

House Bill 2235

Sponsored by Representative WHISNANT (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits review by Land Use Board of Appeals of land use decisions and limited land use decisions changing comprehensive plans and land use regulations to issues raised during local planning process.

Requires Department of Land Conservation and Development to study requirements for citizen involvement in local land use planning to identify changes that can reduce potential for appeals by ensuring more effective involvement in local land use planning.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to quasi-judicial review of land use decision-making; creating new provisions; amending
3 ORS 197.835; and declaring an emergency.

4 Whereas the Legislative Assembly finds that Oregon law allows a party, on appeal before the
5 Land Use Board of Appeals, to raise issues related to post-acknowledgment changes to comprehen-
6 sive plans and land use regulations that were not raised before the local government decision mak-
7 ers; and

8 Whereas the policy places an unreasonable burden on a local government to defend new issues
9 on appeal that could have been addressed in the local land use planning process; and

10 Whereas the policy increases costs of local land use planning and causes unnecessary delays in
11 development by forcing the board to remand new issues for further local decision-making; and

12 Whereas a change in the statutory policy is required to ensure that all issues related to land
13 use decisions and limited land use decisions are raised in the local planning process to qualify for
14 review by the board; now, therefore,

Be It Enacted by the People of the State of Oregon:

15 **SECTION 1.** ORS 197.835 is amended to read:

16 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
17 use decision and prepare a final order affirming, reversing or remanding the land use decision or
18 limited land use decision. The board shall adopt rules defining the circumstances in which it will
19 reverse rather than remand a land use decision or limited land use decision that is not affirmed.
20

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

22 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte
23 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities
24 not shown in the record that, if proved, would warrant reversal or remand, the board may take ev-
25 idence and make findings of fact on those allegations. The board shall be bound by any finding of
26 fact of the local government, special district or state agency for which there is substantial evidence
27 in the whole record.

28 *[(3) Issues shall be limited to those raised by any participant before the local hearings body as*

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 *provided by ORS 197.195 or 197.763, whichever is applicable.]*

2 **(3) Subject to ORS 197.195, 197.620 (2) or 197.763, if applicable, the board shall limit issues**
 3 **related to a land use decision or a limited land use decision that are reviewed on appeal to**
 4 **the issues that were raised before the local hearings body by any participant.**

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

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

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

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

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

22 (7) The board shall reverse or remand an amendment to a land use regulation or the adoption
 23 of a new land use regulation if:

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

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

28 (8) The board shall reverse or remand a decision involving the application of a plan or land use
 29 regulation provision if the decision is not in compliance with applicable provisions of the compre-
 30 hensive plan or land use regulations.

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

33 (a) The local government or special district:

34 (A) Exceeded its jurisdiction;

35 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-
 36 diced the substantial rights of the petitioner;

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

38 (D) Improperly construed the applicable law; or

39 (E) Made an unconstitutional decision; or

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

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

43 (A) Based on the evidence in the record, that the local government decision is outside the range
 44 of discretion allowed the local government under its comprehensive plan and implementing ordi-
 45 nances; or

1 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
2 215.427 or 227.178.

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

6 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent
7 possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues
8 presented to it when 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 197.195.

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

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

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

22 (14) The board shall reverse or remand a land use decision or limited land use decision which
23 violates a commission order issued under ORS 197.328.

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

26 (16) The board may decide cases before it by means of memorandum decisions and shall prepare
27 full opinions only in such cases as it deems proper.

28 **SECTION 2. (1) The Department of Land Conservation and Development shall review a**
29 **statewide land use planning goal related to citizen involvement to determine whether**
30 **changes can reduce the potential for appeal of local land use decision-making to the Land**
31 **Use Board of Appeals by ensuring more effective citizen involvement in the review of local**
32 **land use planning.**

33 **(2) The department shall report to the appropriate legislative interim committees on or**
34 **before January 1, 2017.**

35 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
37 **on its passage.**

38