

Enrolled
House Bill 2830

Sponsored by Representative HELM; Representatives GOMBERG, MCLAIN

CHAPTER

AN ACT

Relating to remand of local land use decision; amending ORS 215.435, 215.437, 227.181 and 227.182.

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

SECTION 1. ORS 215.435 is amended to read:

215.435. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a county, the governing body of the county or its designee shall take final action on an application for a permit, limited land use decision or zone change within [90] **120** days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the [90-day] **120-day** period established under this subsection shall not begin until final resolution of the judicial review.

[(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand.]

[(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.]

(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the county proceed with the application on remand, but if the county does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the county shall deem the application terminated.

(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The county shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The [90-day] **120-day** period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the county making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

SECTION 2. ORS 215.437 is amended to read:

215.437. (1) If the governing body of a county or its designee fails to take final action on an application for a permit, limited land use decision or zone change within [90] **120** days as provided in ORS 215.435, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the county or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section.

SECTION 3. ORS 227.181 is amended to read:

227.181. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within [90] **120** days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830, the [90-day] **120-day** period established under this subsection shall not begin until final resolution of the judicial review.

[(2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand.]

[(b) The 90-day period may be extended for a reasonable period of time at the request of the applicant.]

(2)(a) In addition to the requirements of subsection (1) of this section, the 120-day period established under subsection (1) of this section shall not begin until the applicant requests in writing that the city proceed with the application on remand, but if the city does not receive the request within 180 days of the effective date of the final order or the final resolution of the judicial review, the city shall deem the application terminated.

(b) The 120-day period established under subsection (1) of this section may be extended for up to an additional 365 days if the parties enter into mediation as provided by ORS 197.860 prior to the expiration of the initial 120-day period. The city shall deem the application terminated if the matter is not resolved through mediation prior to the expiration of the 365-day extension.

(3) The [90-day] **120-day** period established under subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(4) Subsection (1) of this section does not apply to a remand proceeding concerning a decision of the city making a change to an acknowledged comprehensive plan or a land use regulation that is submitted to the Director of the Department of Land Conservation and Development under ORS 197.610.

SECTION 4. ORS 227.182 is amended to read:

227.182. (1) If the governing body of a city or its designee fails to take final action on an application for a permit, limited land use decision or zone change within [90] **120** days as provided in ORS 227.181, the applicant may file a petition for a writ of mandamus as provided in ORS 34.105 to 34.240. The court shall set the matter for trial as soon as practicable but not more than 15 days from the date a responsive pleading pursuant to ORS 34.170 is filed, unless the court has been advised by the parties that the matter has been settled.

(2) A writ of mandamus issued under this section shall order the governing body of the city or its designee to make a final determination on the application. The court, in its discretion, may order such remedy as the court determines appropriate.

(3) In a mandamus proceeding under this section the court shall award court costs and attorney fees to an applicant who prevails on a petition under this section.

Passed by House April 16, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 10, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State