a period
10 of delay that results from a continuance granted by the court on the
11 court’s own motion or at the request of one of the parties if the court
12 granted the continuance on the basis of findings that the ends of jus-
13 tice served by granting the continuance outweigh the best interest of
14 the public and the parties in having a decision within 140 days.

15 “(13) A period of delay resulting from a continuance granted by the
16 Court of Appeals under subsection (12)(b) of this section is not ex-
17 cluded from the 140-day period unless the court sets forth in the re-
18 cord, orally or in writing, reasons for finding that the ends of justice
19 served by granting the continuance outweigh the best interests of the
20 public and the parties in having a decision within the 140-day period.
21 The court shall consider the following factors in determining whether
22 to grant a continuance under subsection (12)(b) of this section:

23 “(a) Whether the refusal to grant a continuance in the proceeding
24 is likely to make it impossible to continue with the proceeding or to
25 result in a miscarriage of justice; or

26 “(b) Whether the case is so unusual or complex, due to the number
27 of parties or the existence of novel questions of fact or law, that it is
28 not reasonable to expect adequate consideration of the issues within
29 the 140-day period.

30 “(14) The Court of Appeals may not grant a continuance under

1 subsection (12)(b) of this section due to general congestion of the court
2 calendar or lack of diligent preparation or attention to the case by a
3 party or a member of the court.

4 “[~~(12)~~] (15) If the order of the commission is remanded by the Court of
5 Appeals or the Supreme Court, the commission shall respond to the court’s
6 appellate judgment within 30 days.

7 **“SECTION 4. (1) In the judicial review of Land Conservation and
8 Development Commission Final Order No. 12-UGB-001826 in Court of
9 Appeals Case No. A153355, the Court of Appeals shall:**

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

12 **“(b) Issue a final order on the petition for judicial review within 140
13 days after the court hears oral argument.**

14 **“(2) The 140-day period described in subsection (1)(b) of this section
15 does not include:**

16 **“(a) A period of delay that results from a motion properly before
17 the Court of Appeals; or**

18 **“(b) Except as provided in subsection (3) of this section, a period
19 of delay that results from a continuance granted by the court on the
20 court’s own motion or at the request of one of the parties if the court
21 granted the continuance on the basis of findings that the ends of jus-
22 tice served by granting the continuance outweigh the best interests
23 of the public and the parties in having a decision within 140 days.**

24 **“(3) A period of delay resulting from a continuance granted by the
25 Court of Appeals under subsection (2)(b) of this section is not excluded
26 from the 140-day period unless the court sets forth in the record, orally
27 or in writing, reasons for finding that the ends of justice served by
28 granting the continuance outweigh the best interests of the public and
29 the parties in having a decision within the 140-day period. The court
30 shall consider the following factors in determining whether to grant**

1 a continuance under subsection (2)(b) of this section:

2 “(a) Whether the refusal to grant a continuance in the proceeding
3 is likely to make it impossible to continue with the proceeding or to
4 result in a miscarriage of justice; or

5 “(b) Whether the case is so unusual or complex, due to the number
6 of parties or the existence of novel questions of fact or law, that it is
7 not reasonable to expect adequate consideration of the issues within
8 the 140-day period.

9 “(4) The Court of Appeals may not grant a continuance under sub-
10 section (2)(b) of this section due to general congestion of the court
11 calendar or lack of diligent preparation or attention to the case by a
12 party or a member of the court.

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”.

21
