

House Bill 3224

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 review process for post-acknowledgment land use decisions of city outside Metro that uses simplified method for amending urban growth boundary.

A BILL FOR AN ACT

1
2 Relating to review of land use decisions; amending ORS 197.633 and 197.651.

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

4 **SECTION 1.** ORS 197.633 is amended to read:

5 197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation
6 of the existing comprehensive plan, land use regulations and citizen involvement program and, if
7 necessary, the development of a work program to make needed changes to the comprehensive plan
8 or land use regulations. Phase two is the completion of work tasks outlined in the work program.

9 (2) The Land Conservation and Development Commission shall adopt rules for conducting peri-
10 odic review that address:

11 (a) Initiating periodic review;

12 (b) Citizen participation;

13 (c) The participation of state agencies;

14 (d) The preparation, review and approval of a work program; and

15 (e) The preparation, review and approval of work tasks, including:

16 (A) The amendment of an urban growth boundary.

17 (B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

18 (3) **Except as provided in subsection (4) of this section**, the rules adopted by the commission
19 under this section may include, but are not limited to, provisions concerning standing, requirements
20 to raise issues before local government as a precondition to commission review and other provisions
21 concerning the scope and standard for commission review to simplify or speed the review. The
22 commission shall confine its review of evidence to the local record. The commission's standard of
23 review:

24 (a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to
25 support the local government's decision.

26 (b) For procedural issues, is whether the local government failed to follow the procedures ap-
27 plicable to the matter before the local government in a manner that prejudiced the substantial rights
28 of a party to the proceeding.

29 (c) For issues concerning compliance with applicable laws, is whether the local government's
30 decision on the whole complies with applicable statutes, statewide land use planning goals, admin-
31 istrative rules, the comprehensive plan, the regional framework plan, the functional plan and land

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 use regulations. The commission shall defer to a local government’s interpretation of the compre-
 2 hensive plan or land use regulations in the manner provided in ORS 197.829. *[For purposes of this*
 3 *paragraph, “complies” has the meaning given the term “compliance” in the phrase “compliance with the*
 4 *goals” in ORS 197.747.]*

5 **(4) For a city that amends its urban growth boundary under ORS 197A.300 to 197A.325,**
 6 **the commission’s standard of review:**

7 **(a) For evidentiary issues raised under ORS 197.626 (1)(b), (c) or (e), is whether there is**
 8 **evidence in the record to support the local government’s decision.**

9 **(b) For all other evidentiary issues, is whether there is substantial evidence in the record**
 10 **as a whole to support the local government’s decision.**

11 **(c) For procedural issues, is whether the local government failed to follow the procedures**
 12 **applicable to the matter before the local government in a manner that prejudiced the sub-**
 13 **stantial rights of a party to the proceeding.**

14 **(d) For issues concerning compliance with applicable laws, is whether the local**
 15 **government’s decision on the whole complies with applicable statutes, statewide land use**
 16 **planning goals, administrative rules, the comprehensive plan, the regional framework plan,**
 17 **the functional plan and land use regulations. The commission shall defer to a local**
 18 **government’s interpretation of the comprehensive plan or land use regulations in the man-**
 19 **ner provided in ORS 197.829.**

20 [(4)] (5) A decision by the Director of the Department of Land Conservation and Development
 21 to approve a work program, that no work program is necessary or that no further work is necessary
 22 is final and not subject to appeal.

23 [(5)] (6) The director:

24 (a) Shall take action on a work task not later than 120 days after the local government submits
 25 the work task for review unless the local government waives the 120-day deadline or the commission
 26 grants the director an extension. If the director does not take action within the time period required
 27 by this subsection, the work task is deemed approved. The department shall provide a letter to the
 28 local government certifying that the work task is approved unless an interested party has filed a
 29 timely objection to the work task consistent with administrative rules for conducting periodic re-
 30 view.

31 (b) May approve or remand a work task or refer the work task to the commission for a decision.
 32 A decision by the director to approve or remand a work task may be appealed to the commission.

33 [(6)] (7) Except as provided in this subsection, the commission shall take action on the appeal
 34 or referral of a work task within 90 days of the appeal or referral. Action by the commission in
 35 response to an appeal from a decision of the director or a referral is a final order subject to judicial
 36 review in the manner provided in ORS 197.650 and 197.651. The commission may extend the time for
 37 taking action on the appeal or referral if the commission finds that:

38 (a) The appeal or referral is appropriate for mediation;

39 (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable
 40 for the commission to give adequate consideration to the issues within the 90-day limit; or

41 (c) The parties to the appeal and the commission agree to an extension, not to exceed an addi-
 42 tional 90 days.

43 [(7)] (8) The commission and a local government shall attempt to complete periodic review
 44 within three years after approval of a work program. To promote the timely completion of periodic
 45 review, the commission shall establish a system of incentives to encourage local government com-

1 pliance with timelines in periodic review work programs.

2 **(9) As used in this section, “complies” has the meaning given the term “compliance” in**
 3 **the phrase “compliance with the goals” in ORS 197.747.**

4 **SECTION 2.** ORS 197.651 is amended to read:

5 197.651. (1) Judicial review of a final order of the Land Conservation and Development Com-
 6 mission under ORS 197.626 [*concerning the designation of urban reserves under ORS 195.145 (1)(b)*
 7 *or rural reserves under ORS 195.141*] is as provided in subsections (3) to (12) of this section.

8 (2) Judicial review of [*any other*] a final order of the commission [*under ORS 197.626 or of a final*
 9 *order of the commission*] under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659,
 10 215.780 or 215.788 to 215.794 is as provided in subsections (3) to (7), (9), (10) and (12) of this section.

11 (3) A proceeding for judicial review under this section may be instituted by filing a petition in
 12 the Court of Appeals. The petition must be filed within 21 days after the date the commission de-
 13 livered or mailed the order upon which the petition is based.

14 (4) The filing of the petition, as set forth in subsection (3) of this section, and service of a peti-
 15 tion on the persons who submitted oral or written testimony in the proceeding before the commis-
 16 sion are jurisdictional and may not be waived or extended.

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

20 (6) Within 21 days after service of the petition, the commission shall transmit to the Court of
 21 Appeals the original or a certified copy of the entire record of the proceeding under review. How-
 22 ever, by stipulation of the parties to the review proceeding, the record may be shortened. The Court
 23 of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the addi-
 24 tional costs. The Court of Appeals may require or permit subsequent corrections or additions to the
 25 record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost
 26 of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the
 27 costs to a party that files a frivolous petition for judicial review.

28 (7) Petitions and briefs must be filed within time periods and in a manner established by the
 29 Court of Appeals by rule.

30 (8) The Court of Appeals shall:

31 (a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court
 32 of Appeals determines that the ends of justice served by holding oral argument on a later day out-
 33 weigh the best interests of the public and the parties. However, the Court of Appeals may not hold
 34 oral argument more than 49 days after the date of transmittal of the record because of general
 35 congestion of the court calendar or lack of diligent preparation or attention to the case by a member
 36 of the court or a party.

37 (b) Set forth in writing and provide to the parties a determination to hear oral argument more
 38 than 49 days from the date the record is transmitted, together with the reasons for the determi-
 39 nation. The Court of Appeals shall schedule oral argument as soon as is practicable.

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

41 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
 42 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
 43 the case and for the Court of Appeals to prepare for oral argument; and

44 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
 45 riage of justice.

1 (9) The court:

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

3 (b) May not substitute its judgment for that of the Land Conservation and Development Com-
4 mission as to an issue of fact.

5 (10)(a) The Court of Appeals may affirm, reverse or remand an order reviewed under this sec-
6 tion. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

7 [(a)] (A) Unlawful in substance or procedure. However, error in procedure is not cause for re-
8 versal or remand unless the Court of Appeals determines that substantial rights of the petitioner
9 were prejudiced.

10 [(b)] (B) Unconstitutional.

11 [(c)] (C) Not supported by substantial evidence in the whole record as to facts found by the
12 commission.

13 **(b) When the record contains substantial evidence to support the final decision, the ex-**
14 **istence of evidence in the record that supports a different decision is not cause for reversal**
15 **or remand of the order.**

16 (11) The Court of Appeals shall issue a final order on the petition for judicial review with the
17 greatest possible expediency.

18 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court,
19 the commission shall respond to the court's appellate judgment within 30 days.

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