

House Bill 3222

Sponsored by COMMITTEE ON RURAL COMMUNITIES, LAND USE, AND WATER

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**.

Modifies provisions related to inclusion of needed housing within urban growth boundaries.

A BILL FOR AN ACT

1
2 Relating to needed housing in urbanizable areas; creating new provisions; and amending ORS
3 197.295, 197.303, 197.522 and 197.830.

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

5 **SECTION 1.** ORS 197.295 is amended to read:

6 197.295. As used in ORS 197.295 to 197.314 and 197.475 to 197.490:

7 (1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available
8 and necessary for residential uses. "Buildable lands" includes both vacant land and developed land
9 likely to be redeveloped.

10 (2) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

11 (3) "Government assisted housing" means housing that is financed in whole or part by either a
12 federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that
13 is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided
14 by either a federal or state housing agency or a local housing authority.

15 (4) "Manufactured homes" has the meaning given that term in ORS 446.003.

16 (5) "Mobile home park" has the meaning given that term in ORS 446.003.

17 **(6) "Needed housing" has the meaning given that term in ORS 197.303.**

18 [(6)] (7) "Periodic review" means the process and procedures as set forth in ORS 197.628 to
19 197.651.

20 [(7)] (8) "Urban growth boundary" means an urban growth boundary included or referenced in
21 a comprehensive plan.

22 **SECTION 2.** ORS 197.303 is amended to read:

23 197.303. (1) As used in **this section and** ORS 197.307[, "*needed housing*" means housing types
24 *determined to meet the need shown for housing within an urban growth boundary at particular price*
25 *ranges and rent levels, including at least the following housing types*]:

26 **(a) "Housing types" includes:**

27 [(a)] **(A)** Attached and detached single-family housing and multiple family housing for both
28 owner and renter occupancy;

29 [(b)] **(B)** Government assisted housing;

30 [(c)] **(C)** Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

31 [(d)] **(D)** Manufactured homes on individual lots planned and zoned for single-family residential
32 use that are in addition to lots within designated manufactured dwelling subdivisions; and

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 [(e)] (E) Housing for farmworkers.

2 (b) **“Needed housing” means housing types determined pursuant to the analysis required**
 3 **by ORS 197.296 (3)(b) to meet the need shown for housing within an urban growth boundary**
 4 **at particular price ranges and rent levels.**

5 (2) Subsection [(1)(a) and (d)] (1)(a)(A) and (D) of this section [shall] **do not apply to the defi-**
 6 **inition of “needed housing” for:**

7 (a) A city with a population of less than 2,500.

8 (b) A county with a population of less than 15,000.

9 (3) A local government may take an exception under ORS 197.732 to the definition of “needed
 10 housing” in [subsection (1) of] this section in the same manner that an exception may be taken under
 11 the goals.

12 **SECTION 3. ORS 197.522 is added to and made a part of ORS chapter 197.**

13 **SECTION 4.** ORS 197.522 is amended to read:

14 197.522. (1) A local government shall approve an application for a permit, authorization or other
 15 approval necessary [for the subdivision or partitioning of, or construction on, any] **to subdivide,**
 16 **partition or construct improvements on** land that is consistent with the comprehensive plan and
 17 applicable land use regulations or shall impose reasonable conditions on the application to make the
 18 proposed activity consistent with the plan and applicable regulations.

19 (2) **Conditions imposed on an application approved under subsection (1) of this section**
 20 **may not:**

21 (a) **Have the effect, either in themselves or cumulatively, of discouraging the con-**
 22 **struction of needed housing, as defined in ORS 197.303, through unreasonable cost or delay.**

23 (b) **Reduce the density proposed in the application if the density is consistent with the**
 24 **comprehensive plan and applicable land use regulations.**

25 (3) A local government may deny an application **described in subsection (1) of this section**
 26 that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot
 27 be made consistent through the imposition of reasonable conditions of approval.

28 **SECTION 5.** ORS 197.830 is amended to read:

29 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
 30 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
 31 peals.

32 (2) Except as provided in ORS 197.620, a person may petition the board for review of a land use
 33 decision or limited land use decision if the person:

34 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
 35 and

36 (b) Appeared before the local government, special district or state agency orally or in writing.

37 (3) If a local government makes a land use decision without providing a hearing, except as
 38 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
 39 that is different from the proposal described in the notice of hearing to such a degree that the notice
 40 of the proposed action did not reasonably describe the local government’s final actions, a person
 41 adversely affected by the decision may appeal the decision to the board under this section:

42 (a) Within 21 days of actual notice where notice is required; or

43 (b) Within 21 days of the date a person knew or should have known of the decision where no
 44 notice is required.

45 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416

1 (11) or 227.175 (10):

2 (a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c)
 3 or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving
 4 actual notice of the decision.

5 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
 6 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
 7 section within 21 days after the expiration of the period for filing a local appeal of the decision es-
 8 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

9 (c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11)
 10 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving
 11 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe
 12 the nature of the decision.

13 (d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a
 14 decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision
 15 to the board under this section.

16 (5) If a local government makes a limited land use decision which is different from the proposal
 17 described in the notice to such a degree that the notice of the proposed action did not reasonably
 18 describe the local government's final actions, a person adversely affected by the decision may appeal
 19 the decision to the board under this section:

20 (a) Within 21 days of actual notice where notice is required; or

21 (b) Within 21 days of the date a person knew or should have known of the decision where no
 22 notice is required.

23 (6) The appeal periods described in subsections (3), (4) and (5) of this section:

24 (a) May not exceed three years after the date of the decision, except as provided in paragraph
 25 (b) of this subsection.

26 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-
 27 trative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

28 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under
 29 subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene
 30 in and be made a party to the review proceeding by filing a motion to intervene and by paying a
 31 filing fee of \$100.

32 (b) Persons who may intervene in and be made a party to the review proceedings, as set forth
 33 in subsection (1) of this section, are:

34 (A) The applicant who initiated the action before the local government, special district or state
 35 agency; or

36 (B) Persons who appeared before the local government, special district or state agency, orally
 37 or in writing.

38 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this
 39 subsection shall result in denial of a motion to intervene.

40 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party
 41 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
 42 the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

43 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
 44 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
 45 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to

1 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
2 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
3 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
4 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
5 government, special district or state agency and the applicant of record, if any, in the local gov-
6 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
7 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
8 deposit for costs to be established by the board. If a petition for review is not filed with the board
9 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
10 to the local government, special district or state agency as cost of preparation of the record.

11 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
12 cial district or state agency shall transmit to the board the original or a certified copy of the entire
13 record of the proceeding under review. By stipulation of all parties to the review proceeding the
14 record may be shortened. The board may require or permit subsequent corrections to the record;
15 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
16 ceiving the motion.

17 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice
18 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.
19 Any person moving to intervene shall be provided such notice within seven days after a motion to
20 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that
21 mediation information or assistance may be obtained from the Department of Land Conservation and
22 Development.

23 (11) A petition for review of the land use decision or limited land use decision and supporting
24 brief shall be filed with the board as required by the board under subsection (13) of this section.

25 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

26 (a) The facts that establish that the petitioner has standing.

27 (b) The date of the decision.

28 (c) The issues the petitioner seeks to have reviewed.

29 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for
30 oral argument.

31 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
32 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the
33 respondent's brief, the local government or state agency may withdraw its decision for purposes of
34 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
35 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
36 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
37 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-
38 ceed upon the revised order. An amended notice of intent shall not be required if the local govern-
39 ment or state agency, on reconsideration, affirms the order or modifies the order with only minor
40 changes.

41 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.
42 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
43 court of the county where the application was filed for a writ of mandamus to compel the board to
44 issue a final order.

45 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-

1 prevailing party including the cost of preparation of the record if the prevailing party is the local
 2 government, special district or state agency whose decision is under review. The board shall apply
 3 the deposit required by subsection (9) of this section to any costs charged against the petitioner.

4 (b) The board shall also award reasonable attorney fees and expenses to the prevailing party
 5 against any other party who the board finds presented a position without probable cause to believe
 6 the position was well-founded in law or on factually supported information.

7 **(c) The board shall also award reasonable attorney fees and expenses to the prevailing**
 8 **party, and to intervenors on the prevailing side, in a review related to needed housing under**
 9 **ORS 197.307 (3) or (4).**

10 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

11 (17)(a) The board shall provide for the publication of its orders that are of general public in-
 12 terest in the form it deems best adapted for public convenience. The publications shall constitute
 13 the official reports of the board.

14 (b) Any moneys collected or received from sales by the board shall be paid into the Board
 15 Publications Account established by ORS 197.832.

16 (18) Except for any sums collected for publication of board opinions, all fees collected by the
 17 board under this section that are not awarded as costs shall be paid over to the State Treasurer to
 18 be credited to the General Fund.

19 (19) The board shall track and report on its website:

20 (a) The number of reviews commenced, as described in subsection (1) of this section, the number
 21 of reviews commenced for which a petition is filed under subsection (2) of this section and, in re-
 22 lation to each of those numbers, the rate at which the reviews result in a decision of the board to
 23 uphold, reverse or remand the land use decision or limited land use decision. The board shall track
 24 and report reviews under this paragraph in categories established by the board.

25 (b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's
 26 reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision
 27 or limited land use decision.

28 (c) A list of respondents, the number of reviews involving each respondent and the rate at which
 29 reviews involving the respondent have resulted in decisions of the board to uphold, reverse or re-
 30 mand the land use decision or limited land use decision. Additionally, when a respondent is the local
 31 government that made the land use decision or limited land use decision, the board shall track
 32 whether the local government appears before the board.

33 (d) A list of reviews, and a brief summary of the circumstances in each review, under which the
 34 board exercises its discretion to require a losing party to pay the attorney fees of the prevailing
 35 party.

36