

House Bill 3148

Sponsored by Representative SMITH DB; Representative NEARMAN

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 standing to appeal land use decision or limited land use decision by local government to person who resides or maintains business within 25 miles of local government boundary.

A BILL FOR AN ACT

1 Relating to standing; creating new provisions; and amending ORS 197.620 and 197.830.

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

3 **SECTION 1.** ORS 197.830 is amended to read:

4 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
5 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
6 peals.
7

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

10 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
11 [*and*]

12 **(b) Resides or maintains a place of business within 25 miles of the local government
13 boundary; and**

14 [*(b)*] (c) Appeared before the local government, special district or state agency orally or in
15 writing.

16 (3) If a local government makes a land use decision without providing a hearing, except as
17 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
18 that is different from the proposal described in the notice of hearing to such a degree that the notice
19 of the proposed action did not reasonably describe the local government's final actions, a person
20 **who resides or maintains a place of business within 25 miles of the local government
21 boundary and is** adversely affected by the decision may appeal the decision to the board under this
22 section:

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

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

26 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
27 (11) or 227.175 (10) **a person who resides or maintains a place of business within 25 miles of
28 the local government boundary and who:**

29 (a) [*A person who*] Was not provided notice of the decision as required under ORS 215.416 (11)(c)
30 or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving
31 actual notice of the decision.

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

5 (c) [A *person who*] Receives notice of a decision made without a hearing under ORS 215.416 (11)
 6 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving
 7 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe
 8 the nature of the decision.

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

12 (5) If a local government makes a limited land use decision which is different from the proposal
 13 described in the notice to such a degree that the notice of the proposed action did not reasonably
 14 describe the local government's final actions, a person **who resides or maintains a place of busi-**
 15 **ness within 25 miles of the local government boundary and is** adversely affected by the decision
 16 may appeal the decision to the board under this section:

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

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

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

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

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

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

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

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

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

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

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

40 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
 41 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
 42 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
 43 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
 44 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
 45 statement identifying when, how and to whom notice was provided under ORS 197.615 does not

1 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
 2 government, special district or state agency and the applicant of record, if any, in the local gov-
 3 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
 4 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
 5 deposit for costs to be established by the board. If a petition for review is not filed with the board
 6 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
 7 to the local government, special district or state agency as cost of preparation of the record.

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

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

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

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

- 23 (a) The facts that establish that the petitioner has standing.
- 24 (b) The date of the decision.
- 25 (c) The issues the petitioner seeks to have reviewed.

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

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

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

42 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-
 43 vailing party including the cost of preparation of the record if the prevailing party is the local
 44 government, special district or state agency whose decision is under review. The board shall apply
 45 the deposit required by subsection (9) of this section to any costs charged against the petitioner.

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

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

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

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

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

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

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

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

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

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

30 **SECTION 2.** ORS 197.620 is amended to read:

31 197.620. (1) A decision to not adopt a legislative amendment or a new land use regulation is not
 32 appealable unless the amendment is necessary to address the requirements of a new or amended
 33 goal, rule or statute.

34 (2) Notwithstanding the requirements of ORS 197.830 (2) that a person have appeared before the
 35 local government orally or in writing to seek review of a land use decision, the Director of the
 36 Department of Land Conservation and Development or any other person **who otherwise has**
 37 **standing under ORS 197.830 (2)** may appeal the decision to the Land Use Board of Appeals if:

38 (a) The local government failed to submit all of the materials described in ORS 197.610 (3) or,
 39 if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced substantial rights
 40 of the Department of Land Conservation and Development or the person;

41 (b) Except as provided in subsection (3) of this section, the local government submitted the ma-
 42 terials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline specified in
 43 ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Commission, whichever
 44 is applicable; or

45 (c) The decision differs from the proposed changes submitted under ORS 197.610 to such an ex-

1 tent that the materials submitted under ORS 197.610 do not reasonably describe the decision.

2 (3) Subsection (2)(b) of this section does not authorize an appeal if the local government cures
3 an untimely submission of materials as provided in this subsection. A local government may cure the
4 untimely submission of materials by either:

5 (a) Postponing the date for the final evidentiary hearing by the greater of 10 days or the number
6 of days by which the submission was late; or

7 (b) Holding the evidentiary record open for an additional period of time equal to 10 days or the
8 number of days by which the submission was late, whichever is greater. Additionally, the local
9 government shall provide notice of the postponement or record extension to the Department of Land
10 Conservation and Development.

11 **SECTION 3. The amendments to ORS 197.620 and 197.830 by sections 1 and 2 of this 2017**
12 **Act apply to petitions to review land use decisions or limited land use decisions filed on or**
13 **after the effective date of this 2017 Act.**