

Senate Bill 186

Sponsored by Senator KRUSE (Presession 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**.

Requires that person seeking to appeal land use decision or limited land use decision to Land Use Board of Appeals must own, or have ownership interest in, real property within _____ miles of real property affected by decision.

A BILL FOR AN ACT

1
2 Relating to basis for filing appeal to Land Use Board of Appeals; creating new provisions; and
3 amending ORS 197.830.

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

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

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

9 (2) Except as provided in ORS 197.620 [(1) and (2)], a person **that owns real property, or has**
10 **an ownership interest in real property, that is within _____ miles of real property affected**
11 **by a land use decision or a limited land use decision** may petition the board for review of [*a land*
12 *use decision or limited land use*] **the** decision if the person:

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

15 (b) Appeared before the local government, special district or state agency orally or in 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 **that owns real property, or has an ownership interest in real property, that is within**
21 **_____ miles of real property affected by the land use decision and is** adversely affected by
22 the decision may appeal the decision to the board under this 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):

28 (a) A person [*who*] **that owns real property, or has an ownership interest in real property,**
29 **that is within _____ miles of real property affected by the land use decision and** was not
30 provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may
31 appeal the decision to the board under this section within 21 days of receiving actual notice of the

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 decision.

2 (b) A person *[who]* **that** is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but
 3 *[who]* **that owns real property, or has an ownership interest in real property, that is within**
 4 **_____ miles of real property affected by the land use decision and** is adversely affected or
 5 aggrieved by the decision may appeal the decision to the board under this section within 21 days
 6 after the expiration of the period for filing a local appeal of the decision established by the local
 7 government under ORS 215.416 (11)(a) or 227.175 (10)(a).

8 (c) A person *[who]* **that** receives mailed notice of a decision made without a hearing under ORS
 9 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days
 10 of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not
 11 reasonably describe the nature of the decision **and the person owns real property, or has an**
 12 **ownership interest in real property, that is within _____ miles of real property affected by**
 13 **the decision.**

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

17 (5) If a local government makes a limited land use decision which is different from the proposal
 18 described in the notice to such a degree that the notice of the proposed action did not reasonably
 19 describe the local government’s final actions, a person **that owns real property, or has an own-**
 20 **ership interest in real property, that is within _____ miles of real property affected by the**
 21 **limited land use decision and is** adversely affected by the decision may appeal the decision to the
 22 board under this 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 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in
 27 subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

28 (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763
 29 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-
 30 ply.

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

35 (b) Persons *[who]* **that** may intervene in and be made a party to the review proceedings, as set
 36 forth in subsection (1) of this section, are:

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

39 (B) Persons *[who]* **that own real property, or have an ownership interest in real property,**
 40 **that is within _____ miles of real property affected by the land use decision or limited land**
 41 **use decision and that** appeared before the local government, special district or state agency, orally
 42 or in writing.

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

45 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party

1 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
2 the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

3 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
4 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
5 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
6 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
7 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
8 certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective.
9 Copies of the notice of intent to appeal shall be served upon the local government, special district
10 or state agency and the applicant of record, if any, in the local government, special district or state
11 agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule
12 of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be estab-
13 lished by the board. If a petition for review is not filed with the board as required in subsections
14 (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government,
15 special district or state agency as cost of preparation of the record.

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

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

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

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

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

32 (b) The date of the decision.

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

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

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

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

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

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

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

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

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

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

21 **SECTION 2. The amendments to ORS 197.830 by section 1 of this 2011 Act apply to per-**
 22 **sons filing notices of intent to appeal, seeking review by the Land Use Board of Appeals, on**
 23 **and after the effective date of this 2011 Act.**