

Senate Bill No. 435.....

HISTORY SHEET SENATE

BY SENATORS

HANLON, Representative GRANNELL

Bill 435
~~Resolution~~
~~Memorial~~

At the request of:

Law Improvement Committee, Advisory Committee on Writs of Review

TITLE

34.020 Relating to judicial review; creating new provisions; amending
ORS 34.030, 34.040, 34.050 and others; repealing ORS 34.055, and 197-305
203.200; and appropriating money. 197-300, 1
and others prescribing an effective date

3214 ORIGINAL

Date

Engrossed May 24
Printed A May 24
Re-engrossed June 1
Printed B June 1
Eng Re-eng by House June 28
Printed C by House June 28
Re-eng Re-eng
Printed D
Eng Re-eng Re-eng
Printed E July 9
ENROLLED

SENATE ACTION		HOUSE ACTION	
READ FIRST TIME FEB 8 1979 (RS)	READ SECOND TIME FEB 8 1979	READ FIRST TIME, REFERRED TO SPEAKER'S DESK JUN 7 1979	REFERRED JUN 7 1979
REFERRED TO Trade & Ec. Development		REFERRED TO Judiciary	
REPORTED BACK MAY 24 1979	WITH THE RECOMMENDATION THAT IT ↓	REPORTED BACK JUN 28 1979	WITH THE RECOMMENDATION THAT IT ↓
<input type="checkbox"/> DO PASS Be printed engrossed & referred	<input type="checkbox"/> DO PASS WITH AMENDMENT	<input type="checkbox"/> DO PASS	<input type="checkbox"/> DO PASS WITH AMENDMENT
REFERRED TO RE Trade & Ec. dev. for further consideration		REFERRED TO	
REPORTED BACK JUN 01 1979	WITH THE RECOMMENDATION THAT IT ↓	REPORTED BACK	WITH THE RECOMMENDATION THAT IT ↓
<input type="checkbox"/> DO PASS	<input checked="" type="checkbox"/> DO PASS WITH AMENDMENT	<input type="checkbox"/> DO PASS	<input type="checkbox"/> DO PASS WITH AMENDMENT
READ THIRD TIME AND PASSED June 6, 1979	DATE	READ SECOND TIME JUN 30 1979 (RS)	READ THIRD TIME AND PASSED JUL 2 1979
SIGNED Maribel Cadmus	SECRETARY OF SENATE	SIGNED [Signature]	CHIEF CLERK
SENATE CONCURRED IN HOUSE AMENDMENTS AND REPASSED July 3, 1979	DATE		
SIGNED Maribel Cadmus	SECRETARY OF SENATE		

NOTE TO SENATE DESK PERSONNEL:

On the printed bill, page 1, sponsors reads:

"Representatives Hanlon, Grannell".....

It should read:

"Senator Hanlon, Representative Grannel"

ADDITIONAL ACTION

[illegible]

Enrolled

Senate Bill 435

**Sponsored by Senator HANLON, Representative GRANNELL (at the request of
Law Improvement Committee, Advisory Committee on Writs of Review)**

CHAPTER.....

AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070, 181.350, 197.015, 197.090, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300, 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

SECTION 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

SECTION 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the Governor considers necessary. The members of the board first appointed by the Governor shall be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner

prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

SECTION 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

(4) A notice of intent to appeal a land use decision shall be filed not later than 30 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or special district governing body or state agency and the applicant of record, if any, in the city, county or special district governing body or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs of \$150. In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the filing fee and deposit shall be awarded to the city, county, special district or state agency as cost of preparation of the record.

(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board may allow, the city, county or special district governing body or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record.

(6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be reviewed and shall state:

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

- (b) The date of the decision.
- (c) The issues the petitioner seeks to have reviewed.

(7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the city, county or special district governing body or state agency for which there is substantial evidence in the whole record.

(8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is not issued within 90 days and no extension of time has been stipulated to by the parties, the decision being reviewed shall be considered affirmed and the decision may then be appealed in the manner provided in section 6a of this 1979 Act.

(9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the city, county or special district governing body or state agency whose decision is under review. The deposit required by subsection (4) of this section shall be applied to any costs charged against the petitioner.

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

(11) The board shall provide for the publication of its orders and those previously issued by the commission which are of general public interest in the form it deems best adapted for public convenience. Publications shall constitute the official reports of the board and the commission and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

(12) All fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

SECTION 5. (1) Where a petition for review contains only allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979 Act.

(2) Where a petition for review contains no allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding the decision.

(3) Where a petition for review contains both allegations that a land use decision violates the state-wide planning goals and other allegations of error, the board shall review the decision and proceed as provided in section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be issued until the commission has reviewed the recommendation of the board on the issues concerning the state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall incorporate the determination of the commission into the final order to be issued under this subsection.

(4) The board shall reverse or remand the land use decision under review only if:

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision that was not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made a decision that was unconstitutional; or

(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act.

SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a recommendation to the commission concerning any allegations of

violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties.

(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed. The exceptions shall be filed with the board and submitted to the commission for review.

(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

(5) If the commission receives a recommendation from the board concerning a petition alleging that a comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the state-wide goals, and the commission has received a request from the city or county which adopted such comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission may suspend its consideration of the request for compliance acknowledgment until it has issued its determination on the recommendation of the board and the board has issued a final order. In any event the commission shall issue its determination on the recommendation of the board within the time limits established in subsection (3) of this section.

(6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings brought before it for determination under this section.

SECTION 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of this 1979 Act, may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 30 days only following the date the order upon which the petition is based is served. Date of service shall be the date on which the board delivered or mailed its order.

(4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition shall be served by registered or certified mail upon the board, and all other parties of record in the board proceeding.

(5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so upon a showing of:

- (A) Irreparable injury to the petitioner; and
- (B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant the stay unless the board determines that substantial public harm will result if the order is stayed. If the board denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish.

(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Section 7. ORS 197.015 is amended to read:

197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

[(2)] (3) "Commission" means the Land Conservation and Development Commission.

[(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

[(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[(5)] (6) "Department" means the Department of Land Conservation and Development.

[(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

[(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

[(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans,

programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

[9] (10) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

Section 7a. ORS 197.252 is amended to read:

197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in achieving the state-wide planning goals through performance of the compliance schedule; or

(b) The commission finds that a past approval or denial was of more than local impact and substantially impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the compliance schedule.

(2) Conditions may be imposed under this section only at the time of:

(a) Annual phased review of the satisfactory progress of the city or county;

(b) Approval of a planning assistance grant agreement with the city or county; or

(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by the city or county.

(3) Nothing in this section is intended to limit or modify the powers of the commission or the board under ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement Part) and 197.251 and 197.320.

Section 7b. 197.265 is amended to read:

197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review] proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to ORS 197.300] sections 4 to 6 of this 1979 Act.

(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning, subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred by such city or county in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor.

Section 7c. ORS 197.395 is amended to read:

197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control which occurs upon federal land shall apply to the cities or counties in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the city or county as prescribed by rule of the commission.

(2) If the city or county finds after review of the application that the proposed activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying therefor. Action shall be taken by the governing body within 60 days of receipt of the application, or the application is deemed approved.

(3) The city or county may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 7d. ORS 197.090 is amended to read:

"197.090. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals.

Section 8. ORS 34.020 is amended to read:

34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

Section 9. ORS 34.050 is amended to read:

34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be sufficient.]*

Section 9a. ORS 34.030 is amended to read:

34.030. The writ shall be allowed by the circuit court *[or judge thereof]*, or, in counties where the county court has judicial functions, by the county court *[or judge of the county]* wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed.

Section 10. ORS 34.070 is amended to read:

34.070. *[(1) Except as otherwise provided in subsection (2) of this section,]* In the discretion of the court *[or judge]* issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

[(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not require the defendant to desist from further proceedings regarding the project unless the

undertaking required by ORS 34.055 has been given to the court or judge.]

Section 10a. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body.

(2) The hearings officer shall hold at least one public hearing on the application and within 90 days after receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding on the application may be extended for a reasonable period of time, as determined by the hearings officer, but not to exceed six months from the date of the first public hearing on the application.

(3) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(4) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law.

(5) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(7) Written notice of the approval or denial shall be given to all parties to the proceeding.

Section 10b. ORS 227.173 is amended to read:

227.173. (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(3) Written notice of the approval or denial shall be given to all parties to the proceeding.

Section 11. ORS 215.422 is amended to read:

215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not limited to, the record of the hearings officer's action.]*

(2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010 to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

Section 12. ORS 227.180 is amended to read:

227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or

zone change may have the determination reviewed under [*ORS 34.010 to 34.100*] sections 4 to 6 of this 1979 Act.

Section 13. ORS 34.040 is amended to read:

34.040. The writ shall be allowed in all cases where the inferior court including a district court, officer, or tribunal other than an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or quasi-judicial functions appears to have:

- (1) Exceeded its [*or his*] jurisdiction;
- (2) Failed to follow the procedure applicable to the matter before it [*or him*];
- (3) Made a finding or order not supported by [*reliable, probative and*] substantial evidence in the whole record; [*or*]
- (4) Improperly construed the applicable law; or
- (5) Rendered a decision that is unconstitutional,

to the injury of some substantial [*right*] interest of the plaintiff, and not otherwise. The fact that the right of appeal exists is no bar to the issuance of the writ.

Section 14. ORS 181.350 is amended to read:

181.350. The decisions of the trial board shall be subject to review by the [*circuit court of the county in which the hearing was held*] Court of Appeals. The procedure for review shall be as provided in ORS [*34.010 to 34.100*] 183.482.

Section 15. ORS 198.785 is amended to read:

198.785. [*(1) A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.*]

[*(2)*] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal [*to the Supreme Court*] as provided for appeals in other proceedings.

[*(3)*] (2) An action to determine the validity of a formation or change of organization proceeding may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

[*(4)*] (3) For the purpose of an action to determine or contest the validity of a formation or change of organization, the formation or change shall be considered complete and final upon the date the order of formation or the order, resolution or statement announcing a change of organization is filed with the county clerk as provided by ORS 198.780.

Section 15a. If House Bill 2642 becomes law, section 15 of this Act is repealed and ORS 198.785, as amended by section 7, chapter _____, Oregon Laws 1979 (Enrolled House Bill 2642), is further amended to read:

198.785. [*(1) A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.*]

[*(2)*] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and

decided by the circuit court as quickly as possible. Either party may appeal *[to the Court of Appeals]* as provided for appeals in other proceedings.

[(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

[(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of organization, the formation or change shall be considered complete and final upon the date the order of formation or the order, resolution or statement announcing a change of organization is filed with the county clerk as provided by ORS 198.780.

Section 16. ORS 199.461 is amended to read:

199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

(a) Cause a study to be made of the proposal offered by the petition.

(b) Conduct one or more public hearings on the proposal.

(2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as either to include or exclude territory. If the commission determines that any land has been improperly omitted from the proposal and that the owner of the land has not appeared at the hearing, in person or by his representative designated in writing, the commission shall continue the hearing on the petition and shall order notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any, why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been continued. The required notice may be waived by the nonappearing owner.

(3) On the basis of the study and after hearing, the boundary commission shall approve the proposed boundary change as presented or as modified by the commission or disapprove the proposed change, by an order stating the reasons for the decision of the commission. Any person interested in a boundary change may *[within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100]* appeal the order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders or, if the decision of the boundary commission involves application of the state-wide planning goals, in accordance with the provisions of sections 4 to 6 of this 1979 Act.

(4) Immediately after the effective date of a final order entered under subsection (3) of this section and a proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the assessor and the county clerk of each county in which the affected territory, city or district is located, and the clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a copy of the final order to the person who actually filed the petition and to the affected city or district.

SECTION 17. ORS 203.200 is repealed.

Section 18. ORS 311.860 is amended to read:

311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish services and facilities in the area in which the construction is to take place may enter into an agreement to carry out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions pertaining to and in accordance with the following:

(a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time to or during the period of the construction.

(b) The amounts of the payments to be made by the person proposing to construct the facility and the dates for making the payments.

(c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the course of completion of the construction of the facility. The amount of reduction allowed by the agreement shall be a percentage amount, not to exceed 50 percent, of the

true cash value of the facility as of any assessment date affected by the reduction, and may be fixed or graduated over the period of years for which the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the facility that is estimated to be equivalent to the total amount of payments made under the agreement to the taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment; however, in no event shall the total reduction in true cash value during the period of years of reduction cause a total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

(2) A copy of an agreement entered into under this section shall be filed with the county assessor of each county in which a taxing unit which is a party to the agreement is located.

(3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not grant the exemption for any year unless he has received such certificate. Review of denial of an exemption under this section shall be as provided by ORS [34.010 to 34.100] 305.275.

Section 19. ORS 330.101 is amended to read:

330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall declare that the change and proposals shall become effective as provided in ORS 330.103.

(2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified voters in a school district or area affected by the proposed change is filed with the district boundary board within 20 days after the date set to consider the proposed change and the proposals and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed as nearly as possible in the manner prescribed for annual school elections with the district boundary board acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with the least populous district or area and progressing in order of population to the most populous district or area. If the majority of votes in each election favor the change and the proposals, an election shall be held in the next most populous district or area. The boundary board shall give notice of each election in the manner provided in ORS 331.010.

(3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the change and the proposals shall be defeated, and the same or a substantially similar change combined with substantially similar proposals shall not be considered until 12 months have elapsed from the date of the election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating districts or areas, the district boundary board shall declare the change and proposals effective as provided in ORS 330.103 without further elections.

(4) In an election to add districts to a union high school district, if the district boundary board determines that the proposition carried in the union high school district by a majority of votes cast, and also carried in one or more of the common school districts by a majority of the votes cast in each district, it shall declare the proposition carried as to those common school districts only in which the proposition prevailed, and shall immediately proceed to change the boundaries of the union high school district to include those districts desiring to be added thereto.

(5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified voters of an area requesting that the area be annexed to another school district to which it is contiguous is presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed by the school boards of any affected district or by the original petitioners is not presented to the State Board of Education within 30 days

of the date of the order. If such a remonstrance is presented to the State Board of Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After considering the testimony, the board shall confirm or reject the action of the boundary board and such determination shall be final.

(6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner provided in ORS 183.482. [*A petition for a writ of review to review the action taken may be filed with the circuit court within the time permitted by law.*]

Section 20. ORS 330.123 is amended to read:

330.123. (1) When changes in school district boundaries are made by the detachment of territory or annexation of less than an entire school district to another, the district school boards of the districts affected by each change shall immediately after the change make an equitable division of the then existing assets and liabilities between the districts affected by such change and provide the manner of consummating the division.

(2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of the school districts affected and an additional member appointed by the other appointees.

(3) In the event any such district school board fails to appoint an arbitrator within 30 days, the Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in which the administrative office of the most populous school district is located. Within 10 days after receiving such notice, the judge shall appoint the additional arbitrator.

(4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be equally apportioned among the districts concerned.

(5) The decision of the arbitrators is final and may be reviewed [*by a writ of review*] in the manner provided in ORS 33.320 to 33.340.

(6) Assets include all school property and moneys belonging to the district at the time of the division. Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time of division. In determining the assets, school property shall be estimated at its fair value. The assets and liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal property. The district retaining the real property shall pay the other districts concerned such sums as are determined in accordance with the provisions of this section. All funds to be apportioned during the current school year, after such division, shall be made in proportion to the resident average daily membership of the districts divided, as shown by the report of such districts for the period ending the preceding June 30 as certified by the districts to the administrative office of the county.

Section 21. ORS 330.557 is amended to read:

330.557. (1) Any person residing or owning or occupying real property within the area affected by any final plan of reorganization adopted by the committee for the organization of an administrative school district may petition the State Board of Education to have the plan revised or modified in particulars set forth in such petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer evidence and argument in opposition to such petition.

(2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to 34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for

judicial review of the decision or determination of the State Board of Education denying or overruling the petition of such petitioner to revise or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition for *[writ of]* review shall be filed with the *[circuit court within 30]* Court of Appeals within 60 days after the State Board of Education approves the final plan of reorganization.

Section 22. ORS 341.573 is amended to read:

341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation of territory and another community college district is affected, the boards of the districts shall make an equitable division of the then existing assets and liabilities between the districts affected by such change and provide the manner of consummating the division.

(2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of the affected districts and an additional member appointed by the other appointees.

(3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice, the judge shall appoint one additional arbitrator.

(4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally apportioned among the districts concerned.

(5) The decision of the arbitrators is final and may be reviewed *[only by a writ of review]* in the manner provided in ORS 33.320 to 33.340.

(6) Assets include all property and moneys belonging to the district at the time of division. Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time of division. In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal property. The district retaining the real property shall pay the other districts concerned such sums as are determined in accordance with the provisions of this section. All funds to be apportioned during the current fiscal year, after such division, shall be made in proportion to the number of persons in each district according to the latest federal census.

Section 23. ORS 459.155 is amended to read:

459.155. Review of any action of the board taken pursuant to ORS *[459.140 to 459.155, or any ordinance adopted pursuant thereto,]* 459.150 shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to 34.100.

Section 24. ORS 476.835 is amended to read:

476.835. (1) Within *[30]* 60 days after receiving written notice of the findings of the board, any fire service personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board with the *[Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the order of the board shall not take effect until the court decides the appeal]* Court of Appeals in the manner provided for in ORS 183.482.

(2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two years after the date on which the order of the board revoking his accreditation became final.

Section 25. ORS 479.195 is amended to read:

479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep posted a notice of the maximum number of persons allowed at any one time as established by regulations of the State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction of a governmental subdivision granted the

exemption provided by subsection (4) of ORS 476.030. All such capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

(2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4) of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been made.

(3) The owner of any building or other structure closed under subsection (2) of this section shall have immediate access to the circuit court for the county in which the building or other structure is located for review of the order of exclusion or removal. Such access may be in the form of *[a writ of review or other]* any appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

(4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS 476.030.

SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

SECTION 27. This Act takes effect on November 1, 1979.

SECTION 28. (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

(2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of Appeals under sections 4 to 6 of this Act.

SECTION 29. The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the effective date of this Act.

ENROLLED

Senate Bill 435

Passed by Senate

June 6, 1979

Repassed by Senate

July 3, 1979

Secretary of Senate

President of Senate

Passed by House

July 2, 1979

~~Repassed by House~~

Speaker of House

Received by Executive Department:

..... M.,, 1979.

Approved:, 1979.

Governor

Filed in Office of Secretary of State:

..... M.,, 1979.

Secretary of State

C-Engrossed
Senate Bill 435

Ordered by the House June 28
(Including Amendments by Senate May 24 and June 1
and by House June 28)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory
Committee on Writs of Review)

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.

Declares legislative policy. Creates Land Use Board of Appeals. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective [*January 1, 1980*] November 1, 1979. Repeals board July 1, 1983.

A BILL FOR AN ACT

1
2 Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070,
3 181.350, 197.015, 197.090, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180,
4 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300,
5 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

7 **SECTION 1.** Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

8 **SECTION 1a.** It is the policy of the Legislative Assembly that time is of the essence in reaching final
9 decisions in matters involving land use and that those decisions be made consistently with sound principles
10 governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979
11 Act to accomplish these objectives.

12 **SECTION 2.** (1) There is hereby created a Land Use Board of Appeals consisting of not more than five
13 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS
14 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the
15 Governor considers necessary. The members of the board first appointed by the Governor shall be appointed
16 by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the
17 members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the
18 board shall not be reduced during the period of service of the member.

19 (2) The Governor may at any time remove any member of the board for inefficiency, incompetence,
20 neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the
21 Governor shall give the member a copy of the charges against the member and shall fix the time when the
22 member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The
23 hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted;
complete new sections begin with **SECTION**.

183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

SECTION 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

1 (4) A notice of intent to appeal a land use decision shall be filed not later than 30 days after the date the
2 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
3 special district governing body or state agency and the applicant of record, if any, in the city, county or special
4 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
5 prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs of \$150.
6 In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the
7 filing fee and deposit shall be awarded to the city, county, special district or state agency as cost of preparation
8 of the record.

9 (5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
10 may allow, the city, county or special district governing body or state agency shall transmit to the board the
11 original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to
12 the review proceeding the record may be shortened. The board may require or permit subsequent corrections
13 to the record.

14 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
15 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
16 reviewed and shall state:

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

18 (b) The date of the decision.

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

20 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In the
21 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
22 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
23 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
24 fact of the city, county or special district governing body or state agency for which there is substantial evidence
25 in the whole record.

26 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
27 not issued within 90 days and no extension of time has been stipulated to by the parties, the decision being
28 reviewed shall be considered affirmed and the decision may then be appealed in the manner provided in section
29 6a of this 1979 Act.

30 (9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
31 including the cost of preparation of the record if the prevailing party is the city, county or special district
32 governing body or state agency whose decision is under review. The deposit required by subsection (4) of this
33 section shall be applied to any costs charged against the petitioner.

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

35 (11) The board shall provide for the publication of its orders and those previously issued by the
36 commission which are of general public interest in the form it deems best adapted for public convenience.
37 Publications shall constitute the official reports of the board and the commission and shall be made available
38 for distribution in the manner provided in ORS 2.160 and 9.790.

39 (12) All fees collected by the board under this section that are not awarded as costs shall be paid over to the
40 State Treasurer to be credited to the General Fund.

1 **SECTION 5.** (1) Where a petition for review contains only allegations that a land use decision violates the
2 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
3 Act.

4 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
5 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
6 the decision.

7 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
8 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
9 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
10 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
11 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
12 issued until the commission has reviewed the recommendation of the board on the issues concerning the
13 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
14 incorporate the determination of the commission into the final order to be issued under this subsection.

15 (4) The board shall reverse or remand the land use decision under review only if:

16 (a) The board finds that the city, county or special district governing body:

17 (A) Exceeded its jurisdiction;

18 (B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
19 substantial rights of the petitioner;

20 (C) Made a decision that was not supported by substantial evidence in the whole record;

21 (D) Improperly construed the applicable law; or

22 (E) Made a decision that was unconstitutional; or

23 (b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
24 the city, county or special district governing body or state agency violated the state-wide planning goals.

25 (5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a
26 of this 1979 Act.

27 **SECTION 6.** (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board
28 shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide
29 planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to
30 each party to the proceeding. The recommendation shall include a general summary of the evidence contained
31 in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the
32 state-wide planning goals. The recommendation shall also state whether the petition raises matters of such
33 importance that the commission should hear oral argument from the parties.

34 (2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's
35 recommendation, including that portion of the recommendation stating whether oral argument should be
36 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

37 (3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
38 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
39 recommends that oral argument not be allowed and the commission concurs with the board's recommendation.
40 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
41 which there is substantial evidence in the record. The commission shall issue its determination on the

1 recommendation of the board and return the determination to the board for inclusion in the board's order under
2 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
3 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
4 commission shall obtain the consent of the parties for a postponement.

5 (4) No determination of the commission issued under subsection (3) of this section is valid unless all
6 members of the commission have received the recommendation of the board in the matter and any exceptions
7 thereto that were timely filed with the board and at least four members of the commission concur in its action in
8 the matter.

9 (5) If the commission receives a recommendation from the board concerning a petition alleging that a
10 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
11 state-wide goals, and the commission has received a request from the city or county which adopted such
12 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
13 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission
14 may suspend its consideration of the request for compliance acknowledgment until it has issued its
15 determination on the recommendation of the board and the board has issued a final order. In any event the
16 commission shall issue its determination on the recommendation of the board within the time limits established
17 in subsection (3) of this section.

18 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
19 brought before it for determination under this section.

20 **SECTION 6a.** (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
21 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

22 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
23 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

24 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
25 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
26 petition shall be filed within 30 days only following the date the order upon which the petition is based is
27 served. Date of service shall be the date on which the board delivered or mailed its order.

28 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
29 shall be served by registered or certified mail upon the board, and all other parties of record in the board
30 proceeding.

31 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
32 upon a showing of:

33 (A) Irreparable injury to the petitioner; and

34 (B) A colorable claim of error in the order.

35 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
36 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
37 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
38 result from the granting of the stay.

39 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
40 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
41 Appeals within specified reasonable periods of time.

(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish.

(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Section 7. ORS 197.015 is amended to read:

197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(2) (3) "Commission" means the Land Conservation and Development Commission.

(3) (4) "Committee" means the Joint Legislative Committee on Land Use.

(4) (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(5) (6) "Department" means the Department of Land Conservation and Development.

(6) (7) "Director" means the Director of the Department of Land Conservation and Development.

(7) (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

(8) (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and

special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

[(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

Section 7a. ORS 197.252 is amended to read:

197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in achieving the state-wide planning goals through performance of the compliance schedule; or

(b) The commission finds that a past approval or denial was of more than local impact and substantially impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the compliance schedule.

(2) Conditions may be imposed under this section only at the time of:

(a) Annual phased review of the satisfactory progress of the city or county;

(b) Approval of a planning assistance grant agreement with the city or county; or

(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by the city or county.

(3) Nothing in this section is intended to limit or modify the powers of the commission or the board under ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement Part) and 197.251 and 197.320.

Section 7b. 197.265 is amended to read:

197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review] proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to ORS 197.300] sections 4 to 6 of this 1979 Act.

(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning, subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred

by such city or county in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor.

Section 7c. ORS 197.395 is amended to read:

197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control which occurs upon federal land shall apply to the cities or counties in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the city or county as prescribed by rule of the commission.

(2) If the city or county finds after review of the application that the proposed activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying therefor. Action shall be taken by the governing body within 60 days of receipt of the application, or the application is deemed approved.

(3) The city or county may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 7d. ORS 197.090 is amended to read:

"197.090. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals.

Section 8. ORS 34.020 is amended to read:

34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

Section 9. ORS 34.050 is amended to read:

34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or*

1 judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be
2 sufficient.]

3 Section 9a. ORS 34.030 is amended to read:

4 34.030. The writ shall be allowed by the circuit court [or judge thereof], or, in counties where the county
5 court has judicial functions, by the county court [or judge of the county] wherein the decision or determination
6 sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination
7 with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition
8 shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he
9 has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as
10 alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the
11 date of the decision or determination sought to be reviewed.

12 Section 10. ORS 34.070 is amended to read:

13 34.070. [(1) Except as otherwise provided in subsection (2) of this section,] In the discretion of the court [or
14 judge] issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in
15 the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

16 [(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not
17 require the defendant to desist from further proceedings regarding the project unless the undertaking required by
18 ORS 34.055 has been given to the court or judge.]

19 Section 10a. ORS 215.416 is amended to read:

20 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of
21 land may apply in writing to such persons as the governing body designates, for a permit, in the manner
22 prescribed by the governing body.

23 (2) The hearings officer shall hold at least one public hearing on the application and within 90 days after
24 receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding
25 on the application may be extended for a reasonable period of time, as determined by the hearings officer, but
26 not to exceed six months from the date of the first public hearing on the application.

27 (3) The application shall not be approved if the proposed use of land is found to be in conflict with the
28 comprehensive plan of the county and other applicable ordinance provisions. The approval may include such
29 conditions as are authorized by statute or county legislation.

30 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
31 persons as otherwise provided by law.

32 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
33 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
34 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
35 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
36 whole.

37 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
38 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the

1 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

2 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

3 Section 10b. ORS 227.173 is amended to read:

4 227.173. (1) Approval or denial of a discretionary permit application shall be based on standards and
5 criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
6 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
7 which the development would occur and to the development ordinance and comprehensive plan for the city as a
8 whole.

9 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
10 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
11 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
12 set forth.

13 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

14 Section 11. ORS 215.422 is amended to read:

15 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
16 commission or county governing body, or both, however the governing body prescribes. The appellate
17 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
18 review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not*
19 *limited to, the record of the hearings officer's action.]*

20 (2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010*
21 *to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

22 Section 12. ORS 227.180 is amended to read:

23 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
24 commission or council of the city, or both, however the council prescribes. The appellate authority on its own
25 motion may review the action. The procedure for such an appeal or review shall be prescribed by the council,
26 but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider
27 the record of the hearings officer's action. That record need not set forth evidence verbatim.

28 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change
29 may have the determination reviewed under *[ORS 34.010 to 34.100]* sections 4 to 6 of this 1979 Act.

30 Section 13. ORS 34.040 is amended to read:

31 34.040. The writ shall be allowed in all cases where the inferior court including a district court, officer, or
32 tribunal other than an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or
33 quasi-judicial functions appears to have:

34 (1) Exceeded its *[or his]* jurisdiction;

35 (2) Failed to follow the procedure applicable to the matter before it *[or him]*;

36 (3) Made a finding or order not supported by *[reliable, probative and]* substantial evidence in the whole
37 record; *[or]*

38 (4) Improperly construed the applicable law; or

39 (5) Rendered a decision that is unconstitutional,

40 to the injury of some substantial *[right]* interest of the plaintiff, and not otherwise. The fact that the right of

1 appeal exists is no bar to the issuance of the writ.

2 Section 14. ORS 181.350 is amended to read:

3 181.350. The decisions of the trial board shall be subject to review by the [*circuit court of the county in*
4 *which the hearing was held*] Court of Appeals. The procedure for review shall be as provided in ORS [*34.010 to*
5 *34.100*] 183.482.

6 Section 15. ORS 198.785 is amended to read:

7 198.785. [(1) *A proceeding may not be maintained to contest the validity of a formation or change of*
8 *organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the*
9 *date the formation of the district or change of organization is complete.*]

10 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
11 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
12 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
13 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
14 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
15 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
16 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
17 [*to the Supreme Court*] as provided for appeals in other proceedings.

18 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
19 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

20 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
21 organization, the formation or change shall be considered complete and final upon the date the order of
22 formation or the order, resolution or statement announcing a change of organization is filed with the county
23 clerk as provided by ORS 198.780.

24 Section 15a. If House Bill 2642 becomes law, section 15 of this Act is repealed and ORS 198.785, as
25 amended by section 7, chapter _____, Oregon Laws 1979 (Enrolled House Bill 2642), is further amended to
26 read:

27 198.785. [(1) *A proceeding may not be maintained to contest the validity of a formation or change of*
28 *organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the*
29 *date the formation of the district or change of organization is complete.*]

30 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
31 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
32 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
33 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
34 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
35 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
36 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
37 [*to the Court of Appeals*] as provided for appeals in other proceedings.

38 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
39 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

40 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
41 organization, the formation or change shall be considered complete and final upon the date the order of

1 formation or the order, resolution or statement announcing a change of organization is filed with the county
2 clerk as provided by ORS 198.780.

3 Section 16. ORS 199.461 is amended to read:

4 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

5 (a) Cause a study to be made of the proposal offered by the petition.

6 (b) Conduct one or more public hearings on the proposal.

7 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
8 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as
9 either to include or exclude territory. If the commission determines that any land has been improperly omitted
10 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
11 representative designated in writing, the commission shall continue the hearing on the petition and shall order
12 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
13 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
14 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
15 continued. The required notice may be waived by the nonappearing owner.

16 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
17 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
18 order stating the reasons for the decision of the commission. Any person interested in a boundary change may[,
19 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100*] appeal the
20 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders or, if
21 the decision of the boundary commission involves application of the state-wide planning goals, in accordance with
22 the provisions of sections 4 to 6 of this 1979 Act.

23 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
24 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
25 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
26 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
27 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
28 copy of the final order to the person who actually filed the petition and to the affected city or district.

29 SECTION 17. ORS 203.200 is repealed.

30 Section 18. ORS 311.860 is amended to read:

31 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
32 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
33 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
34 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
35 pertaining to and in accordance with the following:

36 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
37 to or during the period of the construction.

38 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
39 for making the payments.

40 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
41 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the

1 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
2 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
3 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
4 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
5 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
6 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
7 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
8 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

9 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
10 county in which a taxing unit which is a party to the agreement is located.

11 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
12 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
13 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
14 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
15 under this section shall be as provided by ORS [34.010 to 34.100] 305.275.

16 Section 19. ORS 330.101 is amended to read:

17 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
18 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
19 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
20 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
21 declare that the change and proposals shall become effective as provided in ORS 330.103.

22 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
23 voters in a school district or area affected by the proposed change is filed with the district boundary board
24 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
25 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
26 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
27 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
28 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
29 the least populous district or area and progressing in order of population to the most populous district or area.
30 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
31 most populous district or area. The boundary board shall give notice of each election in the manner provided in
32 ORS 331.010.

33 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
34 change and the proposals shall be defeated, and the same or a substantially similar change combined with
35 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
36 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
37 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
38 ORS 330.103 without further elections.

39 (4) In an election to add districts to a union high school district, if the district boundary board determines
40 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
41 or more of the common school districts by a majority of the votes cast in each district, it shall declare the

1 proposition carried as to those common school districts only in which the proposition prevailed, and shall
2 immediately proceed to change the boundaries of the union high school district to include those districts
3 desiring to be added thereto.

4 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
5 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
6 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
7 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
8 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
9 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
10 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of
11 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
12 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
13 considering the testimony, the board shall confirm or reject the action of the boundary board and such
14 determination shall be final.

15 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
16 provided in ORS 183.482. *[A petition for a writ of review to review the action taken may be filed with the circuit*
17 *court within the time permitted by law.]*

18 Section 20. ORS 330.123 is amended to read:

19 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
20 annexation of less than an entire school district to another, the district school boards of the districts affected by
21 each change shall immediately after the change make an equitable division of the then existing assets and
22 liabilities between the districts affected by such change and provide the manner of consummating the division.

23 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
24 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
25 the school districts affected and an additional member appointed by the other appointees.

26 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
27 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
28 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
29 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
30 which the administrative office of the most populous school district is located. Within 10 days after receiving
31 such notice, the judge shall appoint the additional arbitrator.

32 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
33 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
34 equally apportioned among the districts concerned.

35 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the manner provided
36 in ORS 33.320 to 33.340.

37 (6) Assets include all school property and moneys belonging to the district at the time of the division.
38 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
39 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
40 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
41 property. The district retaining the real property shall pay the other districts concerned such sums as are

1 determined in accordance with the provisions of this section. All funds to be apportioned during the current
2 school year, after such division, shall be made in proportion to the resident average daily membership of the
3 districts divided, as shown by the report of such districts for the period ending the preceding June 30 as
4 certified by the districts to the administrative office of the county.

5 Section 21. ORS 330.557 is amended to read:

6 330.557. (1) Any person residing or owning or occupying real property within the area affected by any final
7 plan of reorganization adopted by the committee for the organization of an administrative school district may
8 petition the State Board of Education to have the plan revised or modified in particulars set forth in such
9 petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall
10 be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of
11 such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS
12 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The
13 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer
14 evidence and argument in opposition to such petition.

15 (2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to*
16 *34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision
17 or determination of the State Board of Education denying or overruling the petition of such petitioner to revise
18 or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition
19 for [*writ of*] review shall be filed with the [*circuit court within 30*] Court of Appeals within 60 days after the State
20 Board of Education approves the final plan of reorganization.

21 Section 22. ORS 341.573 is amended to read:

22 341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation
23 of territory and another community college district is affected, the boards of the districts shall make an
24 equitable division of the then existing assets and liabilities between the districts affected by such change and
25 provide the manner of consummating the division.

26 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
27 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
28 the affected districts and an additional member appointed by the other appointees.

29 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education
30 shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within
31 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the
32 judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice,
33 the judge shall appoint one additional arbitrator.

34 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's
35 service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally
36 apportioned among the districts concerned.

37 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the manner
38 provided in ORS 33.320 to 33.340.

39 (6) Assets include all property and moneys belonging to the district at the time of division. Liabilities
40 include all debts for which the respective districts in their corporate capacities are liable at the time of division.
41 In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided

1 between the districts in proportion to the last assessed value of the real and personal property. The district
2 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
3 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
4 division, shall be made in proportion to the number of persons in each district according to the latest federal
5 census.

6 Section 23. ORS 459.155 is amended to read:

7 459.155. Review of any action of the board taken pursuant to ORS [459.140 to 459.155, or any ordinance
8 adopted pursuant thereto,] 459.150 shall be taken solely and exclusively by writ of review in the manner set
9 forth in ORS 34.010 to 34.100.

10 Section 24. ORS 476.835 is amended to read:

11 476.835. (1) Within [30] 60 days after receiving written notice of the findings of the board, any fire service
12 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
13 with the [Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the
14 order of the board shall not take effect until the court decides the appeal] Court of Appeals in the manner
15 provided for in ORS 183.482.

16 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
17 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
18 years after the date on which the order of the board revoking his accreditation became final.

19 Section 25. ORS 479.195 is amended to read:

20 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
21 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
22 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
23 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
24 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
25 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
26 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

27 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
28 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
29 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
30 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
31 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
32 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
33 made.

34 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
35 immediate access to the circuit court for the county in which the building or other structure is located for
36 review of the order of exclusion or removal. Such access may be in the form of [a writ of review or other] any
37 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

38 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available

1 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
2 476.030.

3 **SECTION 26.** ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

4 **SECTION 27.** This Act takes effect on November 1, 1979.

5 **SECTION 28.** (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

6 (2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals
7 before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of
8 Appeals under sections 4 to 6 of this Act.

9 **SECTION 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review
10 of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and
11 Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by
12 the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the
13 effective date of this Act.

B-Engrossed

Senate Bill 435

Ordered by the Senate June 1
(Including Amendments by Senate May 24 and June 1)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory Committee on Writs of Review)

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.

Declares legislative policy. Creates Land Use Board of Appeals [within the Department of Land Conservation and Development]. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective January 1, 1980. Repeals board July 1, 1983.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070, 181.350, 197.015, 197.090, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300, 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

SECTION 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in creating sections 1a to 6a of this 1979 Act to accomplish these objectives. be appointed by the

Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983.

The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

B-Engrossed

Senate Bill 435

Ordered by the Senate June 1
(Including Amendments by Senate May 24 and June 1)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory Committee on Writs of Review)

SUMMARY

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SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

SECTION 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the Governor considers necessary. The members of the board shall hold their positions at the pleasure of the Governor and their salaries shall be fixed by the Governor unless otherwise provided for by law. ②

(2) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

SECTION 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency, *other than the Land Conservation and Development Commission,* with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

(4) A notice of intent to appeal a land use decision shall be filed not later than ³⁰20 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or special district governing body or state agency and the applicant of record, if any, in the city, county or special district governing body or state agency proceeding. The notice shall be served and filed in the form and manner ^{\$50 and a deposit for costs of \$150} prescribed by rule of the board and shall be accompanied by a filing fee of \$200. In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the filing fee ^{and deposit} shall be awarded to the city, county, special district or state agency as cost of preparation of the record.

(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board may allow, the city, county or special district governing body or state agency shall transmit to the board the original or a certified copy of the entire record, if any, of the proceeding under review. By stipulation of all

1 parties to the review proceeding the record may be shortened. The board may require or permit subsequent
2 corrections to the record.

3 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
4 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
5 reviewed and shall state:

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

7 (b) The date of the decision.

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

9 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, *if any*. In the
10 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
11 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
12 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
13 fact of the city, county or special district governing body or state agency for which there is substantial evidence
14 in the whole record.

15 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
16 *and no extension of time has been stipulated to by the parties* not issued within 90 days, the decision being reviewed shall be considered affirmed. *Insert (3)*

and the decision may then be appealed in the manner provided in
section 6a of this 1979 Act *as it is under review*. *Insert (3)* The deposit required by
subsection (4) of this section shall be applied to any costs *Insert (4)*
charged against the petitioner. *in the form it deems best adapted for public convenience.*

23 P
24 (12) All fees collected by the board under this section that *are available*
are not awarded as costs shall be paid over to the State Treasurer *Insert (5)*
to be credited to the General Fund. *and proceed as provided in section 6 of this 1979*

28 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
29 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
30 the decision.

31 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
32 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
33 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
34 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
35 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
36 issued until the commission has reviewed the recommendation of the board on the issues concerning the
37 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
38 incorporate the determination of the commission into the final order to be issued under this subsection.

39 (4) The board shall reverse or remand the land use decision under review only if:

40 (a) The board finds that the city, county or special district governing body:

41 (A) Exceeded its jurisdiction;

parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record.

(6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be reviewed and shall state:

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

(b) The date of the decision.

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

(7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, *if any*. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the city, county or special district governing body or state agency for which there is substantial evidence in the whole record.

(8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is not issued within 90 days, *and no extension of time has been stipulated to by the parties*, the decision being reviewed shall be considered affirmed.

(9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the city, county or special district governing body or state agency whose decision is under review.

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

(11) The board shall provide for the publication of its orders and those previously issued by the commission which are of general public interest in the form it deems best adapted for public convenience. Publications shall constitute the official reports of the board and the commission and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

SECTION 5. (1) Where a petition for review contains only allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979 Act.

(2) Where a petition for review contains no allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding the decision.

(3) Where a petition for review contains both allegations that a land use decision violates the state-wide planning goals and other allegations of error, the board shall review the decision and proceed as provided in section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be issued until the commission has reviewed the recommendation of the board on the issues concerning the state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall incorporate the determination of the commission into the final order to be issued under this subsection.

(4) The board shall reverse or remand the land use decision under review only if:

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

1 (B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
2 substantial rights of the petitioner;

3 (C) Made a decision that was not supported by substantial evidence in the whole record;

4 (D) Improperly construed the applicable law; or

5 (E) Made a decision that was unconstitutional; or

6 (b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
7 the city, county or special district governing body or state agency violated the state-wide planning goals.

8 (5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a
9 of this 1979 Act.

10 SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board
11 shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide
12 planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to
13 each party to the proceeding. The recommendation shall include a general summary of the evidence contained
14 in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the
15 state-wide planning goals. The recommendation shall also state whether the petition raises matters of such
16 importance that the commission should hear oral argument from the parties.

17 (2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's
18 recommendation, including that portion of the recommendation stating whether oral argument should be
19 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

20 (3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
21 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
22 recommends that oral argument not be allowed and the commission concurs with the board's recommendation.
23 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
24 which there is substantial evidence in the record. The commission shall issue its determination on the
25 recommendation of the board and return the determination to the board for inclusion in the board's order under
26 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
27 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
28 commission shall obtain the consent of the parties for a postponement.

29 (4) No determination of the commission issued under subsection (3) of this section is valid unless all
30 members of the commission have received the recommendation of the board in the matter and any exceptions
31 thereto that were timely filed with the board and at least four members of the commission concur in its action in
32 the matter.

33 (5) If the commission receives a recommendation from the board concerning a petition alleging that a
34 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
35 state-wide goals, and the commission has received a request from the city or county which adopted such
36 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
37 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission
38 may suspend its consideration of the request for compliance acknowledgment until it has issued its
39 determination on the recommendation of the board and the board has issued a final order. In any event the
40 commission shall issue its determination on the recommendation of the board within the time limits established
41 in subsection (3) of this section.

1 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
2 brought before it for determination under this section.

3 **SECTION 6a.** (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
4 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

5 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
6 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

7 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
8 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
9 petition shall be filed within 30 days only following the date the order upon which the petition is based is
10 served. Date of service shall be the date on which the board delivered or mailed its order.

11 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
12 shall be served by registered or certified mail upon the board, and all other parties of record in the board
13 proceeding.

14 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
15 upon a showing of:

16 (A) Irreparable injury to the petitioner; and

17 (B) A colorable claim of error in the order.

18 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
19 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
20 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
21 result from the granting of the stay.

22 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
23 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
24 Appeals within specified reasonable periods of time.

25 (d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules
26 as the court may establish.

27 (6) Within 20 days after service of the petition, or within such further time as the court may allow, the
28 board shall transmit to the court the original or a certified copy of the entire record of the proceeding under
29 review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party
30 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The
31 court may require or permit subsequent corrections or additions to the record when deemed desirable. Except
32 as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any
33 intervening party. However, the court may tax such costs and the cost of transcription of record to a party
34 filing a frivolous petition for review.

35 (7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the
36 court shall not substitute its judgment for that of the board as to any issue of fact.

37 (8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if
38 it finds:

39 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for
40 reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

41 (b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Section 7. ORS 197.015 is amended to read:

197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

[(2)] (3) "Commission" means the Land Conservation and Development Commission.

[(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

[(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[(5)] (6) "Department" means the Department of Land Conservation and Development.

[(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

[(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

[(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

[(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

Section 7a. ORS 197.252 is amended to read:

197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

1 (a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
2 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
3 achieving the state-wide planning goals through performance of the compliance schedule; or

4 (b) The commission finds that a past approval or denial was of more than local impact and substantially
5 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
6 compliance schedule.

7 (2) Conditions may be imposed under this section only at the time of:

8 (a) Annual phased review of the satisfactory progress of the city or county;

9 (b) Approval of a planning assistance grant agreement with the city or county; or

10 (c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by
11 the city or county.

12 (3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
13 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
14 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
15 Replacement Part) and 197.251 and 197.320.

16 Section 7b. 197.265 is amended to read:

17 197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review]
18 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
19 ORS 197.300] sections 4 to 6 of this 1979 Act.

20 (2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
21 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
22 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
23 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred
24 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
25 appropriated to the commission therefor.

26 Section 7c. ORS 197.395 is amended to read:

27 197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
28 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
29 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
30 and any other information required by the city or county as prescribed by rule of the commission.

31 (2) If the city or county finds after review of the application that the proposed activity complies with
32 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
33 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
34 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
35 approved.

36 (3) The city or county may prescribe and include in the permit any conditions or restrictions that it
37 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
38 the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 7d. ORS 197.090 is amended to read:

“197.090. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals.

Section 8. ORS 34.020 is amended to read:

34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

Section 9. ORS 34.050 is amended to read:

34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be sufficient.]*

Section 9a. ORS 34.030 is amended to read:

34.030. The writ shall be allowed by the circuit court *[or judge thereof]*, or, in counties where the county court has judicial functions, by the county court *[or judge of the county]* wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed.

Section 10. ORS 34.070 is amended to read:

34.070. *[(1) Except as otherwise provided in subsection (2) of this section,]* In the discretion of the court *[or judge]* issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

[(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not

1 *require the defendant to desist from further proceedings regarding the project unless the undertaking required by*
2 *ORS 34.055 has been given to the court or judge.]*

3 Section 10a. ORS 215.416 is amended to read:

4 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of
5 land may apply in writing to such persons as the governing body designates, for a permit, in the manner
6 prescribed by the governing body.

7 (2) The hearings officer shall hold at least one public hearing on the application and within 90 days after
8 receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding
9 on the application may be extended for a reasonable period of time, as determined by the hearings officer, but
10 not to exceed six months from the date of the first public hearing on the application.

11 (3) The application shall not be approved if the proposed use of land is found to be in conflict with the
12 comprehensive plan of the county and other applicable ordinance provisions. The approval may include such
13 conditions as are authorized by statute or county legislation.

14 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
15 persons as otherwise provided by law.

16 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
17 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
18 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
19 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
20 whole.

21 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
22 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the
23 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

24 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

25 Section 10b. ORS 227.173 is amended to read:

26 227.173. (1) ~~Notice of~~ approval or denial of a discretionary permit application shall be based on standards
27 and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
28 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
29 which the development would occur and to the development ordinance and comprehensive plan for the city as a
30 whole.

31 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
32 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
33 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
34 set forth.

35 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

36 Section 11. ORS 215.422 is amended to read:

37 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
38 commission or county governing body, or both, however the governing body prescribes. The appellate
39 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
40 review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not*
41 *limited to, the record of the hearings officer's action.]*

(2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010 to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

Section 12. ORS 227.180 is amended to read:

227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under *[ORS 34.010 to 34.100]* sections 4 to 6 of this 1979 Act.

Section 13. ORS 34.040 is amended to read:

34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other than a ~~district court~~ *including a district court* or an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or quasi-judicial functions appears to have:

(1) Exceeded its *[or his]* jurisdiction;

(2) Failed to follow the procedure applicable to the matter before it *[or him]*;

(3) Made a finding or order not supported by *[reliable, probative and]* substantial evidence in the whole record; *[or]*

(4) Improperly construed the applicable law; or

(5) Rendered a decision that is unconstitutional,

to the injury of some substantial *[right]* interest of the plaintiff, and not otherwise. The fact that the right of appeal exists is no bar to the issuance of the writ.

Section 14. ORS 181.350 is amended to read:

181.350. The decisions of the trial board shall be subject to review by the *[circuit court of the county in which the hearing was held]* Court of Appeals. The procedure for review shall be as provided in ORS *[34.010 to 34.100]* 183.482.

Section 15. ORS 198.785 is amended to read:

198.785. *[(1) A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.]*

[(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal *[to the Supreme Court]* as provided for appeals in other proceedings.

[(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

Section 15a. If House Bill 2642 becomes law, section 15 of this Act is repealed and ORS 198.785, as amended by section 7, chapter _____, Oregon Laws 1979 (Enrolled House Bill 2642), is further amended to read:

198.785. [(1)] A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.]

[(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal [to the Court of Appeals] as provided for appeals in other proceedings.

[(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

[(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of organization, the formation or change shall be considered complete and final upon the date the order of formation or the order, resolution or statement announcing a change of organization is filed with the county clerk as provided by ORS 198.780.

1 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
 2 organization, the formation or change shall be considered complete and final upon the date the order of
 3 formation or the order, resolution or statement announcing a change of organization is filed with the county
 4 clerk as provided by ORS 198.780.

5 Section 16. ORS 199.461 is amended to read:

6 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

7 (a) Cause a study to be made of the proposal offered by the petition.

8 (b) Conduct one or more public hearings on the proposal.

9 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
 10 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as
 11 either to include or exclude territory. If the commission determines that any land has been improperly omitted
 12 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
 13 representative designated in writing, the commission shall continue the hearing on the petition and shall order
 14 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
 15 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
 16 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
 17 continued. The required notice may be waived by the nonappearing owner.

18 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
 19 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
 20 order stating the reasons for the decision of the commission. Any person interested in a boundary change may,
 21 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100* appeal the
 22 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders.

23 (4) Immediately after the effective date of a final order entered upon, or, if the decision of

the boundary commission involves application of the state-wide
planning goals, in accordance with the provisions of sections 4 to
6 of this 1979 Act district. If the commission disapproves a minor boundary change, it shall send a
 28 copy of the final order to the person who actually filed the petition and to the affected city or district.

29 SECTION 17. ORS 203.200 is repealed.

30 Section 18. ORS 311.860 is amended to read:

31 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
 32 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
 33 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
 34 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
 35 pertaining to and in accordance with the following:

36 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
 37 to or during the period of the construction.

38 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
 39 for making the payments.

40 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
 41 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the

1 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
 2 organization, the formation or change shall be considered complete and final upon the date the order of
 3 formation or the order, resolution or statement announcing a change of organization is filed with the county
 4 clerk as provided by ORS 198.780.

5 Section 16. ORS 199.461 is amended to read:

6 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

7 (a) Cause a study to be made of the proposal offered by the petition.

8 (b) Conduct one or more public hearings on the proposal.

9 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
 10 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as
 11 either to include or exclude territory. If the commission determines that any land has been improperly omitted
 12 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
 13 representative designated in writing, the commission shall continue the hearing on the petition and shall order
 14 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
 15 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
 16 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
 17 continued. The required notice may be waived by the nonappearing owner.

18 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
 19 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
 20 order stating the reasons for the decision of the commission. Any person interested in a boundary change may[,
 21 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100*] appeal the
 22 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders.

23 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
 copy of the final order to the person who actually filed the petition and to the affected city or district.

29 SECTION 17. ORS 203.200 is repealed.

30 Section 18. ORS 311.860 is amended to read:

31 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
 32 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
 33 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
 34 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
 35 pertaining to and in accordance with the following:

36 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
 37 to or during the period of the construction.

38 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
 39 for making the payments.

40 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
 41 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the

1 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
2 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
3 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
4 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
5 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
6 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
7 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
8 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

9 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
10 county in which a taxing unit which is a party to the agreement is located.

11 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
12 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
13 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
14 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
15 under this section shall be as provided by ORS [~~34.010 to 34.100~~] 305.275.

16 Section 19. ORS 330.101 is amended to read:

17 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
18 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
19 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
20 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
21 declare that the change and proposals shall become effective as provided in ORS 330.103.

22 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
23 voters in a school district or area affected by the proposed change is filed with the district boundary board
24 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
25 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
26 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
27 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
28 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
29 the least populous district or area and progressing in order of population to the most populous district or area.
30 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
31 most populous district or area. The boundary board shall give notice of each election in the manner provided in
32 ORS 331.010.

33 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
34 change and the proposals shall be defeated, and the same or a substantially similar change combined with
35 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
36 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
37 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
38 ORS 330.103 without further elections.

39 (4) In an election to add districts to a union high school district, if the district boundary board determines
40 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
41 or more of the common school districts by a majority of the votes cast in each district, it shall declare the

1 proposition carried as to those common school districts only in which the proposition prevailed, and shall
2 immediately proceed to change the boundaries of the union high school district to include those districts
3 desiring to be added thereto.

4 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
5 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
6 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
7 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
8 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
9 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
10 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of
11 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
12 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
13 considering the testimony, the board shall confirm or reject the action of the boundary board and such
14 determination shall be final.

15 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
16 provided in ORS 183.482. *[A petition for a writ of review to review the action taken may be filed with the circuit*
17 *court within the time permitted by law.]*

18 Section 20. ORS 330.123 is amended to read:

19 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
20 annexation of less than an entire school district to another, the district school boards of the districts affected by
21 each change shall immediately after the change make an equitable division of the then existing assets and
22 liabilities between the districts affected by such change and provide the manner of consummating the division.

23 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
24 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
25 the school districts affected and an additional member appointed by the other appointees.

26 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
27 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
28 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
29 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
30 which the administrative office of the most populous school district is located. Within 10 days after receiving
31 such notice, the judge shall appoint the additional arbitrator.

32 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
33 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
34 equally apportioned among the districts concerned.

35 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the manner provided
36 in ORS 33.320 to 33.340.

37 (6) Assets include all school property and moneys belonging to the district at the time of the division.
38 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
39 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
40 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
41 property. The district retaining the real property shall pay the other districts concerned such sums as are

determined in accordance with the provisions of this section. All funds to be apportioned during the current school year, after such division, shall be made in proportion to the resident average daily membership of the districts divided, as shown by the report of such districts for the period ending the preceding June 30 as certified by the districts to the administrative office of the county.

Section 21. ORS 330.557 is amended to read:

330.557. (1) Any person residing or owning or occupying real property within the area affected by any final plan of reorganization adopted by the committee for the organization of an administrative school district may petition the State Board of Education to have the plan revised or modified in particulars set forth in such petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer evidence and argument in opposition to such petition.

(2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to 34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision or determination of the State Board of Education denying or overruling the petition of such petitioner to revise or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition for [*writ of*] review shall be filed with the [*circuit court within 30*] Court of Appeals within 60 days after the State Board of Education approves the final plan of reorganization.

Section 22. ORS 341.573 is amended to read:

341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation of territory and another community college district is affected, the boards of the districts shall make an equitable division of the then existing assets and liabilities between the districts affected by such change and provide the manner of consummating the division.

(2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of the affected districts and an additional member appointed by the other appointees.

(3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice, the judge shall appoint one additional arbitrator.

(4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally apportioned among the districts concerned.

(5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the manner provided in ORS 33.320 to 33.340.

(6) Assets include all property and moneys belonging to the district at the time of division. Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time of division. In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided

1 between the districts in proportion to the last assessed value of the real and personal property. The district
2 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
3 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
4 division, shall be made in proportion to the number of persons in each district according to the latest federal
5 census.

6 Section 23. ORS 459.155 is amended to read:

7 459.155. Review of any action of the board taken pursuant to ORS [~~459.140 to 459.155, or any ordinance~~
8 ~~adopted pursuant thereto,~~] 459.150 shall be taken solely and exclusively by writ of review in the manner set
9 forth in ORS 34.010 to 34.100.

10 Section 24. ORS 476.835 is amended to read:

11 476.835. (1) Within [~~30~~] 60 days after receiving written notice of the findings of the board, any fire service
12 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
13 with the [~~Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the~~
14 ~~order of the board shall not take effect until the court decides the appeal~~] Court of Appeals in the manner
15 provided for in ORS 183.482.

16 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
17 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
18 years after the date on which the order of the board revoking his accreditation became final.

19 Section 25. ORS 479.195 is amended to read:

20 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
21 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
22 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
23 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
24 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
25 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
26 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

27 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
28 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
29 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
30 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
31 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
32 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
33 made.

34 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
35 immediate access to the circuit court for the county in which the building or other structure is located for
36 review of the order of exclusion or removal. Such access may be in the form of [~~a writ of review or other~~] any
37 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

38 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available

1 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
2 476.030.

3 **SECTION 26.** ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

4 **SECTION 27.** This Act takes effect on January 1, 1980. *November 1, 1979*

5 **SECTION 28.** (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

6 (2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals
7 before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of
8 Appeals under sections 4 to 6 of this Act.

9 **SECTION 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review
10 of land use decisions to be filed on or after January 1, 1980. Any petition before the Land Conservation and
11 Development Commission or any circuit court still pending on January 1, 1980, shall be finally determined by
12 the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the
13 effective date of this Act. *November 1, 1979*

B-Engrossed
Senate Bill 435

Ordered by the Senate June 1
(Including Amendments by Senate May 24 and June 1)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory Committee on Writs of Review)

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.

Declares legislative policy. Creates Land Use Board of Appeals [*within the Department of Land Conservation and Development*]. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective January 1, 1980. Repeals board July 1, 1983.

A BILL FOR AN ACT

1
2 Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070,
3 181.350, 197.015, 197.090, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180,
4 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300,
5 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

7 **SECTION 1.** Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

8 **SECTION 1a.** It is the policy of the Legislative Assembly that time is of the essence in reaching final
9 decisions in matters involving land use and that those decisions be made consistently with sound principles
10 governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979
11 Act to accomplish these objectives.

12 **SECTION 2.** (1) There is hereby created a Land Use Board of Appeals consisting of not more than five
13 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS
14 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the
15 Governor considers necessary. The members of the board shall hold their positions at the pleasure of the
16 Governor and their salaries shall be fixed by the Governor unless otherwise provided for by law.

17 (2) Referees appointed under subsection (1) of this section shall be members in good standing of the
18 Oregon State Bar.

19 **SECTION 2a.** (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed
20 in section 4 of this 1979 Act.

21 (2) In conducting review proceedings the members of the board may sit together or separately as the chief
22 hearings referee shall decide.

23 (3) The chief hearings referee shall apportion the business of the board among the members of the board.
24 Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1 arising under those petitions, except as provided in section 6 of this 1979 Act.

2 (4) The board shall adopt rules governing the conduct of review proceedings brought before it under
3 sections 4 to 6 of this 1979 Act.

4 **SECTION 3.** As used in sections 4 to 6 of this 1979 Act:

5 (1) "Land use decision" means:

6 (a) A final decision or determination made by a city, county or special district governing body that
7 concerns the adoption, amendment or application of:

8 (A) The state-wide planning goals;

9 (B) A comprehensive plan provision; or

10 (C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

11 (b) A final decision or determination of a state agency with respect to which the agency is required to apply
12 the state-wide planning goals.

13 (2) "Person" means any individual, partnership, corporation, association, governmental subdivision or
14 agency or public or private organization of any kind.

15 **SECTION 4.** (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by
16 filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a
17 of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction
18 to review any land use decision of a city, county or special district governing body or a state agency in the
19 manner provided in sections 5 and 6 of this 1979 Act.

20 (2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected
21 or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in
22 subsection (4) of this section may petition the board for review of that decision or may, within a reasonable
23 time after a petition for review of that decision has been filed with the board, intervene in and be made a party
24 to any review proceeding pending before the board.

25 (3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may
26 petition the board for review of a quasi-judicial land use decision if the person:

27 (a) Appeared before the city, county or special district governing body or state agency orally or in writing;
28 and

29 (b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a
30 person whose interests are adversely affected or who was aggrieved by the decision.

31 (4) A notice of intent to appeal a land use decision shall be filed not later than 20 days after the date the
32 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
33 special district governing body or state agency and the applicant of record, if any, in the city, county or special
34 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
35 prescribed by rule of the board and shall be accompanied by a filing fee of \$200. In the event a petition for
36 review is not filed with the board as required in subsection (6) of this section, then the filing fee shall be
37 awarded to the city, county, special district or state agency as cost of preparation of the record.

38 (5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
39 may allow, the city, county or special district governing body or state agency shall transmit to the board the
40 original or a certified copy of the entire record, if any, of the proceeding under review. By stipulation of all

1 parties to the review proceeding the record may be shortened. The board may require or permit subsequent
2 corrections to the record.

3 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
4 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
5 reviewed and shall state:

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

7 (b) The date of the decision.

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

9 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In the
10 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
11 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
12 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
13 fact of the city, county or special district governing body or state agency for which there is substantial evidence
14 in the whole record.

15 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
16 not issued within 90 days, the decision being reviewed shall be considered affirmed.

17 (9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
18 including the cost of preparation of the record if the prevailing party is the city, county or special district
19 governing body or state agency whose decision is under review.

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

21 (11) The board shall provide for the publication of its orders and those previously issued by the
22 commission which are of general public interest in the form it deems best adapted for public convenience.
23 Publications shall constitute the official reports of the board and the commission and shall be made available
24 for distribution in the manner provided in ORS 2.160 and 9.790.

25 **SECTION 5.** (1) Where a petition for review contains only allegations that a land use decision violates the
26 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
27 Act.

28 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
29 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
30 the decision.

31 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
32 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
33 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
34 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
35 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
36 issued until the commission has reviewed the recommendation of the board on the issues concerning the
37 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
38 incorporate the determination of the commission into the final order to be issued under this subsection.

39 (4) The board shall reverse or remand the land use decision under review only if:

40 (a) The board finds that the city, county or special district governing body:

41 (A) Exceeded its jurisdiction;

1 (B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
2 substantial rights of the petitioner;

3 (C) Made a decision that was not supported by substantial evidence in the whole record;

4 (D) Improperly construed the applicable law; or

5 (E) Made a decision that was unconstitutional; or

6 (b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
7 the city, county or special district governing body or state agency violated the state-wide planning goals.

8 (5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a
9 of this 1979 Act.

10 SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board
11 shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide
12 planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to
13 each party to the proceeding. The recommendation shall include a general summary of the evidence contained
14 in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the
15 state-wide planning goals. The recommendation shall also state whether the petition raises matters of such
16 importance that the commission should hear oral argument from the parties.

17 (2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's
18 recommendation, including that portion of the recommendation stating whether oral argument should be
19 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

20 (3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
21 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
22 recommends that oral argument not be allowed and the commission concurs with the board's recommendation.
23 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
24 which there is substantial evidence in the record. The commission shall issue its determination on the
25 recommendation of the board and return the determination to the board for inclusion in the board's order under
26 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
27 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
28 commission shall obtain the consent of the parties for a postponement.

29 (4) No determination of the commission issued under subsection (3) of this section is valid unless all
30 members of the commission have received the recommendation of the board in the matter and any exceptions
31 thereto that were timely filed with the board and at least four members of the commission concur in its action in
32 the matter.

33 (5) If the commission receives a recommendation from the board concerning a petition alleging that a
34 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
35 state-wide goals, and the commission has received a request from the city or county which adopted such
36 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
37 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission
38 may suspend its consideration of the request for compliance acknowledgment until it has issued its
39 determination on the recommendation of the board and the board has issued a final order. In any event the
40 commission shall issue its determination on the recommendation of the board within the time limits established
41 in subsection (3) of this section.

1 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
2 brought before it for determination under this section.

3 SECTION 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
4 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

5 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
6 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

7 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
8 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
9 petition shall be filed within 30 days only following the date the order upon which the petition is based is
10 served. Date of service shall be the date on which the board delivered or mailed its order.

11 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
12 shall be served by registered or certified mail upon the board, and all other parties of record in the board
13 proceeding.

14 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
15 upon a showing of:

16 (A) Irreparable injury to the petitioner; and

17 (B) A colorable claim of error in the order.

18 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
19 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
20 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
21 result from the granting of the stay.

22 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
23 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
24 Appeals within specified reasonable periods of time.

25 (d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules
26 as the court may establish.

27 (6) Within 20 days after service of the petition, or within such further time as the court may allow, the
28 board shall transmit to the court the original or a certified copy of the entire record of the proceeding under
29 review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party
30 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The
31 court may require or permit subsequent corrections or additions to the record when deemed desirable. Except
32 as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any
33 intervening party. However, the court may tax such costs and the cost of transcription of record to a party
34 filing a frivolous petition for review.

35 (7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the
36 court shall not substitute its judgment for that of the board as to any issue of fact.

37 (8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if
38 it finds:

39 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for
40 reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

41 (b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Section 7. ORS 197.015 is amended to read:

197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

[(2)] (3) "Commission" means the Land Conservation and Development Commission.

[(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

[(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[(5)] (6) "Department" means the Department of Land Conservation and Development.

[(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

[(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

[(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

[(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

Section 7a. ORS 197.252 is amended to read:

197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS 197.251, the commission may condition the compliance schedule for the city or county to direct the city or county to apply specified goal requirements in approving or denying future land conservation and development actions if the commission finds that past approvals or denials would have constituted violations of the state-wide planning goals and:

1 (a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
2 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
3 achieving the state-wide planning goals through performance of the compliance schedule; or

4 (b) The commission finds that a past approval or denial was of more than local impact and substantially
5 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
6 compliance schedule.

7 (2) Conditions may be imposed under this section only at the time of:

8 (a) Annual phased review of the satisfactory progress of the city or county;

9 (b) Approval of a planning assistance grant agreement with the city or county; or

10 (c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by
11 the city or county.

12 (3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
13 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
14 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
15 Replacement Part) and 197.251 and 197.320.

16 Section 7b. 197.265 is amended to read:

17 197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review]
18 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
19 ORS 197.300] sections 4 to 6 of this 1979 Act.

20 (2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
21 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
22 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
23 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred
24 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
25 appropriated to the commission therefor.

26 Section 7c. ORS 197.395 is amended to read:

27 197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
28 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
29 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
30 and any other information required by the city or county as prescribed by rule of the commission.

31 (2) If the city or county finds after review of the application that the proposed activity complies with
32 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
33 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
34 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
35 approved.

36 (3) The city or county may prescribe and include in the permit any conditions or restrictions that it
37 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
38 the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 7d. ORS 197.090 is amended to read:

“197.090. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(5) Provide clerical and other necessary support services for the Land Use Board of Appeals.

Section 8. ORS 34.020 is amended to read:

34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

Section 9. ORS 34.050 is amended to read:

34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be sufficient.]*

Section 9a. ORS 34.030 is amended to read:

34.030. The writ shall be allowed by the circuit court *[or judge thereof]*, or, in counties where the county court has judicial functions, by the county court *[or judge of the county]* wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed.

Section 10. ORS 34.070 is amended to read:

34.070. *[(1) Except as otherwise provided in subsection (2) of this section,]* In the discretion of the court *[or judge]* issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

[(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not

1 *require the defendant to desist from further proceedings regarding the project unless the undertaking required by*
2 *ORS 34.055 has been given to the court or judge.]*

3 Section 10a. ORS 215.416 is amended to read:

4 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of
5 land may apply in writing to such persons as the governing body designates, for a permit, in the manner
6 prescribed by the governing body.

7 (2) The hearings officer shall hold at least one public hearing on the application and within 90 days after
8 receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding
9 on the application may be extended for a reasonable period of time, as determined by the hearings officer, but
10 not to exceed six months from the date of the first public hearing on the application.

11 (3) The application shall not be approved if the proposed use of land is found to be in conflict with the
12 comprehensive plan of the county and other applicable ordinance provisions. The approval may include such
13 conditions as are authorized by statute or county legislation.

14 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
15 persons as otherwise provided by law.

16 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
17 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
18 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
19 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
20 whole.

21 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
22 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the
23 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

24 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

25 Section 10b. ORS 227.173 is amended to read:

26 227.173. (1) Notice of approval or denial of a discretionary permit application shall be based on standards
27 and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
28 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
29 which the development would occur and to the development ordinance and comprehensive plan for the city as a
30 whole.

31 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
32 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
33 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
34 set forth.

35 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

36 Section 11. ORS 215.422 is amended to read:

37 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
38 commission or county governing body, or both, however the governing body prescribes. The appellate
39 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
40 review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not*
41 *limited to, the record of the hearings officer's action.]*

(2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010 to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

Section 12. ORS 227.180 is amended to read:

227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under *[ORS 34.010 to 34.100]* sections 4 to 6 of this 1979 Act.

Section 13. ORS 34.040 is amended to read:

34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other than a district court or an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or quasi-judicial functions appears to have:

(1) Exceeded its *[or his]* jurisdiction;

(2) Failed to follow the procedure applicable to the matter before it *[or him]*;

(3) Made a finding or order not supported by *[reliable, probative and]* substantial evidence in the whole record; *[or]*

(4) Improperly construed the applicable law; or

(5) Rendered a decision that is unconstitutional,

to the injury of some substantial *[right]* interest of the plaintiff, and not otherwise. The fact that the right of appeal exists is no bar to the issuance of the writ.

Section 14. ORS 181.350 is amended to read:

181.350. The decisions of the trial board shall be subject to review by the *[circuit court of the county in which the hearing was held]* Court of Appeals. The procedure for review shall be as provided in ORS *[34.010 to 34.100]* 183.482.

Section 15. ORS 198.785 is amended to read:

198.785. *[(1) A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.]*

[(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal *[to the Supreme Court]* as provided for appeals in other proceedings.

[(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

1 ~~[(4)]~~ (3) For the purpose of an action to determine or contest the validity of a formation or change of
2 organization, the formation or change shall be considered complete and final upon the date the order of
3 formation or the order, resolution or statement announcing a change of organization is filed with the county
4 clerk as provided by ORS 198.780.

5 Section 16. ORS 199.461 is amended to read:

6 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

7 (a) Cause a study to be made of the proposal offered by the petition.

8 (b) Conduct one or more public hearings on the proposal.

9 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
10 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as
11 either to include or exclude territory. If the commission determines that any land has been improperly omitted
12 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
13 representative designated in writing, the commission shall continue the hearing on the petition and shall order
14 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
15 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
16 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
17 continued. The required notice may be waived by the nonappearing owner.

18 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
19 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
20 order stating the reasons for the decision of the commission. Any person interested in a boundary change may~~[,~~
21 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100* appeal the
22 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders.

23 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
24 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
25 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
26 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
27 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
28 copy of the final order to the person who actually filed the petition and to the affected city or district.

29 SECTION 17. ORS 203.200 is repealed.

30 Section 18. ORS 311.860 is amended to read:

31 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
32 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
33 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
34 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
35 pertaining to and in accordance with the following:

36 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
37 to or during the period of the construction.

38 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
39 for making the payments.

40 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
41 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the

1 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
2 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
3 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
4 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
5 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
6 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
7 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
8 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

9 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
10 county in which a taxing unit which is a party to the agreement is located.

11 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
12 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
13 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
14 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
15 under this section shall be as provided by ORS [34.010 to 34.100] 305.275.

16 Section 19. ORS 330.101 is amended to read:

17 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
18 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
19 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
20 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
21 declare that the change and proposals shall become effective as provided in ORS 330.103.

22 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
23 voters in a school district or area affected by the proposed change is filed with the district boundary board
24 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
25 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
26 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
27 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
28 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
29 the least populous district or area and progressing in order of population to the most populous district or area.
30 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
31 most populous district or area. The boundary board shall give notice of each election in the manner provided in
32 ORS 331.010.

33 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
34 change and the proposals shall be defeated, and the same or a substantially similar change combined with
35 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
36 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
37 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
38 ORS 330.103 without further elections.

39 (4) In an election to add districts to a union high school district, if the district boundary board determines
40 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
41 or more of the common school districts by a majority of the votes cast in each district, it shall declare the

1 proposition carried as to those common school districts only in which the proposition prevailed, and shall
2 immediately proceed to change the boundaries of the union high school district to include those districts
3 desiring to be added thereto.

4 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
5 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
6 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
7 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
8 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
9 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
10 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of
11 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
12 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
13 considering the testimony, the board shall confirm or reject the action of the boundary board and such
14 determination shall be final.

15 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
16 provided in ORS 183.482. *[A petition for a writ of review to review the action taken may be filed with the circuit*
17 *court within the time permitted by law.]*

18 Section 20. ORS 330.123 is amended to read:

19 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
20 annexation of less than an entire school district to another, the district school boards of the districts affected by
21 each change shall immediately after the change make an equitable division of the then existing assets and
22 liabilities between the districts affected by such change and provide the manner of consummating the division.

23 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
24 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
25 the school districts affected and an additional member appointed by the other appointees.

26 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
27 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
28 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
29 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
30 which the administrative office of the most populous school district is located. Within 10 days after receiving
31 such notice, the judge shall appoint the additional arbitrator.

32 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
33 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
34 equally apportioned among the districts concerned.

35 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the manner provided
36 in ORS 33.320 to 33.340.

37 (6) Assets include all school property and moneys belonging to the district at the time of the division.
38 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
39 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
40 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
41 property. The district retaining the real property shall pay the other districts concerned such sums as are

1 determined in accordance with the provisions of this section. All funds to be apportioned during the current
2 school year, after such division, shall be made in proportion to the resident average daily membership of the
3 districts divided, as shown by the report of such districts for the period ending the preceding June 30 as
4 certified by the districts to the administrative office of the county.

5 Section 21. ORS 330.557 is amended to read:

6 330.557. (1) Any person residing or owning or occupying real property within the area affected by any final
7 plan of reorganization adopted by the committee for the organization of an administrative school district may
8 petition the State Board of Education to have the plan revised or modified in particulars set forth in such
9 petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall
10 be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of
11 such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS
12 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The
13 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer
14 evidence and argument in opposition to such petition.

15 (2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to*
16 *34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision
17 or determination of the State Board of Education denying or overruling the petition of such petitioner to revise
18 or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition
19 for [*writ of*] review shall be filed with the [*circuit court within 30*] Court of Appeals within 60 days after the State
20 Board of Education approves the final plan of reorganization.

21 Section 22. ORS 341.573 is amended to read:

22 341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation
23 of territory and another community college district is affected, the boards of the districts shall make an
24 equitable division of the then existing assets and liabilities between the districts affected by such change and
25 provide the manner of consummating the division.

26 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
27 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
28 the affected districts and an additional member appointed by the other appointees.

29 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education
30 shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within
31 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the
32 judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice,
33 the judge shall appoint one additional arbitrator.

34 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's
35 service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally
36 apportioned among the districts concerned.

37 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the manner
38 provided in ORS 33.320 to 33.340.

39 (6) Assets include all property and moneys belonging to the district at the time of division. Liabilities
40 include all debts for which the respective districts in their corporate capacities are liable at the time of division.
41 In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided

1 between the districts in proportion to the last assessed value of the real and personal property. The district
2 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
3 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
4 division, shall be made in proportion to the number of persons in each district according to the latest federal
5 census.

6 Section 23. ORS 459.155 is amended to read:

7 459.155. Review of any action of the board taken pursuant to ORS [~~459.140 to 459.155, or any ordinance~~
8 ~~adopted pursuant thereto,~~] 459.150 shall be taken solely and exclusively by writ of review in the manner set
9 forth in ORS 34.010 to 34.100.

10 Section 24. ORS 476.835 is amended to read:

11 476.835. (1) Within [~~30~~] 60 days after receiving written notice of the findings of the board, any fire service
12 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
13 with the [~~Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the~~
14 ~~order of the board shall not take effect until the court decides the appeal~~] Court of Appeals in the manner
15 provided for in ORS 183.482.

16 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
17 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
18 years after the date on which the order of the board revoking his accreditation became final.

19 Section 25. ORS 479.195 is amended to read:

20 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
21 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
22 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
23 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
24 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
25 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
26 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

27 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
28 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
29 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
30 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
31 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
32 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
33 made.

34 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
35 immediate access to the circuit court for the county in which the building or other structure is located for
36 review of the order of exclusion or removal. Such access may be in the form of [~~a writ of review or other~~] any
37 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

38 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available

1 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
2 476.030.

3 **SECTION 26.** ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

4 **SECTION 27.** This Act takes effect on January 1, 1980.

5 **SECTION 28.** (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

6 (2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals
7 before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of
8 Appeals under sections 4 to 6 of this Act.

9 **SECTION 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review
10 of land use decisions to be filed on or after January 1, 1980. Any petition before the Land Conservation and
11 Development Commission or any circuit court still pending on January 1, 1980, shall be finally determined by
12 the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the
13 effective date of this Act.

A-Engrossed

Senate Bill 435

Ordered by the Senate May 24
(Including Amendments by Senate May 24)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory Committee on Writs of Review)

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.

[Revises manner for review of land use and certain other decisions. Appropriates \$50,000 out of General Fund to Court of Appeals for necessary administrative expenses.] Declares legislative policy. Creates Land Use Board of Appeals within the Department of Land Conservation and Development. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective January 1, 1980.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070, 181.350, 197.015, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300, 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

SECTION 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

① SECTION 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the Governor considers necessary. The members of the board shall hold their positions at the pleasure of the Governor and their salaries shall be fixed by the Governor unless otherwise provided for by law.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with SECTION.

A-Engrossed

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Effective January 1, 1980.

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Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070, 181.350, 197.015, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300, 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

SECTION 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

SECTION 2. (1) The Land Use Board of Appeals is established within the Department of Land Conservation and Development. With the approval of the Governor, the commission shall appoint a chief hearings referee and such other referees as the commission considers necessary to serve as members of the board. The members of the board shall hold their positions at the pleasure of the commission and their salaries shall be fixed by the commission unless otherwise provided by law.

(2) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

(3) The members of the board shall not be assigned any duties that would interfere with or influence the discharge of their duties under sections 2a and 4 of this 1979 Act.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION**.

1 hearings referee shall decide.

2 (3) The chief hearings referee shall apportion the business of the board among the members of the board.
3 Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues
4 arising under those petitions, except as provided in section 6 of this 1979 Act.

5 (4) The board shall adopt rules governing the conduct of review proceedings brought before it under
6 sections 4 to 6 of this 1979 Act.

7 SECTION 3. As used in sections 4 to 6 of this 1979 Act:

8 (1) "Land use decision" means:

9 (a) A final decision or determination made by a city, county or special district governing body that
10 concerns the adoption, amendment or application of:

11 (A) The state-wide planning goals;

12 (B) A comprehensive plan provision; or

13 (C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

14 (b) A final decision or determination of a state agency with respect to which the agency is required to apply
15 the state-wide planning goals.

16 (2) "Person" means any individual, partnership, corporation, association, governmental subdivision or
17 agency or public or private organization of any kind.

18 SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by
19 filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a
20 of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction
21 to review any land use decision of a city, county or special district governing body or a state agency in the
22 manner provided in sections 5 and 6 of this 1979 Act.

23 (2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected
24 or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in
25 subsection (4) of this section may petition the board for review of that decision or may, within a reasonable
26 time after a petition for review of that decision has been filed with the board, intervene in and be made a party
27 to any review proceeding pending before the board.

28 (3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may
29 petition the board for review of a quasi-judicial land use decision if the person:

30 (a) Appeared before the city, county or special district governing body or state agency orally or in writing;
31 and

32 (b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a
33 person whose interests are adversely affected or who was aggrieved by the decision.

34 (4) A notice of intent to appeal a land use decision shall be filed not later than 20 days after the date the
35 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
36 special district governing body or state agency and the applicant of record, if any, in the city, county or special
37 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
38 prescribed by rule of the board and shall be accompanied by a filing fee of \$200. In the event a petition for
39 review is not filed with the board as required in subsection (6) of this section, then the filing fee shall be
40 awarded to the city, county, special district or state agency as cost of preparation of the record.

1 (5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
2 may allow, the city, county or special district governing body or state agency shall transmit to the board the
3 original or a certified copy of the entire record, if any, of the proceeding under review. By stipulation of all
4 parties to the review proceeding the record may be shortened. The board may require or permit subsequent
5 corrections to the record.

6 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
7 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
8 reviewed and shall state:

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

10 (b) The date of the decision.

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

12 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In the
13 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
14 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
15 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
16 fact of the city, county or special district governing body or state agency for which there is substantial evidence
17 in the whole record.

18 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
19 not issued within 90 days, the decision being reviewed shall be considered affirmed.

20 (9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
21 including the cost of preparation of the record if the prevailing party is the city, county or special district
22 governing body or state agency whose decision is under review.

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

24 *and those previously issued by the commission*
(11) The board shall provide for the publication of its orders which are of general public interest in the form
25 it deems best adapted for public convenience. Publications shall constitute the official reports of the board and
26 shall be made available for distribution in the manner provided in ORS 2.160 and 9.790. *and the commission*

27 **SECTION 5.** (1) Where a petition for review contains only allegations that a land use decision violates the
28 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
29 Act.

30 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
31 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
32 the decision.

33 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
34 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
35 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
36 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
37 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
38 issued until the commission has reviewed the recommendation of the board on the issues concerning the
39 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
40 incorporate the determination of the commission into the final order to be issued under this subsection.

41 (4) The board shall reverse or remand the land use decision under review only if:

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision that was not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made a decision that was unconstitutional; or

(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act.

SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties.

(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed. The exceptions shall be filed with the board and submitted to the commission for review.

(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

If the commission receives a recommendation from the board concerning
 (5) ~~The commission may, in its sole discretion, continue its review of~~ the commission may
 suspend its consideration of the request for compliance
 acknowledgment until it has issued its determination on the
 recommendation of the board and the board has issued a final order.
 In any event the commission shall issue its determination on the
 recommendation of the board within the time limits established in
 subsection (3) of this section.

(a) The board finds that the city, county or special district governing body:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision that was not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made a decision that was unconstitutional; or

(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act.

SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties.

(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed. The exceptions shall be filed with the board and submitted to the commission for review.

(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

If the commission receives a recommendation from the board concerning
 (5) ~~The commission may, in its sole discretion, continue its review of a petition alleging that a~~
 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
 state-wide goals, ~~if the commission has received a request from the city or county which adopted such~~
 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251. ² Following entry
 of an order on the request for compliance acknowledgment, the commission shall resume its review of the
 petition, unless the findings and conclusions in the acknowledgment order are dispositive of the matters raised

1 in the petition, in which event the commission may dismiss the allegations of violation of the state-wide
2 planning goals in the petition.

3 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
4 brought before it for determination under this section.

5 SECTION 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
6 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

7 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
8 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

9 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
10 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
11 petition shall be filed within 30 days only following the date the order upon which the petition is based is
12 served. Date of service shall be the date on which the board delivered or mailed its order.

13 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
14 shall be served by registered or certified mail upon the board, and all other parties of record in the board
15 proceeding.

16 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
17 upon a showing of:

18 (A) Irreparable injury to the petitioner; and

19 (B) A colorable claim of error in the order.

20 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
21 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
22 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
23 result from the granting of the stay.

24 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
25 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
26 Appeals within specified reasonable periods of time.

27 (d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules
28 as the court may establish.

29 (6) Within 20 days after service of the petition, or within such further time as the court may allow, the
30 board shall transmit to the court the original or a certified copy of the entire record of the proceeding under
31 review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party
32 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The
33 court may require or permit subsequent corrections or additions to the record when deemed desirable. Except
34 as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any
35 intervening party. However, the court may tax such costs and the cost of transcription of record to a party
36 filing a frivolous petition for review.

37 (7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the
38 court shall not substitute its judgment for that of the board as to any issue of fact.

39 (8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if
40 it finds:

1 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for
2 reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

3 (b) The order to be unconstitutional; or

4 (c) The order is not supported by substantial evidence in the whole record.

5 Section 7. ORS 197.015 is amended to read:

6 197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

7 (1) "Activity of state-wide significance" means a land conservation and development activity designated
8 pursuant to ORS 197.400.

9 (2) "Board" means the Land Use Board of Appeals or any member thereof.

10 [(2)] (3) "Commission" means the Land Conservation and Development Commission.

11 [(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

12 [(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the
13 governing body of a state agency, city, county or special district that interrelates all functional and natural
14 systems and activities relating to the use of lands, including but not limited to sewer and water systems,
15 transportation systems, educational systems, recreational facilities, and natural resources and air and water
16 quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area
17 covered and functional and natural activities and systems occurring in the area covered by the plan. "General
18 nature" means a summary of policies and proposals in broad categories and does not necessarily indicate
19 specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of
20 governments, semipublic and private agencies and the citizens of Oregon have been considered and
21 accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

22 [(5)] (6) "Department" means the Department of Land Conservation and Development.

23 [(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

24 [(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant
25 to ORS 197.005 to 197.430.

26 [(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation,
27 adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and
28 special districts in the preparation, adoption and implementation of plans, programs and regulations in
29 compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and
30 special districts to a single approach.

31 [(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized
32 and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port
33 districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit
34 districts and sanitary districts.

35 [(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state
36 officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95
37 as a regional clearinghouse.

38 Section 7a. ORS 197.252 is amended to read:

39 197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS
40 197.251, the commission may condition the compliance schedule for the city or county to direct the city or
41 county to apply specified goal requirements in approving or denying future land conservation and development

1 actions if the commission finds that past approvals or denials would have constituted violations of the
2 state-wide planning goals and:

3 (a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
4 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
5 achieving the state-wide planning goals through performance of the compliance schedule; or

6 (b) The commission finds that a past approval or denial was of more than local impact and substantially
7 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
8 compliance schedule.

9 (2) Conditions may be imposed under this section only at the time of:

10 (a) Annual phased review of the satisfactory progress of the city or county;

11 (b) Approval of a planning assistance grant agreement with the city or county; or

12 (c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by
13 the city or county.

14 (3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
15 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
16 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
17 Replacement Part) and 197.251 and 197.320.

18 Section 7b. 197.265 is amended to read:

19 197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review]
20 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
21 ORS 197.300] sections 4 to 6 of this 1979 Act.

22 (2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
23 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
24 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
25 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred
26 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
27 appropriated to the commission therefor.

28 Section 7c. ORS 197.395 is amended to read:

29 197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
30 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
31 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
32 and any other information required by the city or county as prescribed by rule of the commission.

33 (2) If the city or county finds after review of the application that the proposed activity complies with
34 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
35 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
36 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
37 approved.

38 (3) The city or county may prescribe and include in the permit any conditions or restrictions that it
39 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
40 the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 7a. ORS 197.090 is amended to read:

"197.090. Subject to policies adopted by the commission, the director shall:

"(1) Be the administrative head of the department.

"(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, cities, counties and special districts.

"(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

"(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

"(5) Provide clerical and other necessary support services for the Land Use Board of Appeals."

judge] issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

[(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not require the defendant to desist from further proceedings regarding the project unless the undertaking required by ORS 34.055 has been given to the court or judge.]

Section 10a. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body.

(2) The hearings officer shall hold at least one public hearing on the application and within 90 days after receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding on the application may be extended for a reasonable period of time, as determined by the hearings officer, but not to exceed six months from the date of the first public hearing on the application.

(3) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

1 (4) Actions pursuant to this section are subject to review [*pursuant to ORS 197.300*] under sections 4 to 6 of
2 this 1979 Act.

3 Section 8. ORS 34.020 is amended to read:

4 34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for
5 which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by
6 any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as
7 provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate
8 order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

9 Section 9. ORS 34.050 is amended to read:

10 34.050. [*Except as provided in ORS 34.055,*] Before allowing the writ, the court [*or judge*] shall require the
11 plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that
12 he will pay all costs and disbursements that may be adjudged to the defendant on the review. [*The court or*
13 *judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be*
14 *sufficient.*]

15 Section 9a. ORS 34.030 is amended to read:

16 34.030. The writ shall be allowed by the circuit court [*or judge thereof*], or, in counties where the county
17 court has judicial functions, by the county court [*or judge of the county*] wherein the decision or determination
18 sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination
19 with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition
20 shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he
21 has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as
22 alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the
23 date of the decision or determination sought to be reviewed.

24 Section 10. ORS 34.070 is amended to read:

25 34.070. [*(1) Except as otherwise provided in subsection (2) of this section,*] In the discretion of the court [*or*
26 *judge*] issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in
27 the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

28 [*(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not*
29 *require the defendant to desist from further proceedings regarding the project unless the undertaking required by*
30 *ORS 34.055 has been given to the court or judge.*]

31 Section 10a. ORS 215.416 is amended to read:

32 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of
33 land may apply in writing to such persons as the governing body designates, for a permit, in the manner
34 prescribed by the governing body.

35 (2) The hearings officer shall hold at least one public hearing on the application and within 90 days after
36 receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding
37 on the application may be extended for a reasonable period of time, as determined by the hearings officer, but
38 not to exceed six months from the date of the first public hearing on the application.

39 (3) The application shall not be approved if the proposed use of land is found to be in conflict with the
40 comprehensive plan of the county and other applicable ordinance provisions. The approval may include such
41 conditions as are authorized by statute or county legislation.

1 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
2 persons as otherwise provided by law.

3 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
4 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
5 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
6 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
7 whole.

8 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
9 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the
10 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

11 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

12 Section 10b. ORS 227.173 is amended to read:

13 227.173. (1) Notice of approval or denial of a discretionary permit application shall be based on standards
14 and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
15 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
16 which the development would occur and to the development ordinance and comprehensive plan for the city as a
17 whole.

18 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
19 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
20 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
21 set forth.

22 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

23 Section 11. ORS 215.422 is amended to read:

24 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
25 commission or county governing body, or both, however the governing body prescribes. The appellate
26 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
27 review shall be prescribed by the governing body. [*An appeal or review proceeding shall be based upon, but not*
28 *limited to, the record of the hearings officer's action.*]

29 (2) A party aggrieved by the final determination may have the determination reviewed [*under ORS 34.010*
30 *to 34.100*] in the manner provided in sections 4 to 6 of this 1979 Act.

31 Section 12. ORS 227.180 is amended to read:

32 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
33 commission or council of the city, or both, however the council prescribes. The appellate authority on its own
34 motion may review the action. The procedure for such an appeal or review shall be prescribed by the council,
35 but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider
36 the record of the hearings officer's action. That record need not set forth evidence verbatim.

37 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change

1 may have the determination reviewed under [ORS 34.010 to 34.100] sections 4 to 6 of this 1979 Act.

2 Section 13. ORS 34.040 is amended to read:

3 34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other than a
4 district court or an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or
5 quasi-judicial functions appears to have:

6 (1) Exceeded its [or his] jurisdiction;

7 (2) Failed to follow the procedure applicable to the matter before it [or him];

8 (3) Made a finding or order not supported by [reliable, probative and] substantial evidence in the whole
9 record; [or]

10 (4) Improperly construed the applicable law; or

11 (5) Rendered a decision that is unconstitutional,

12 to the injury of some substantial [right] interest of the plaintiff, and not otherwise. The fact that the right of
13 appeal exists is no bar to the issuance of the writ.

14 Section 14. ORS 181.350 is amended to read:

15 181.350. The decisions of the trial board shall be subject to review by the [circuit court of the county in
16 which the hearing was held] Court of Appeals. The procedure for review shall be as provided in ORS [34.010 to
17 34.100] 183.482.

18 Section 15. ORS 198.785 is amended to read:

19 198.785. [(1) A proceeding may not be maintained to contest the validity of a formation or change of
20 organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the
21 date the formation of the district or change of organization is complete.]

22 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
23 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
24 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
25 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
26 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
27 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
28 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
29 [to the Supreme Court] as provided for appeals in other proceedings.

30 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
31 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

32 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
33 organization, the formation or change shall be considered complete and final upon the date the order of
34 formation or the order, resolution or statement announcing a change of organization is filed with the county
35 clerk as provided by ORS 198.780.

36 Section 16. ORS 199.461 is amended to read:

37 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

38 (a) Cause a study to be made of the proposal offered by the petition.

39 (b) Conduct one or more public hearings on the proposal.

40 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
41 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as

1 either to include or exclude territory. If the commission determines that any land has been improperly omitted
2 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
3 representative designated in writing, the commission shall continue the hearing on the petition and shall order
4 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
5 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
6 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
7 continued. The required notice may be waived by the nonappearing owner.

8 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
9 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
10 order stating the reasons for the decision of the commission. Any person interested in a boundary change may[,
11 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100*] appeal the
12 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders.

13 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
14 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
15 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
16 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
17 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
18 copy of the final order to the person who actually filed the petition and to the affected city or district.

19 SECTION 17. ORS 203.200 is repealed.

20 Section 18. ORS 311.860 is amended to read:

21 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
22 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
23 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
24 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
25 pertaining to and in accordance with the following:

26 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
27 to or during the period of the construction.

28 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
29 for making the payments.

30 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
31 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the
32 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
33 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
34 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
35 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
36 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
37 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
38 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
39 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

40 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
41 county in which a taxing unit which is a party to the agreement is located.

1 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
2 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
3 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
4 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
5 under this section shall be as provided by ORS [~~34.010 to 34.100~~] 305.275.

6 Section 19. ORS 330.101 is amended to read:

7 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
8 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
9 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
10 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
11 declare that the change and proposals shall become effective as provided in ORS 330.103.

12 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
13 voters in a school district or area affected by the proposed change is filed with the district boundary board
14 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
15 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
16 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
17 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
18 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
19 the least populous district or area and progressing in order of population to the most populous district or area.
20 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
21 most populous district or area. The boundary board shall give notice of each election in the manner provided in
22 ORS 331.010.

23 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
24 change and the proposals shall be defeated, and the same or a substantially similar change combined with
25 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
26 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
27 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
28 ORS 330.103 without further elections.

29 (4) In an election to add districts to a union high school district, if the district boundary board determines
30 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
31 or more of the common school districts by a majority of the votes cast in each district, it shall declare the
32 proposition carried as to those common school districts only in which the proposition prevailed, and shall
33 immediately proceed to change the boundaries of the union high school district to include those districts
34 desiring to be added thereto.

35 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
36 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
37 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
38 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
39 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
40 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
41 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of

1 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
2 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
3 considering the testimony, the board shall confirm or reject the action of the boundary board and such
4 determination shall be final.

5 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
6 provided in ORS 183.482. [*A petition for a writ of review to review the action taken may be filed with the circuit*
7 *court within the time permitted by law.*]

8 Section 20. ORS 330.123 is amended to read:

9 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
10 annexation of less than an entire school district to another, the district school boards of the districts affected by
11 each change shall immediately after the change make an equitable division of the then existing assets and
12 liabilities between the districts affected by such change and provide the manner of consummating the division.

13 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
14 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
15 the school districts affected and an additional member appointed by the other appointees.

16 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
17 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
18 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
19 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
20 which the administrative office of the most populous school district is located. Within 10 days after receiving
21 such notice, the judge shall appoint the additional arbitrator.

22 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
23 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
24 equally apportioned among the districts concerned.

25 (5) The decision of the arbitrators is final and may be reviewed [*by a writ of review*] in the manner provided
26 in ORS 33.320 to 33.340.

27 (6) Assets include all school property and moneys belonging to the district at the time of the division.
28 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
29 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
30 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
31 property. The district retaining the real property shall pay the other districts concerned such sums as are
32 determined in accordance with the provisions of this section. All funds to be apportioned during the current
33 school year, after such division, shall be made in proportion to the resident average daily membership of the
34 districts divided, as shown by the report of such districts for the period ending the preceding June 30 as
35 certified by the districts to the administrative office of the county.

36 Section 21. ORS 330.557 is amended to read:

37 330.557. (1) Any person residing or owning or occupying real property within the area affected by any final
38 plan of reorganization adopted by the committee for the organization of an administrative school district may
39 petition the State Board of Education to have the plan revised or modified in particulars set forth in such
40 petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall

1 be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of
2 such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS
3 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The
4 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer
5 evidence and argument in opposition to such petition.

6 (2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to*
7 *34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision
8 or determination of the State Board of Education denying or overruling the petition of such petitioner to revise
9 or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition
10 for [*writ of*] review shall be filed with the [*circuit court within 30*] Court of Appeals within 60 days after the State
11 Board of Education approves the final plan of reorganization.

12 Section 22. ORS 341.573 is amended to read:

13 341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation
14 of territory and another community college district is affected, the boards of the districts shall make an
15 equitable division of the then existing assets and liabilities between the districts affected by such change and
16 provide the manner of consummating the division.

17 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
18 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
19 the affected districts and an additional member appointed by the other appointees.

20 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education
21 shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within
22 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the
23 judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice,
24 the judge shall appoint one additional arbitrator.

25 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's
26 service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally
27 apportioned among the districts concerned.

28 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the manner
29 provided in ORS 33.320 to 33.340.

30 (6) Assets include all property and moneys belonging to the district at the time of division. Liabilities
31 include all debts for which the respective districts in their corporate capacities are liable at the time of division.
32 In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided
33 between the districts in proportion to the last assessed value of the real and personal property. The district
34 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
35 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
36 division, shall be made in proportion to the number of persons in each district according to the latest federal
37 census.

38 Section 23. ORS 459.155 is amended to read:

39 459.155. Review of any action of the board taken pursuant to ORS [*459.140 to 459.155, or any ordinance*

1 *adopted pursuant thereto,]* 459.150 shall be taken solely and exclusively by writ of review in the manner set
2 forth in ORS 34.010 to 34.100.

3 Section 24. ORS 476.835 is amended to read:

4 476.835. (1) Within ~~[30]~~ 60 days after receiving written notice of the findings of the board, any fire service
5 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
6 with the ~~[Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the~~
7 ~~order of the board shall not take effect until the court decides the appeal]~~ Court of Appeals in the manner
8 provided for in ORS 183.482.

9 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
10 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
11 years after the date on which the order of the board revoking his accreditation became final.

12 Section 25. ORS 479.195 is amended to read:

13 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
14 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
15 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
16 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
17 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
18 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
19 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

20 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
21 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other

④ "SECTION 28. (1) Sections 1 to ~~8 and 11 and 12~~ of this Act are
repealed July 1, 1983. *6a*

"(2) Notwithstanding subsection (1) of this section, any
petition filed with the Land Use Board of Appeals before July 1,
1983, that is still pending on that date, shall be finally
determined by the Land Use Board of Appeals under sections 4 to 6
of this Act.

"SECTION 29. The provisions of sections 1 to 8 and 11 and 12 of
this Act first apply to petitions for review of land use decisions
to be filed on or after January 1, 1980. Any petition before the
Land Conservation and Development Commission or any circuit court
still pending on January 1, 1980, shall be finally determined by
the commission or the court in the manner provided in ORS 34.010 to
34.100, 197.300 to 197.315 before the effective date of this Act. *sect 4*

1 *adopted pursuant thereto,* 459.150 shall be taken solely and exclusively by writ of review in the manner set
2 forth in ORS 34.010 to 34.100.

3 Section 24. ORS 476.835 is amended to read:

4 476.835. (1) Within ~~[30]~~ 60 days after receiving written notice of the findings of the board, any fire service
5 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
6 with the *[Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the*
7 *order of the board shall not take effect until the court decides the appeal]* Court of Appeals in the manner
8 provided for in ORS 183.482.

9 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
10 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
11 years after the date on which the order of the board revoking his accreditation became final.

12 Section 25. ORS 479.195 is amended to read:

13 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
14 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
15 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
16 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
17 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
18 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
19 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

20 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
21 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
22 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
23 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
24 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
25 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
26 made.

27 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
28 immediate access to the circuit court for the county in which the building or other structure is located for
29 review of the order of exclusion or removal. Such access may be in the form of *[a writ of review or other]* any
30 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

31 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available
32 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
33 476.030.

34 SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

35 SECTION 27. This Act takes effect on January 1, 1980.

Subject
4

A-Engrossed
Senate Bill 435

Ordered by the Senate May 24
(Including Amendments by Senate May 24)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee Advisory
Committee on Writs of Review)

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.

[Revises manner for review of land use and certain other decisions. Appropriates \$50,000 out of General Fund to Court of Appeals for necessary administrative expenses.] Declares legislative policy. Creates Land Use Board of Appeals within the Department of Land Conservation and Development. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective January 1, 1980.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070, 181.350, 197.015, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300, 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

SECTION 1. Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979 Act to accomplish these objectives.

SECTION 2. (1) The Land Use Board of Appeals is established within the Department of Land Conservation and Development. With the approval of the Governor, the commission shall appoint a chief hearings referee and such other referees as the commission considers necessary to serve as members of the board. The members of the board shall hold their positions at the pleasure of the commission and their salaries shall be fixed by the commission unless otherwise provided by law.

(2) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

(3) The members of the board shall not be assigned any duties that would interfere with or influence the discharge of their duties under sections 2a and 4 of this 1979 Act.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION**.

1 hearings referee shall decide.

2 (3) The chief hearings referee shall apportion the business of the board among the members of the board.
3 Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues
4 arising under those petitions, except as provided in section 6 of this 1979 Act.

5 (4) The board shall adopt rules governing the conduct of review proceedings brought before it under
6 sections 4 to 6 of this 1979 Act.

7 SECTION 3. As used in sections 4 to 6 of this 1979 Act:

8 (1) "Land use decision" means:

9 (a) A final decision or determination made by a city, county or special district governing body that
10 concerns the adoption, amendment or application of:

11 (A) The state-wide planning goals;

12 (B) A comprehensive plan provision; or

13 (C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

14 (b) A final decision or determination of a state agency with respect to which the agency is required to apply
15 the state-wide planning goals.

16 (2) "Person" means any individual, partnership, corporation, association, governmental subdivision or
17 agency or public or private organization of any kind.

18 SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by
19 filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a
20 of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction
21 to review any land use decision of a city, county or special district governing body or a state agency in the
22 manner provided in sections 5 and 6 of this 1979 Act.

23 (2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected
24 or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in
25 subsection (4) of this section may petition the board for review of that decision or may, within a reasonable
26 time after a petition for review of that decision has been filed with the board, intervene in and be made a party
27 to any review proceeding pending before the board.

28 (3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may
29 petition the board for review of a quasi-judicial land use decision if the person:

30 (a) Appeared before the city, county or special district governing body or state agency orally or in writing;
31 and

32 (b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a
33 person whose interests are adversely affected or who was aggrieved by the decision.

34 (4) A notice of intent to appeal a land use decision shall be filed not later than 20 days after the date the
35 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
36 special district governing body or state agency and the applicant of record, if any, in the city, county or special
37 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
38 prescribed by rule of the board and shall be accompanied by a filing fee of \$200. In the event a petition for
39 review is not filed with the board as required in subsection (6) of this section, then the filing fee shall be
40 awarded to the city, county, special district or state agency as cost of preparation of the record.

1 (5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
2 may allow, the city, county or special district governing body or state agency shall transmit to the board the
3 original or a certified copy of the entire record, if any, of the proceeding under review. By stipulation of all
4 parties to the review proceeding the record may be shortened. The board may require or permit subsequent
5 corrections to the record.

6 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
7 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
8 reviewed and shall state:

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

10 (b) The date of the decision.

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

12 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In the
13 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
14 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
15 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
16 fact of the city, county or special district governing body or state agency for which there is substantial evidence
17 in the whole record.

18 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
19 not issued within 90 days, the decision being reviewed shall be considered affirmed.

20 (9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
21 including the cost of preparation of the record if the prevailing party is the city, county or special district
22 governing body or state agency whose decision is under review.

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

24 (11) The board shall provide for the publication of its orders which are of general public interest in the form
25 it deems best adapted for public convenience. Publications shall constitute the official reports of the board and
26 shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

27 **SECTION 5.** (1) Where a petition for review contains only allegations that a land use decision violates the
28 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
29 Act.

30 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
31 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
32 the decision.

33 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
34 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
35 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
36 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
37 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
38 issued until the commission has reviewed the recommendation of the board on the issues concerning the
39 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
40 incorporate the determination of the commission into the final order to be issued under this subsection.

41 (4) The board shall reverse or remand the land use decision under review only if:

1 (a) The board finds that the city, county or special district governing body:

2 (A) Exceeded its jurisdiction;

3 (B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
4 substantial rights of the petitioner;

5 (C) Made a decision that was not supported by substantial evidence in the whole record;

6 (D) Improperly construed the applicable law; or

7 (E) Made a decision that was unconstitutional; or

8 (b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
9 the city, county or special district governing body or state agency violated the state-wide planning goals.

10 (5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a
11 of this 1979 Act.

12 SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board
13 shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide
14 planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to
15 each party to the proceeding. The recommendation shall include a general summary of the evidence contained
16 in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the
17 state-wide planning goals. The recommendation shall also state whether the petition raises matters of such
18 importance that the commission should hear oral argument from the parties.

19 (2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's
20 recommendation, including that portion of the recommendation stating whether oral argument should be
21 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

22 (3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
23 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
24 recommends that oral argument not be allowed and the commission concurs with the board's recommendation.
25 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
26 which there is substantial evidence in the record. The commission shall issue its determination on the
27 recommendation of the board and return the determination to the board for inclusion in the board's order under
28 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
29 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
30 commission shall obtain the consent of the parties for a postponement.

31 (4) No determination of the commission issued under subsection (3) of this section is valid unless all
32 members of the commission have received the recommendation of the board in the matter and any exceptions
33 thereto that were timely filed with the board and at least four members of the commission concur in its action in
34 the matter.

35 (5) The commission may, in its sole discretion, continue its review of a petition alleging that a
36 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
37 state-wide goals, if the commission has received a request from the city or county which adopted such
38 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
39 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251. Following entry
40 of an order on the request for compliance acknowledgment, the commission shall resume its review of the
41 petition, unless the findings and conclusions in the acknowledgment order are dispositive of the matters raised

1 in the petition, in which event the commission may dismiss the allegations of violation of the state-wide
2 planning goals in the petition.

3 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
4 brought before it for determination under this section.

5 **SECTION 6a.** (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
6 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

7 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
8 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

9 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
10 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
11 petition shall be filed within 30 days only following the date the order upon which the petition is based is
12 served. Date of service shall be the date on which the board delivered or mailed its order.

13 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
14 shall be served by registered or certified mail upon the board, and all other parties of record in the board
15 proceeding.

16 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
17 upon a showing of:

18 (A) Irreparable injury to the petitioner; and

19 (B) A colorable claim of error in the order.

20 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
21 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
22 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
23 result from the granting of the stay.

24 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
25 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
26 Appeals within specified reasonable periods of time.

27 (d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules
28 as the court may establish.

29 (6) Within 20 days after service of the petition, or within such further time as the court may allow, the
30 board shall transmit to the court the original or a certified copy of the entire record of the proceeding under
31 review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party
32 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The
33 court may require or permit subsequent corrections or additions to the record when deemed desirable. Except
34 as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any
35 intervening party. However, the court may tax such costs and the cost of transcription of record to a party
36 filing a frivolous petition for review.

37 (7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the
38 court shall not substitute its judgment for that of the board as to any issue of fact.

39 (8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if
40 it finds:

1 (a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for
2 reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

3 (b) The order to be unconstitutional; or

4 (c) The order is not supported by substantial evidence in the whole record.

5 Section 7. ORS 197.015 is amended to read:

6 197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

7 (1) "Activity of state-wide significance" means a land conservation and development activity designated
8 pursuant to ORS 197.400.

9 (2) "Board" means the Land Use Board of Appeals or any member thereof.

10 [(2)] (3) "Commission" means the Land Conservation and Development Commission.

11 [(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

12 [(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the
13 governing body of a state agency, city, county or special district that interrelates all functional and natural
14 systems and activities relating to the use of lands, including but not limited to sewer and water systems,
15 transportation systems, educational systems, recreational facilities, and natural resources and air and water
16 quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area
17 covered and functional and natural activities and systems occurring in the area covered by the plan. "General
18 nature" means a summary of policies and proposals in broad categories and does not necessarily indicate
19 specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of
20 governments, semipublic and private agencies and the citizens of Oregon have been considered and
21 accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

22 [(5)] (6) "Department" means the Department of Land Conservation and Development.

23 [(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

24 [(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant
25 to ORS 197.005 to 197.430.

26 [(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation,
27 adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and
28 special districts in the preparation, adoption and implementation of plans, programs and regulations in
29 compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and
30 special districts to a single approach.

31 [(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized
32 and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port
33 districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit
34 districts and sanitary districts.

35 [(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state
36 officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95
37 as a regional clearinghouse.

38 Section 7a. ORS 197.252 is amended to read:

39 197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS
40 197.251, the commission may condition the compliance schedule for the city or county to direct the city or
41 county to apply specified goal requirements in approving or denying future land conservation and development

1 actions if the commission finds that past approvals or denials would have constituted violations of the
2 state-wide planning goals and:

3 (a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
4 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
5 achieving the state-wide planning goals through performance of the compliance schedule; or

6 (b) The commission finds that a past approval or denial was of more than local impact and substantially
7 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
8 compliance schedule.

9 (2) Conditions may be imposed under this section only at the time of:

10 (a) Annual phased review of the satisfactory progress of the city or county;

11 (b) Approval of a planning assistance grant agreement with the city or county; or

12 (c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by
13 the city or county.

14 (3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
15 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
16 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
17 Replacement Part) and 197.251 and 197.320.

18 Section 7b. 197.265 is amended to read:

19 197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review]
20 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
21 ORS 197.300] sections 4 to 6 of this 1979 Act.

22 (2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
23 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
24 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
25 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred
26 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
27 appropriated to the commission therefor.

28 Section 7c. ORS 197.395 is amended to read:

29 197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
30 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
31 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
32 and any other information required by the city or county as prescribed by rule of the commission.

33 (2) If the city or county finds after review of the application that the proposed activity complies with
34 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
35 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
36 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
37 approved.

38 (3) The city or county may prescribe and include in the permit any conditions or restrictions that it
39 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
40 the cities or counties affected by the activity.

(4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of this 1979 Act.

Section 8. ORS 34.020 is amended to read:

34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

Section 9. ORS 34.050 is amended to read:

34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be sufficient.]*

Section 9a. ORS 34.030 is amended to read:

34.030. The writ shall be allowed by the circuit court *[or judge thereof]*, or, in counties where the county court has judicial functions, by the county court *[or judge of the county]* wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed.

Section 10. ORS 34.070 is amended to read:

34.070. *[(1) Except as otherwise provided in subsection (2) of this section,]* In the discretion of the court *[or judge]* issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

[(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not require the defendant to desist from further proceedings regarding the project unless the undertaking required by ORS 34.055 has been given to the court or judge.]

Section 10a. ORS 215.416 is amended to read:

215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body.

(2) The hearings officer shall hold at least one public hearing on the application and within 90 days after receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding on the application may be extended for a reasonable period of time, as determined by the hearings officer, but not to exceed six months from the date of the first public hearing on the application.

(3) The application shall not be approved if the proposed use of land is found to be in conflict with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

1 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
2 persons as otherwise provided by law.

3 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
4 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
5 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
6 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
7 whole.

8 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
9 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the
10 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

11 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

12 Section 10b. ORS 227.173 is amended to read:

13 227.173. (1) Notice of approval or denial of a discretionary permit application shall be based on standards
14 and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
15 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
16 which the development would occur and to the development ordinance and comprehensive plan for the city as a
17 whole.

18 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
19 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
20 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
21 set forth.

22 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

23 Section 11. ORS 215.422 is amended to read:

24 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
25 commission or county governing body, or both, however the governing body prescribes. The appellate
26 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
27 review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not*
28 *limited to, the record of the hearings officer's action.]*

29 (2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010*
30 *to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

31 Section 12. ORS 227.180 is amended to read:

32 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
33 commission or council of the city, or both, however the council prescribes. The appellate authority on its own
34 motion may review the action. The procedure for such an appeal or review shall be prescribed by the council,
35 but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider
36 the record of the hearings officer's action. That record need not set forth evidence verbatim.

37 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change

1 may have the determination reviewed under [*ORS 34.010 to 34.100*] sections 4 to 6 of this 1979 Act.

2 Section 13. ORS 34.040 is amended to read:

3 34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other than a
4 district court or an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or
5 quasi-judicial functions appears to have:

6 (1) Exceeded its [*or his*] jurisdiction;

7 (2) Failed to follow the procedure applicable to the matter before it [*or him*];

8 (3) Made a finding or order not supported by [*reliable, probative and*] substantial evidence in the whole
9 record; [*or*]

10 (4) Improperly construed the applicable law; or

11 (5) Rendered a decision that is unconstitutional,

12 to the injury of some substantial [*right*] interest of the plaintiff, and not otherwise. The fact that the right of
13 appeal exists is no bar to the issuance of the writ.

14 Section 14. ORS 181.350 is amended to read:

15 181.350. The decisions of the trial board shall be subject to review by the [*circuit court of the county in*
16 *which the hearing was held*] Court of Appeals. The procedure for review shall be as provided in ORS [*34.010 to*
17 *34.100*] 183.482.

18 Section 15. ORS 198.785 is amended to read:

19 198.785. [*(1) A proceeding may not be maintained to contest the validity of a formation or change of*
20 *organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the*
21 *date the formation of the district or change of organization is complete.*]

22 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
23 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
24 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
25 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
26 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
27 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
28 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
29 [*to the Supreme Court*] as provided for appeals in other proceedings.

30 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
31 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

32 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
33 organization, the formation or change shall be considered complete and final upon the date the order of
34 formation or the order, resolution or statement announcing a change of organization is filed with the county
35 clerk as provided by ORS 198.780.

36 Section 16. ORS 199.461 is amended to read:

37 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

38 (a) Cause a study to be made of the proposal offered by the petition.

39 (b) Conduct one or more public hearings on the proposal.

40 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
41 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as

1 either to include or exclude territory. If the commission determines that any land has been improperly omitted
2 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
3 representative designated in writing, the commission shall continue the hearing on the petition and shall order
4 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
5 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
6 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
7 continued. The required notice may be waived by the nonappearing owner.

8 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
9 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
10 order stating the reasons for the decision of the commission. Any person interested in a boundary change may[,
11 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100*] appeal the
12 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders.

13 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
14 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
15 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
16 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
17 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
18 copy of the final order to the person who actually filed the petition and to the affected city or district.

19 SECTION 17. ORS 203.200 is repealed.

20 Section 18. ORS 311.860 is amended to read:

21 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
22 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
23 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
24 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
25 pertaining to and in accordance with the following:

26 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
27 to or during the period of the construction.

28 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
29 for making the payments.

30 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
31 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the
32 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
33 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
34 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
35 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
36 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
37 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
38 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
39 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

40 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
41 county in which a taxing unit which is a party to the agreement is located.

1 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
2 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
3 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
4 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
5 under this section shall be as provided by ORS ~~[34.010 to 34.100]~~ 305.275.

6 Section 19. ORS 330.101 is amended to read:

7 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
8 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
9 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
10 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
11 declare that the change and proposals shall become effective as provided in ORS 330.103.

12 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
13 voters in a school district or area affected by the proposed change is filed with the district boundary board
14 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
15 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
16 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
17 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
18 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
19 the least populous district or area and progressing in order of population to the most populous district or area.
20 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
21 most populous district or area. The boundary board shall give notice of each election in the manner provided in
22 ORS 331.010.

23 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
24 change and the proposals shall be defeated, and the same or a substantially similar change combined with
25 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
26 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
27 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
28 ORS 330.103 without further elections.

29 (4) In an election to add districts to a union high school district, if the district boundary board determines
30 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
31 or more of the common school districts by a majority of the votes cast in each district, it shall declare the
32 proposition carried as to those common school districts only in which the proposition prevailed, and shall
33 immediately proceed to change the boundaries of the union high school district to include those districts
34 desiring to be added thereto.

35 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
36 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
37 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
38 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
39 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
40 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
41 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of

1 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
2 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
3 considering the testimony, the board shall confirm or reject the action of the boundary board and such
4 determination shall be final.

5 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
6 provided in ORS 183.482. *[A petition for a writ of review to review the action taken may be filed with the circuit*
7 *court within the time permitted by law.]*

8 Section 20. ORS 330.123 is amended to read:

9 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
10 annexation of less than an entire school district to another, the district school boards of the districts affected by
11 each change shall immediately after the change make an equitable division of the then existing assets and
12 liabilities between the districts affected by such change and provide the manner of consummating the division.

13 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
14 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
15 the school districts affected and an additional member appointed by the other appointees.

16 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
17 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
18 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
19 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
20 which the administrative office of the most populous school district is located. Within 10 days after receiving
21 such notice, the judge shall appoint the additional arbitrator.

22 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
23 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
24 equally apportioned among the districts concerned.

25 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the manner provided
26 in ORS 33.320 to 33.340.

27 (6) Assets include all school property and moneys belonging to the district at the time of the division.
28 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
29 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
30 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
31 property. The district retaining the real property shall pay the other districts concerned such sums as are
32 determined in accordance with the provisions of this section. All funds to be apportioned during the current
33 school year, after such division, shall be made in proportion to the resident average daily membership of the
34 districts divided, as shown by the report of such districts for the period ending the preceding June 30 as
35 certified by the districts to the administrative office of the county.

36 Section 21. ORS 330.557 is amended to read:

37 330.557. (1) Any person residing or owning or occupying real property within the area affected by any final
38 plan of reorganization adopted by the committee for the organization of an administrative school district may
39 petition the State Board of Education to have the plan revised or modified in particulars set forth in such
40 petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall

1 be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of
2 such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS
3 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The
4 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer
5 evidence and argument in opposition to such petition.

6 (2) Any petitioner may petition [*the circuit court for writ of review in the manner provided by ORS 34.010 to*
7 *34.100 to review*] the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision
8 or determination of the State Board of Education denying or overruling the petition of such petitioner to revise
9 or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition
10 for [*writ of*] review shall be filed with the [*circuit court within 30*] Court of Appeals within 60 days after the State
11 Board of Education approves the final plan of reorganization.

12 Section 22. ORS 341.573 is amended to read:

13 341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation
14 of territory and another community college district is affected, the boards of the districts shall make an
15 equitable division of the then existing assets and liabilities between the districts affected by such change and
16 provide the manner of consummating the division.

17 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
18 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
19 the affected districts and an additional member appointed by the other appointees.

20 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education
21 shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within
22 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the
23 judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice,
24 the judge shall appoint one additional arbitrator.

25 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's
26 service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally
27 apportioned among the districts concerned.

28 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the manner
29 provided in ORS 33.320 to 33.340.

30 (6) Assets include all property and moneys belonging to the district at the time of division. Liabilities
31 include all debts for which the respective districts in their corporate capacities are liable at the time of division.
32 In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided
33 between the districts in proportion to the last assessed value of the real and personal property. The district
34 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
35 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
36 division, shall be made in proportion to the number of persons in each district according to the latest federal
37 census.

38 Section 23. ORS 459.155 is amended to read:

39 459.155. Review of any action of the board taken pursuant to ORS [*459.140 to 459.155, or any ordinance*

1 *adopted pursuant thereto,]* 459.150 shall be taken solely and exclusively by writ of review in the manner set
2 forth in ORS 34.010 to 34.100.

3 Section 24. ORS 476.835 is amended to read:

4 476.835. (1) Within ~~[30]~~ 60 days after receiving written notice of the findings of the board, any fire service
5 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
6 with the ~~[Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the~~
7 ~~order of the board shall not take effect until the court decides the appeal]~~ Court of Appeals in the manner
8 provided for in ORS 183.482.

9 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
10 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
11 years after the date on which the order of the board revoking his accreditation became final.

12 Section 25. ORS 479.195 is amended to read:

13 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
14 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
15 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
16 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
17 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
18 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
19 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

20 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
21 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
22 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
23 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
24 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
25 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
26 made.

27 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
28 immediate access to the circuit court for the county in which the building or other structure is located for
29 review of the order of exclusion or removal. Such access may be in the form of ~~[a writ of review or other]~~ any
30 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

31 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available
32 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
33 476.030.

34 SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

35 SECTION 27. This Act takes effect on January 1, 1980.

Senator A-ENGROSSER
Senate Bill 435

Sponsored by Representatives HANLON, GRANNELL (at the request of Law
Improvement Committee Advisory Committee on Writs of Review)

ordered by the Senate May 2, 1979
(including Amendments by Senate May 2, 1979)
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.

Revises manner for review of land use and certain other decisions. Appropriates \$50,000 out of General Fund to Court of Appeals for necessary administrative expenses.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.030, 34.040, 34.050, 34.070, 181.350, 197.300, 198.785, 199.461, 203.060, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.185, 341.573, 459.155, 476.835, 479.195, 553.360 and 553.815; repealing ORS 34.055 and 203.200; and appropriating money.

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

SECTION 1. Sections 2, 3 and 3a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 2. (1) Judicial review of any quasi-judicial decision by a city, county or special district governing body alleged to be in violation of the state-wide planning goals or the comprehensive plan, or zoning, subdivision or other land use ordinance or regulation of the city, county or special district is conferred upon the Court of Appeals.

(2) Any person who has standing may petition the Court of Appeals for judicial review under this section. A person shall be deemed to have standing to file such petition if the person:

(a) Appeared before the city, county or special district governing body in some manner, orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed, or was a person who has a substantial interest in the decision.

(3) The petition shall be filed not later than 30 days following the date the written decision sought to be reviewed is signed or the date the city, county or special district mails the notice of the decision to the petitioner and to persons who have requested such notice in writing not later than five days following the close of the final hearing regarding the decision, whichever last occurs.

(4) The petition shall state the nature of the decision the petitioner desires reviewed, and shall state by supporting affidavit, the facts showing how the petitioner has standing to have the decision reviewed. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit and any findings of facts made by a Master as provided in subsection (6) of this section, whether or not the petitioner has standing to have the decision reviewed. Copies of the petition shall be served upon the city, county or special district governing body, the Land Conservation and Development Commission, and the applicant of record in the city, county or special district governing body proceeding. Notice that the petition has been filed shall be served upon all participants below who requested such notice.

(5) Within 30 days after service of the petition, or within such further time as the court may allow, the city, county or special district governing body shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. In addition to exercising its discretion in awarding costs under subsection (9) of this section, the court

① SECTION 1a. It is the policy of the Legislative Assembly that
time is of the essence in reaching final decisions in matters
involving land use and that those decisions be made consistently
with sound principles governing judicial review. It is the intent
of the Legislative Assembly in enacting sections 1a to 6a of this
1979 Act to accomplish these objectives.

SECTION 2. (1) The Land Use Board of Appeals is established
within the Department of Land Conservation and Development. With
the approval of the Governor, the commission shall appoint a chief
hearings referee and such other referees as the commission
considers necessary to serve as members of the board. The members
of the board shall hold their positions at the pleasure of the
commission and their salaries shall be fixed by the commission
unless otherwise provided by law.

Each member shall have
the power to hear and issue orders on petitions filed with the
board and on all issues arising under those petitions, except as
provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of
review proceedings brought before it under sections 4 to 6 of this
1979 Act.

SECTION 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county
or special district governing body that concerns the adoption,
amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

1 "(2) Referees appointed under subsection (1) of this section
2 shall be members in good standing of the Oregon State Bar.

3 "(3) The members of the board shall not be assigned any duties
4 that would interfere with or influence the discharge of their
5 duties under sections 2a and 4 of this 1979 Act.

6 "SECTION 2a. (1) The board shall conduct review proceedings
7 upon petitions filed in the manner prescribed in section 4 of this
8 1979 Act.

9 "(2) In conducting review proceedings the members of the board
10 may sit together or separately as the chief hearings referee shall
11 decide.

12 "(3) The chief hearings referee shall apportion the business of
13 the board among the members of the board. Each member shall have
14 the power to hear and issue orders on petitions filed with the
15 board and on all issues arising under those petitions, except as
16 provided in section 6 of this 1979 Act.

17 "(4) The board shall adopt rules governing the conduct of
18 review proceedings brought before it under sections 4 to 6 of this
19 1979 Act.

20 "SECTION 3. As used in sections 4 to 6 of this 1979 Act:

21 "(1) "Land use decision" means:

22 "(a) A final decision or determination made by a city, county
23 or special district governing body that concerns the adoption,
24 amendment or application of:

25 "(A) The state-wide planning goals;

26 "(B) A comprehensive plan provision; or

1 "(C) A zoning, subdivision or other ordinance that implements a
2 comprehensive plan; or

3 "(b) A final decision or determination of a state agency with
4 respect to which the agency is required to apply the state-wide
5 planning goals.

6 "(2) 'Person' means any individual, partnership, corporation,
7 association, governmental subdivision or agency or public or
8 private organization of any kind.

9 "SECTION 4. (1) Review of land use decisions under sections 4
10 to 6 of this 1979 Act shall be commenced by filing a notice of
11 intent to appeal with the Land Use Board of Appeals. Subject to the
12 provisions of section 6a of this 1979 Act relating to judicial
13 review by the Court of Appeals, the board shall have exclusive
14 jurisdiction to review any land use decision of a city, county or
15 special district governing body or a state agency in the manner
16 provided in sections 5 and 6 of this 1979 Act.

17 "(2) Except as provided in subsection (3) of this section, any
18 person whose interests are adversely affected or who is aggrieved
19 by a land use decision and who has filed a notice of intent to
20 appeal as provided in subsection (4) of this section may petition
21 the board for review of that decision or may, within a reasonable
22 time after a petition for review of that decision has been filed
23 with the board, intervene in and be made a party to any review
24 proceeding pending before the board.

1 "(3) Any person who has filed a notice of intent to appeal as
2 provided in subsection (4) of this section may petition the board
3 for review of a quasi-judicial land use decision if the person:

4 "(a) Appeared before the city, county or special district
5 governing body or state agency orally or in writing; and

6 "(b) Was a person entitled as of right to notice and hearing
7 prior to the decision to be reviewed or was a person whose
8 interests are adversely affected or who was aggrieved by the
9 decision.

10 "(4) A notice of intent to appeal a land use decision shall be
11 filed not later than 20 days after the date the decision sought to
12 be reviewed becomes final. Copies of the notice shall be served
13 upon the city, county or special district governing body or state
14 agency and the applicant of record, if any, in the city, county or
15 special district governing body or state agency proceeding. The
16 notice shall be serve *9 served* and filed in the form and manner prescribed
17 by rule of the board and shall be accompanied by a filing fee of
18 \$200. In the event a petition for review is not filed with the
19 board as required in subsection (6) of this section, then the
20 filing fee shall be awarded to the city, county, special district
21 or state agency as cost of preparation of the record. X

22 "(5) Within 20 days after service of the notice of intent to
23 appeal, or within such further time as the board may allow, the
24 city, county or special district governing body or state agency
25 shall transmit to the board the original or a certified copy of the
26 entire record, if any, of the proceeding under review. By

1 stipulation of all parties to the review proceeding the record may
2 be shortened. The board may require or permit subsequent
3 corrections to the record.

4 9"(6) Within 20 days after the date of transmittal of the
5 record, a petition for review of the land use decision and
6 supporting brief shall be filed with the board. The petition shall
7 include a copy of the decision sought to be reviewed and shall
8 state:

9 9"(a) The facts that establish that the petitioner has standing.

10 9"(b) The date of the decision.

11 9"(c) The issues the petitioner seeks to have reviewed.

12 9"(7) Review of a decision under sections 4 to 6 of this 1979
13 Act shall be confined to the record, if any. In the case of
14 disputed allegations of unconstitutionality of the decision,
15 standing, ex parte contacts or other procedural irregularities not
16 shown in the record which, if proved, would warrant reversal or
17 remand, the board may take evidence and make findings of fact on
18 those allegations. The board shall be bound by any finding of fact
19 of the city, county or special district governing body or state
20 agency for which there is substantial evidence in the whole record.

21 9"(8) The board shall issue a final order within 90 days after
22 the date of filing of the petition. If the order is not issued
23 within 90 days, the decision being reviewed shall be considered
24 affirmed.

25 9"(9) Upon entry of its final order the board may, in its
26 discretion, award costs to the prevailing party including the cost of

preparation of the record if the prevailing party is the city, county or special district governing body or state agency whose decision is under review.

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

"(11) The board shall provide for the publication of its orders which are of general public interest in the form it deems best adapted for public convenience. Publications shall constitute the official reports of the board and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

"SECTION 5. (1) Where a petition for review contains only allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979 Act.

"(2) Where a petition for review contains no allegations that a land use decision violates the state-wide planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding the decision.

"(3) Where a petition for review contains both allegations that a land use decision violates the state-wide planning goals and other allegations of error, the board shall review the decision and proceed as provided in section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board concerning any issues not related to the state-wide planning goals shall be final,

but no final order shall be issued until the commission has reviewed the recommendation of the board on the issues concerning the state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall incorporate the determination of the commission into the final order to be issued under this subsection.

"(4) The board shall reverse or remand the land use decision under review only if:

"(a) The board finds that the city, county or special district governing body:

"(A) Exceeded its jurisdiction;

"(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

"(C) Made a decision that was not supported by substantial evidence in the whole record;

"(D) Improperly construed the applicable law; or

"(E) Made a decision that was unconstitutional; or

"(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that the city, county or special district governing body or state agency violated the state-wide planning goals.

"(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a of this 1979 Act.

"SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board shall prepare a

recommendation to the commission concerning any allegations of violation of the state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to each party to the proceeding. The recommendation shall include a general summary of the evidence contained in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the state-wide planning goals. The recommendation shall also state whether the petition raises matters of such importance that the commission should hear oral argument from the parties.

"(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's recommendation, including that portion of the recommendation stating whether oral argument should be allowed. The exceptions shall be filed with the board and submitted to the commission for review.

"(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The commission shall allow the parties an opportunity to present oral argument to the commission unless the board recommends that oral argument not be allowed and the commission concurs with the board's recommendation. The commission shall be bound by any finding of fact of the city, county, special district or state agency for which there is substantial evidence in the record. The commission shall issue its determination on the recommendation of the board and return the determination to the board for inclusion in the board's order under section 5 of this 1979 Act within such time as is necessary to

allow the board to prepare and issue a final order in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the commission shall obtain the consent of the parties for a postponement.

"(4) No determination of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the board in the matter and any exceptions thereto that were timely filed with the board and at least four members of the commission concur in its action in the matter.

"(5) The commission may, in its sole discretion, continue its review of a petition alleging that a comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the state-wide goals, if the commission has received a request from the city or county which adopted such comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251. Following entry of an order on the request for compliance acknowledgment, the commission shall resume its review of the petition, unless the findings and conclusions in the acknowledgment order are dispositive of the matters raised in the petition, in which event the commission may dismiss the allegations of violation of the state-wide planning goals in the petition.

9 (6) The commission shall adopt such rules as it considers
necessary for the conduct of review proceedings brought before it
for determination under this section. 2

7 SECTION 6a. (1) Any party to a proceeding before the Land Use
Board of Appeals under sections 4 to 6 of this 1979 Act, may seek
judicial review of a final order issued in those proceedings.

9 (2) Notwithstanding the provisions of ORS 183.480 to 183.500,
judicial review of orders issued under sections 4 to 6 of this 1979
Act shall be solely as provided in this section.

9 (3) Jurisdiction for judicial review of proceedings under
sections 4 to 6 of this 1979 Act is conferred upon the Court of
Appeals. Proceedings for review shall be instituted by filing a
petition in the Court of Appeals. The petition shall be filed
within 30 days only following the date the order upon which the
petition is based is served. Date of service shall be the date on
which the board delivered or mailed its order.

7 (4) The petition shall state the nature of the order the
8 petitioner desires reviewed. Copies of the petition shall be served
9 by registered or certified mail upon the board, and all other
0 parties of record in the board proceeding.

1 (5) (a) The filing of the petition shall not stay enforcement
2 of the board order, but the board may do so upon a showing of:

3 (A) Irreparable injury to the petitioner; and

4 (B) A colorable claim of error in the order.

5 (b) When a petitioner makes the showing required by paragraph
6 (a) of this subsection, the board shall grant the stay unless the

board determines that substantial public harm will result if the order is stayed. If the board denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

"(c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

"(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish.

"(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

"(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

"(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

"(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

"(b) The order to be unconstitutional; or

"(c) The order is not supported by substantial evidence in the whole record."

Delete lines 38 and 39.

On page 6, delete lines 1 through 3 and insert:

"Section 7. ORS 197.015 is amended to read:

"197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

"(1) 'Activity of state-wide significance' means a land conservation and development activity designated pursuant to ORS 197.400.

"(2) 'Board' means the Land Use Board of Appeals or any member thereof.

"[(2)] (3) 'Commission' means the Land Conservation and Development Commission.

1 "[(3)] (4) "Committee" means the Joint Legislative Committee on
Land Use.

2 "[(4)] (5) "Comprehensive plan" means a generalized,
coordinated land use map and policy statement of the governing body
of a state agency, city, county or special district that
interrelates all functional and natural systems and activities
relating to the use of lands, including but not limited to sewer
and water systems, transportation systems, educational systems,
recreational facilities, and natural resources and air and water
quality management programs. "Comprehensive" means all-inclusive,
both in terms of the geographic area covered and functional and
natural activities and systems occurring in the area covered by the
plan. "General nature" means a summary of policies and proposals in
broad categories and does not necessarily indicate specific
locations of any area, activity or use. A plan is "coordinated"
when the needs of all levels of governments, semipublic and private
agencies and the citizens of Oregon have been considered and
accommodated as much as possible. "Land" includes water, both
surface and subsurface, and the air.

0 "[(5)] (6) "Department" means the Department of Land
1 Conservation and Development.

2 "[(6)] (7) "Director" means the Director of the Department of
3 Land Conservation and Development.

4 "[(7)] (8) "Goals" mean the mandatory state-wide planning
5 standards adopted by the commission pursuant to ORS 197.005 to
6 197.430.

1 "[(8)] (9) "Guidelines" mean suggested approaches designed to
2 aid cities and counties in preparation, adoption and implementation
3 of comprehensive plans in compliance with goals and to aid state
4 agencies and special districts in the preparation, adoption and
5 implementation of plans, programs and regulations in compliance
6 with goals. Guidelines shall be advisory and shall not limit state
7 agencies, cities, counties and special districts to a single
8 approach.

9 "[(9)] (10) "Special district" means any unit of local
10 government, other than a city or county, authorized and regulated
11 by statute and includes, but is not limited to: Water control
12 districts, irrigation districts, port districts, regional air
13 quality control authorities, fire districts, school districts,
14 hospital districts, mass transit districts and sanitary districts.

15 "[(10)] (11) "Voluntary association of local governments" means
16 a regional planning agency in this state officially designated by
17 the Governor pursuant to the federal Office of Management and
18 Budget Circular A-95 as a regional clearinghouse.

19 "Section 7a. ORS 197.252 is amended to read:

20 "197.252. (1) Even if a city or county has not agreed to a
21 condition in a compliance schedule under ORS 197.251, the
22 commission may condition the compliance schedule for the city or
23 county to direct the city or county to apply specified goal
24 requirements in approving or denying future land conservation and
25 development actions if the commission finds that past approvals or

denials would have constituted violations of the state-wide planning goals and:

"(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in achieving the state-wide planning goals through performance of the compliance schedule; or

"(b) The commission finds that a past approval or denial was of more than local impact and substantially impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the compliance schedule.

"(2) Conditions may be imposed under this section only at the time of:

"(a) Annual phased review of the satisfactory progress of the city or county;

"(b) Approval of a planning assistance grant agreement with the city or county; or

"(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by the city or county.

"(3) Nothing in this section is intended to limit or modify the powers of the commission ^{or} on the board under ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement Part) and 197.251 and 197.320.

"Section 7b. 197.265 is amended to read:

197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review] proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to ORS 197.300] sections 4 to 6 of this 1979 Act.

"(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning, subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred by such city or county in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor.

"Section 7c. ORS 197.395 is amended to read:

"197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control which occurs upon federal land shall apply to the cities or counties in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the city or county as prescribed by rule of the commission.

"(2) If the city or county finds after review of the application that the proposed activity complies with state-wide goals and the comprehensive plans of the cities or counties

1 affected by the activity, it shall approve the application and
2 issue a permit for the activity to the person or public agency
3 applying therefor. Action shall be taken by the governing body
4 within 60 days of receipt of the application, or the application is
5 deemed approved.

6 "(3) The city or county may prescribe and include in the permit
7 any conditions or restrictions that it considers necessary to
8 assure that the activity complies with state-wide goals and the
9 comprehensive plans of the cities or counties affected by the
10 activity.

11 "(4) Actions pursuant to this section are subject to review
12 [pursuant to ORS 197.300] under sections 4 to 6 of this 1979 Act.

13 "Section 8. ORS 34.020 is amended to read:

14 "34.020. Except for a proceeding resulting in a land use
15 decision as defined in section 3 of this 1979 Act for which review
16 is provided in sections 4 to 6 of this 1979 Act, any party to any
17 process or proceeding before or by any inferior court, officer, or
18 tribunal may have the decision or determination thereof reviewed
19 for errors, as provided in ORS 34.010 to 34.100, and not otherwise.
20 Upon a review, the court may review any intermediate order
21 involving the merits and necessarily affecting the decision or
22 determination sought to be reviewed."

23 ~~22.300, or any ordinance or rule adopted pursuant thereto.~~

24 32 (b) Where a petition for review under this section alleges that city, county or special district
25 33 governing body has erred, based upon one or more of the grounds described in subsection (10) of
34 this section, in approving or authorizing a land development project, then before allowing the
35 petition containing a stay of proceedings authorized by subsection (12) of this section, the court
36 shall require the petitioner to give an undertaking with good and sufficient surety, to be approved by
37 the court, in an amount not to exceed \$1,000, to the effect that the petitioner will pay actual damages
38 of the developer in an amount not to exceed the amount of the undertaking if the court affirms the
39 decision approving or authorizing the project.

1 may tax the costs of transcription of record to a party filing a frivolous petition for review as the
2 court may determine.

3 (6) Review of a decision under this section shall be confined to the record; the court shall not
4 substitute its judgment for that of the city, county or special district governing body as to any issue
5 of fact. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte
6 contacts or other procedural irregularities not shown in the record which, if proved, would warrant
7 reversal or remand, the Court of Appeals pursuant to rules adopted by the court to carry out this
8 subsection, may refer the allegations to a Master appointed by the court to take evidence and make
9 findings of fact upon them.

10 (7) In accordance with the rules of the court, the Land Conservation and Development
11 Commission may submit to the court a brief upon any alleged violation of the state-wide planning
12 goals as applied to the facts before the court.

13 (8) In addition to transmitting the record as provided in subsection (5) of this section, the city,
14 county or special district governing body may participate in the proceedings under this section by
15 filing briefs or otherwise subject to rules adopted by the court.

16 (9) Upon judicial review of a decision under this section, the Court of Appeals may, in its
17 discretion, award costs, including the cost of preparing the record, to any party.

18 (10) The court may affirm, reverse or remand the decision. The court shall reverse or remand
19 the decision only if it finds that:

20 (a) The city, county or special district governing body exceeded its jurisdiction;

21 (b) The city, county or special district governing body failed to follow the procedure applicable
22 to the matter before it;

23 (c) The decision was not supported by substantial evidence in the whole record;

24 (d) The city, county or special district governing body improperly construed the applicable law;

25 or

26 (e) The decision is unconstitutional.

27 (11)(a) As used in this subsection:

28 (A) "Developer" means a person or persons proposing a land development project.

29 (B) "Land development project" or "project" means any proposed use of land for which
30 approval or authority is required pursuant to ORS 215.010 to 215.190, 215.402 to 215.422, 227.010 to
31 227.300, or any ordinance or rule adopted pursuant thereto.

32 (b) Where a petition for review under this section alleges that city, county or special district
33 governing body has erred, based upon one or more of the grounds described in subsection (10) of
34 this section, in approving or authorizing a land development project, then before allowing the
35 petition containing a stay of proceedings authorized by subsection (12) of this section, the court
36 shall require the petitioner to give an undertaking with good and sufficient surety, to be approved by
37 the court, in an amount not to exceed \$1,000, to the effect that the petitioner will pay actual damages
38 of the developer in an amount not to exceed the amount of the undertaking if the court affirms the
39 decision approving or authorizing the project.

1 (c) The petitioner may request a hearing on the amount of the undertaking required by the court
2 under paragraph (b) of this subsection. At such hearing the developer shall offer proof as to the
3 amount of his investment in the project and actual damages which may be caused by delaying the
4 land development project.

5 (d) Based upon the length of time which it may take for the court to render a judgment on the
6 matter being reviewed, the amount of the developer's investment in the project and the actual
7 damages which may be caused by delaying the project, the court shall set the amount of the
8 undertaking which the petitioner will be required to give.

9 (e) If upon a review, described in this section, the court affirms the decision approving or
10 authorizing the project, the court may award actual damages to the developer in an amount not to
11 exceed the amount of the undertaking required under this subsection.

12 (12) (a) Except as otherwise provided in paragraph (b) of this subsection, the court, in its
13 discretion, may require that the defendant desist from further proceedings in the matter to be
14 reviewed, whereupon the proceedings shall be stayed accordingly.

15 (b) The court reviewing a land development project as defined in subsection (11) of this section
16 may not require the defendant to desist from further proceedings regarding the project unless the
17 undertaking required by subsection (11) of this section has been given to the court.

18 **SECTION 3.** (1) If the Land Conservation and Development Commission has not issued an
19 order under ORS 197.251 granting compliance acknowledgment to a city or county, review of any
20 legislative decision regarding any comprehensive plan provision or any zoning, subdivision or other
21 ordinance or regulation alleged to be in violation of the state-wide planning goals shall be by the
22 Land Conservation and Development Commission in the manner provided for in ORS 197.300 to
23 197.315.

24 (2) If the commission has issued an order under ORS 197.251 granting compliance
25 acknowledgment to a city or county, review of:

26 (a) Any legislative decision regarding a major revision of a comprehensive plan alleged to be in
27 violation of the state-wide planning goals shall be by the Land Conservation and Development
28 Commission in the manner provided for in ORS 197.300 to 197.315.

29 (b) Any legislative decision regarding any zoning, subdivision or other ordinance or regulation
30 alleged to be in violation of the comprehensive plan shall be by the circuit court of the county in
31 which the decision was made in the manner provided in ORS chapter 28 or 32.

32 (3) Notwithstanding subsection (1) of this section, if a city or county received compliance
33 acknowledgment under ORS 197.251 at the time a decision of the city, county or special district is
34 pending with the Land Conservation and Development Commission under subsection (1) of this
35 section, then the commission may transfer review of the matter to the circuit court for proceedings
36 pursuant to paragraph (b) of subsection (2) of this section.

37 **SECTION 3a.** If the court or commission determines that a petition filed under any of the
38 provisions of this 1979 Act, ORS chapter 28, ORS 34.010 to 34.100 or 34.110 to 34.240, properly

1 belongs in a different forum, the court or commission shall transfer review of the petition to the
2 appropriate forum effective upon the date of filing of the original petition.

3 **SECTION 4.** Section 5 of this Act is added to and made a part of ORS 34.010 to 34.100.

4 **SECTION 5.** Notwithstanding ORS 34.030, judicial review of any quasi-judicial decision of a
5 city, county or special district governing body alleged to be in violation of the state-wide planning
6 goals or a comprehensive plan or zoning, subdivision or other land use ordinance or regulation shall
7 be by the Court of Appeals pursuant to section 2 of this 1979 Act.

8 Section 6. ORS 197.300 is amended to read:

9 197.300. (1) In the manner provided in ORS 197.305 to 197.315, the commission shall review
10 upon:

11 (a) Petition by a county, city, special district governing body, or state agency, a comprehensive
12 plan provision or any zoning, subdivision or other ordinance or regulation adopted by a state
13 agency, city, county or special district that the governing body or state agency considers to be in
14 conflict with state-wide planning goals approved under ORS 197.240.

15 (b) Petition by a city, county, special district governing body, or state agency, a land
16 conservation and development action taken by a state agency, city, county or special district that
17 the governing body or state agency considers to be in conflict with state-wide planning goals
18 approved under ORS 197.240.

19 (c) Petition by a state agency, city, county or special district, any county governing body action
20 that the state agency, city, county or special district considers to be improperly taken or outside the
21 scope of the governing body's authority under ORS 197.190, 197.225 and 197.260.

22 (d) Petition by any person or group of persons whose interests are substantially affected, a
23 legislative decision regarding any comprehensive plan provision or any zoning, subdivision or other
24 ordinance or regulation alleged to be in violation of state-wide planning goals approved under ORS
25 197.240 except as provided in paragraph (b) of subsection (2) of section 3 of this 1979 Act.

26 (2) A petition filed with the commission pursuant to subsection (1) of this section must be filed
27 not later than *[60 days after the date of the final adoption or approval of the action or comprehensive*
28 *plan upon which the petition is based]* 30 days following the date the written decision sought to be
29 reviewed is signed or the date the city, county, state agency or special district mails the notice to the
30 petitioner and to persons who have requested such notice in writing not later than five days following
31 the close of the final hearing regarding the decision, whichever last occurs.

32 *[(3) No city, county, state agency, special district or person shall have a petition pending before*
33 *the commission pursuant to paragraphs (a), (b) or (d) of subsection (1) of this section and at the*
34 *same time have a petition pending before a court which make the same or substantially similar*
35 *allegations of violations of any state-wide planning goal involving the same legal or factual issues. In*
36 *the case of such pending petitions with the commission and a court, the same or substantially similar*
37 *allegations in the later filing shall be stricken.]*

38 **SECTION 7.** In addition to and not in lieu of any other appropriation, there is appropriated to
39 the Court of Appeals for the biennium beginning July 1, 1979, out of the General Fund, the sum of

1 \$50,000 for paying necessary administrative expenses incurred in carrying out subsection (6) of
2 section 2 of this Act.

3 ~~SECTION 8. ORS 34.055 is repealed.~~

4 Section 9. ORS 34.050 is amended to read:

5 34.050. [*Except as provided in ORS 34.055,*] Before allowing the writ, the court [*or judge*] shall
6 require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of
7 \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the
8 defendant on the review. [*The court or judge may allow the undertaking to be given in a sum not less*
9 *than \$50, when it is probable that such sum will be sufficient.*]

10 Section 9a. ORS 34.030 is amended to read:

11 34.030. The writ shall be allowed by the circuit court [*or judge thereof*], or, in counties where the
12 county court has judicial functions, by the county court [*or judge of the county*] wherein the decision
13 or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the
14 decision or determination with convenient certainty, and setting forth the errors alleged to have
15 been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by
16 the certificate of an attorney to the effect that he has examined the process or proceeding, and the
17 decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not
18 be allowed unless the petition therefor is made within 60 days from the date of the decision or
19 determination sought to be reviewed.

20 Section 10. ORS 34.070 is amended to read:

21 34.070. [(1) *Except as otherwise provided in subsection (2) of this section,*] In the discretion of
22 the court [*or judge*] issuing the writ, the writ may contain a requirement that the defendant desist
23 from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed
24 accordingly.

25 [(2) *A court or judge issuing a writ involving a land development project as defined in ORS 34.055*
26 *may not require the defendant to desist from further proceedings regarding the project unless the*
27 *undertaking required by ORS 34.055 has been given to the court or judge.*]

28 Section 10a. ORS 215.416 is amended to read:

29 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
30 an owner of land may apply in writing to such persons as the governing body designates, for a
31 permit, in the manner prescribed by the governing body.

32 (2) The hearings officer shall hold at least one public hearing on the application and within 90
33 days after receiving it deny or approve it. However, with the agreement of the county and the
34 applicant, the proceeding on the application may be extended for a reasonable period of time, as
35 determined by the hearings officer, but not to exceed six months from the date of the first public
36 hearing on the application.

37 (3) The application shall not be approved if the proposed use of land is found to be in conflict
38 with the comprehensive plan of the county and other applicable ordinance provisions. The approval
39 may include such conditions as are authorized by statute or county legislation.

1 (4) Hearings under this section shall be held only after notice to the applicant and also notice to
2 other persons as otherwise provided by law.

3 (5) Approval or denial of a permit application shall be based on standards and criteria which
4 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county
5 and which shall relate approval or denial of a permit application to the zoning ordinance and
6 comprehensive plan for the area in which the proposed use of land would occur and to the zoning
7 ordinance and comprehensive plan for the county as a whole.

8 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement
9 that explains the criteria and standards considered relevant to the decision, states the facts relied
10 upon in rendering the decision and explains the justification for the decision based on the criteria,
11 standards and facts set forth.

12 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

13 Section 10b. ORS 227.173 is amended to read:

14 227.173. (1) Notice of approval or denial of a discretionary permit application shall be based on
15 standards and criteria, which shall be set forth in the development ordinance and which shall relate
16 approval or denial of a discretionary permit application to the development ordinance and to the
17 comprehensive plan for the area in which the development would occur and to the development
18 ordinance and comprehensive plan for the city as a whole.

19 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief
20 statement that explains the criteria and standards considered relevant to the decision, states the
21 facts relied upon in rendering the decision and explains the justification for the decision based on
22 the criteria, standards and facts set forth.

23 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

24 Section 11. ORS 215.422 is amended to read:

25 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the
26 planning commission or county governing body, or both, however the governing body prescribes.
27 The appellate authority on its own motion may review the action. The procedure and type of hearing
28 for such an appeal or review shall be prescribed by the governing body. *[An appeal or review*
29 *proceeding shall be based upon, but not limited to, the record of the hearings officer's action.]*

30 (2) A party aggrieved by the final determination may have the determination reviewed *[under:*
31 *in the manner provided in sections 4 to 6 of this 1979 Act*
[ORS 34.010 to 34.100] section 2 of this 1979 Act.

32 Section 12. ORS 227.180 is amended to read:

33 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the
34 planning commission or council of the city, or both, however the council prescribes. The appellate
35 authority on its own motion may review the action. The procedure for such an appeal or review shall
36 be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or
37 review the appellate authority shall consider the record of the hearings officer's action. That record
38 need not set forth evidence verbatim.

39 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or

sections 4 to 6 of this 1979 Act.
zone change may have the determination reviewed under *[ORS 34.010 to 34.100]* section 2 of this 1979 Act.

Section 13. ORS 34.040 is amended to read:

34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other than a district court or an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or quasi-judicial functions appears to have:

(1) Exceeded its *[or his]* jurisdiction;

(2) Failed to follow the procedure applicable to the matter before it *[or him]*;

(3) Made a finding or order not supported by *[reliable, probative and]* substantial evidence in the whole record; *[or]*

(4) Improperly construed the applicable law; or

(5) Rendered a decision that is unconstitutional,

to the injury of some substantial *[right]* interest of the plaintiff, and not otherwise. The fact that the right of appeal exists is no bar to the issuance of the writ.

SECTION 14. Section 15 of this Act is added to and made a part of ORS 221.310 to 221.390.

Null
SECTION 15. Nothing in ORS 221.310 to 221.390 shall be construed to prevent an interlocutory order which involves the constitutionality of a statute or ordinance or of the proceedings which may affect the final judgment from being reviewed in the circuit court for errors in law appearing upon the face of the judgment or the proceedings connected therewith, as provided in ORS 34.010 to 34.100.

14
Section 16. ORS 181.350 is amended to read:

181.350. The decisions of the trial board shall be subject to review by the *[circuit court of the county in which the hearing was held]* Court of Appeals. The procedure for review shall be as provided in ORS *[34.010 to 34.100]* 183.482.

15
Section 17. ORS 198.785 is amended to read:

198.785. *[(1) A proceeding may not be maintained to contest the validity of a formation or change of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the date the formation of the district or change of organization is complete.]*

16
[(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization, or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the circuit court that the petition for formation or change of organization is legally sufficient and the requisite number of signatures is attached, the circuit court shall direct the county board to call the election. The suit shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal *[to the Supreme Court]* as provided for appeals in other proceedings.

1 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding
2 may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

3 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or
4 change of organization, the formation or change shall be considered complete and final upon the
5 date the order of formation or the order, resolution or statement announcing a change of
6 organization is filed with the county clerk as provided by ORS 198.780.

7 Section 18. ORS 199.461 is amended to read:

8 199.461. (1) When the boundary commission receives a petition in a boundary change
9 proceeding, it shall:

10 (a) Cause a study to be made of the proposal offered by the petition.

11 (b) Conduct one or more public hearings on the proposal.

12 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a
13 petition for formation or a minor boundary change of a city or district or in a petition for
14 consolidation of cities so as either to include or exclude territory. If the commission determines that
15 any land has been improperly omitted from the proposal and that the owner of the land has not
16 appeared at the hearing, in person or by his representative designated in writing, the commission
17 shall continue the hearing on the petition and shall order notice given to the nonappearing owner
18 requiring him to appear before the commission and show cause, if any, why his land should not be
19 included in the proposal. Notice to nonappearing owners may be given by personal service or by
20 letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
21 continued. The required notice may be waived by the nonappearing owner.

22 (3) On the basis of the study and after hearing, the boundary commission shall approve the
23 proposed boundary change as presented or as modified by the commission or disapprove the
24 proposed change, by an order stating the reasons for the decision of the commission. Any person
25 interested in a boundary change may[, *within 30 days after the date of a final order, appeal the order*
26 *for review under ORS 34.010 to 34.100*] **appeal the order in accordance with the provisions of ORS**
27 **183.480 to 183.500 governing judicial review of contested cases.**

28 (4) Immediately after the effective date of a final order entered under subsection (3) of this
29 section and a proclamation declaring a minor boundary change approved if any is entered under
30 subsection (3) of ORS 199.505, the commission shall file a copy of the order and proclamation, if
31 any, with the Secretary of State, the assessor and the county clerk of each county in which the
32 affected territory, city or district is located, and the clerk of the affected city or district. If the
33 commission disapproves a minor boundary change, it shall send a copy of the final order to the
34 person who actually filed the petition and to the affected city or district.

35 Section 19. ORS 203.060 is amended to read:

36 203.060. **Except as otherwise provided in sections 2 and 3 of this 1979 Act:**

37 (1) **County legislative decisions, including ordinances adopted under ORS 203.030 to 203.065,**
38 **shall be subject to judicial review and invalidation under the provisions of ORS chapter 28 on account**

1 of unreasonableness, procedural error in adoption, or conflict with paramount state law or
2 constitutional provision.

3 (2) County quasi-judicial decisions alleged to be in error upon one or more of the grounds described
4 in subsections (1) to (5) of ORS 34.040 shall be subject to judicial review as provided in ORS 34.010 to
5 34.100.

6 (3) All other county decisions shall be subject to judicial review as provided in ORS 34.110 to
7 34.240.

8 SECTION 20. ORS 203.200 is repealed.

9 Section 21. ORS 311.860 is amended to read:

10 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the
11 necessary preliminary construction permits or certificates and the governing body of any taxing unit
12 obligated to furnish services and facilities in the area in which the construction is to take place may
13 enter into an agreement to carry out the purposes of ORS 311.850. An agreement entered into under
14 this section shall contain provisions pertaining to and in accordance with the following:

15 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit
16 prior in time to or during the period of the construction.

17 (b) The amounts of the payments to be made by the person proposing to construct the facility
18 and the dates for making the payments.

19 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of
20 the taxing unit entering into the agreement for each year of a period of years, not to exceed 10,
21 commencing on or in the course of completion of the construction of the facility. The amount of
22 reduction allowed by the agreement shall be a percentage amount, not to exceed 50 percent, of the
23 true cash value of the facility as of any assessment date affected by the reduction, and may be fixed
24 or graduated over the period of years for which the reduction is allowed. The total reduction
25 allowed by the agreement shall result in a tax benefit for the facility that is estimated to be
26 equivalent to the total amount of payments made under the agreement to the taxing unit, plus
27 interest at the maximum rate of eight percent per annum from the date of each payment; however,
28 in no event shall the total reduction in true cash value during the period of years of reduction cause a
29 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

30 (2) A copy of an agreement entered into under this section shall be filed with the county assessor
31 of each county in which a taxing unit which is a party to the agreement is located.

32 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the
33 governing body of the taxing unit that is a party to the agreement may certify to the county assessor
34 that all payments have been made to the taxing unit in accordance with the terms of the agreement.
35 The county assessor shall not grant the exemption for any year unless he has received such
36 certificate. Review of denial of an exemption under this section shall be as provided by ORS [34.010
37 to 34.100] 305.275.

38 Section 22. ORS 330.101 is amended to read:

39 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in

1 the manner provided in ORS 331.010 of the proposed change and the proposals and the session of
2 the board at which they will be considered. If no remonstrance is submitted requiring an election as
3 provided in subsection (2) of this section and if the board makes the findings set forth in subsection
4 (2) of ORS 330.090, the board shall declare that the change and proposals shall become effective as
5 provided in ORS 330.103.

6 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the
7 qualified voters in a school district or area affected by the proposed change is filed with the district
8 boundary board within 20 days after the date set to consider the proposed change and the proposals
9 and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
10 submit the question of the proposed change and the proposals to the qualified voters of each
11 affected district or area from which a remonstrance was filed as nearly as possible in the manner
12 prescribed for annual school elections with the district boundary board acting in the place of the
13 local school districts. Separate elections shall be held in sequence, commencing with the least
14 populous district or area and progressing in order of population to the most populous district or
15 area. If the majority of votes in each election favor the change and the proposals, an election shall
16 be held in the next most populous district or area. The boundary board shall give notice of each
17 election in the manner provided in ORS 331.010.

18 (3) If the majority of votes cast in any affected district or area oppose the change and the
19 proposals, the change and the proposals shall be defeated, and the same or a substantially similar
20 change combined with substantially similar proposals shall not be considered until 12 months have
21 elapsed from the date of the election at which the change and the proposals were defeated. If the
22 vote is favorable in all remonstrating districts or areas, the district boundary board shall declare the
23 change and proposals effective as provided in ORS 330.103 without further elections.

24 (4) In an election to add districts to a union high school district, if the district boundary board
25 determines that the proposition carried in the union high school district by a majority of votes cast,
26 and also carried in one or more of the common school districts by a majority of the votes cast in
27 each district, it shall declare the proposition carried as to those common school districts only in
28 which the proposition prevailed, and shall immediately proceed to change the boundaries of the
29 union high school district to include those districts desiring to be added thereto.

30 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition
31 signed by 100 percent of the owners of record or the contract purchasers of real property and 100
32 percent of the qualified voters of an area requesting that the area be annexed to another school
33 district to which it is contiguous is presented to the district boundary board, the board, if it makes
34 the findings set forth in subsection (2) of ORS 330.090, shall order the change to be made effective
35 on the following May 31, providing a remonstrance signed by the school boards of any affected
36 district or by the original petitioners is not presented to the State Board of Education within 30 days
37 of the date of the order. If such a remonstrance is presented to the State Board of Education, the
38 board shall set a time for a hearing, give notice of the same, and hear the case in the area affected.
39 If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After

1 considering the testimony, the board shall confirm or reject the action of the boundary board and
2 such determination shall be final.

3 (6) **Judicial review of an action taken under this section shall be by the Court of Appeals in the**
4 **manner provided in ORS 183.482.** *[A petition for a writ of review to review the action taken may be*
5 *filed with the circuit court within the time permitted by law.]*

6 Section 23. ORS 330.123 is amended to read:

7 330.123. (1) When changes in school district boundaries are made by the detachment of territory
8 or annexation of less than an entire school district to another, the district school boards of the
9 districts affected by each change shall immediately after the change make an equitable division of
10 the then existing assets and liabilities between the districts affected by such change and provide the
11 manner of consummating the division.

12 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be
13 decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by
14 each of the boards of the school districts affected and an additional member appointed by the other
15 appointees.

16 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
17 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators
18 selected fail to appoint the additional arbitrator within 30 days after the appointment of the
19 arbitrator last appointed, the Superintendent of Public Instruction shall notify the judge of the
20 circuit court senior in service of the county in which the administrative office of the most populous
21 school district is located. Within 10 days after receiving such notice, the judge shall appoint the
22 additional arbitrator.

23 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each
24 day's service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus
25 incurred shall be equally apportioned among the districts concerned.

26 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the
27 manner provided in ORS 33.320 to 33.340.

28 (6) Assets include all school property and moneys belonging to the district at the time of the
29 division. Liabilities include all debts for which the respective districts in their corporate capacities
30 are liable at the time of division. In determining the assets, school property shall be estimated at its
31 fair value. The assets and liabilities shall be divided between the districts in proportion to the last
32 assessed value of the real and personal property. The district retaining the real property shall pay
33 the other districts concerned such sums as are determined in accordance with the provisions of this
34 section. All funds to be apportioned during the current school year, after such division, shall be
35 made in proportion to the resident average daily membership of the districts divided, as shown by
36 the report of such districts for the period ending the preceding June 30 as certified by the districts to
37 the administrative office of the county.

38 Section 24. ORS 330.557 is amended to read:

39 330.557. (1) Any person residing or owning or occupying real property within the area affected

1 by any final plan of reorganization adopted by the committee for the organization of an
 2 administrative school district may petition the State Board of Education to have the plan revised or
 3 modified in particulars set forth in such petition. Such petition shall be filed with the secretary of the
 4 State Board of Education and a copy thereof shall be delivered to the secretary of the committee in
 5 person or by certified mail within 30 days after adoption of such plan by the committee. The
 6 petitioner shall have the right to be heard at the hearing provided by ORS 330.560 and to be
 7 represented by counsel and to offer evidence and argument in support of such petition. The
 8 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel
 9 and to offer evidence and argument in opposition to such petition.

10 (2) Any petitioner may petition *[the circuit court for writ of review in the manner provided by*
 11 *ORS 34.010 to 34.100 to review]* the Court of Appeals in the manner provided by ORS 183.482 for
 12 judicial review of the decision or determination of the State Board of Education denying or
 13 overruling the petition of such petitioner to revise or modify the final plan of reorganization in the
 14 particulars set forth in the petition, provided that such petition for *[writ of]* review shall be filed with
 15 the *[circuit court within 30]* Court of Appeals within 60 days after the State Board of Education
 16 approves the final plan of reorganization.

17 Section 25. ORS 341.185 is amended to read:

18 341.185. Any qualified voter of a district aggrieved by the adjustment of or failure to adjust
 19 boundaries of a zone pursuant to subsection (1) of ORS 341.175 on the basis that population is not as
 20 nearly equal as is feasible is entitled to appear before the board at a public hearing to present his
 21 case. If the board refuses to make the requested adjustment in the boundaries, he may appeal from
 22 the decision of the board *[to the circuit court. The appeal shall be by writ of review]* to the Court of
 23 Appeals in the manner provided in ORS 183.482.

24 Section 26. ORS 341.573 is amended to read:

25 341.573. (1) When changes in district boundaries are made by the detachment of territory or an
 26 annexation of territory and another community college district is affected, the boards of the districts
 27 shall make an equitable division of the then existing assets and liabilities between the districts
 28 affected by such change and provide the manner of consummating the division.

29 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be
 30 decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by
 31 each of the boards of the affected districts and an additional member appointed by the other
 32 appointees.

33 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of
 34 Education shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the
 35 additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the State
 36 Board of Education shall notify the judge senior in service of the circuit court of the principal
 37 county. Within 10 days after receiving such notice, the judge shall appoint one additional arbitrator.

1 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each
2 day's service, and necessary expenses, while serving in his official capacity. Expenses thus incurred
3 shall be equally apportioned among the districts concerned.

4 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the
5 manner provided in ORS 33.320 to 33.340.

6 (6) Assets include all property and moneys belonging to the district at the time of division.
7 Liabilities include all debts for which the respective districts in their corporate capacities are liable
8 at the time of division. In determining the assets, property shall be estimated at its fair value. The
9 assets and liabilities shall be divided between the districts in proportion to the last assessed value of
10 the real and personal property. The district retaining the real property shall pay the other districts
11 concerned such sums as are determined in accordance with the provisions of this section. All funds
12 to be apportioned during the current fiscal year, after such division, shall be made in proportion to
13 the number of persons in each district according to the latest federal census.

14 Section ²³27. ORS 459.155 is amended to read:

15 459.155. Review of any action of the board taken pursuant to ORS [*459.140 to 459.155, or any*
16 *ordinance adopted pursuant thereto,*] 459.150 shall be taken solely and exclusively by writ of review
17 in the manner set forth in ORS 34.010 to 34.100.

18 Section ²⁴28. ORS 476.835 is amended to read:

19 476.835. (1) Within [~~30~~] 60 days after receiving written notice of the findings of the board, any
20 fire service personnel aggrieved by the findings and order of the board may file an appeal from the
21 final order of the board with the [*Circuit Court in Marion County. The appeal shall be heard on a*
22 *writ of review. If an appeal is filed, the order of the board shall not take effect until the court decides*
23 *the appeal*] Court of Appeals in the manner provided for in ORS 183.482.

24 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820
25 and 476.825 and subsection (1) of this section may reapply for accreditation at any time after the
26 expiration of two years after the date on which the order of the board revoking his accreditation
27 became final.

28 Section ²⁵29. ORS 479.195 is amended to read:

29 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and
30 every place of public assembly not having fixed seats and having a capacity of more than 100
31 persons shall post and keep posted a notice of the maximum number of persons allowed at any one
32 time as established by regulations of the State Fire Marshal or by the approved authority when such
33 public assemblies are located within the jurisdiction of a governmental subdivision granted the
34 exemption provided by subsection (4) of ORS 476.030. All such capacity notices shall be on a form
35 approved or provided by the State Fire Marshal and shall be securely fixed and posted in a
36 conspicuous place so as to be readily visible to the occupants of such place of assembly.

37 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the
38 approved authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection
39 finds a building or other structure described in subsection (1) of this section, to be occupied by a

1 number of persons in excess of the maximum number of persons allowed at any one time as set
2 forth in the capacity notice, the State Fire Marshal, or his deputies, assistants as defined in ORS
3 476.060, or the approved authority, as provided in subsection (4) of ORS 476.030, may close the
4 building or other structure for use or occupancy until compliance has been made.

5 (3) The owner of any building or other structure closed under subsection (2) of this section shall
6 have immediate access to the circuit court for the county in which the building or other structure is
7 located for review of the order of exclusion or removal. Such access may be in the form of [*a writ of*
8 *review or other*] any appropriate judicial proceeding and shall be given priority over all other cases
9 on the docket of the circuit court.

10 (4) The closure provided for in subsection (2) of this section shall not exclude any other
11 remedies available to the State Fire Marshal, his deputies, or the approved authority, as provided by
12 subsection (4) of ORS 476.030.

13 (2) Section 30 ORS 553.260 is amended to read:

14 (2) "SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315
are repealed.

15 "SECTION 27. This Act takes effect on January 1, 1980."

16 way and other works within or without the limits of the
17 subdistrict, have filed their report with the court and that the owner of each tract of land included
18 therein is given notice that he may examine the report and file objections to the report or to any
19 determination of benefits or damages on or before the date set for the hearing.

20 (2) The district or any person owning or having any interest in the lands described, or the owner
21 of any tract of land within the subdistrict for which the appraisals were made, may file exceptions to
22 the report of the appraisers or to any determination of benefits or damages determined to accrue to
23 lands upon the construction of the proposed works or to the determination of the cash value of the
24 lands necessary to be taken for rights of way or other works.

25 (3) The court shall hear all objections and make such amendments and modifications to the
26 report of the appraisers as to the court may seem equitable. Upon the conclusion of the hearing the
27 court shall enter its order in which shall be given the description of each tract of land appraised, the
28 value of the benefits and damages which the court determines will accrue to each tract, and the
29 value of lands necessary to be taken for rights of way and other works.

30 (4) Any party interested may take an appeal from such order in the manner set forth in ORS
31 [553.815] chapter 35. The order shall be filed in the office of the county clerk of the county in which
32 the court is situated, and a certified copy of the order shall be filed with the county clerk of each
33 other county in which lands within the subdistrict are located. Notwithstanding ORS 2.516, the only
34 review which shall be allowed from the decision of the circuit court under ORS chapter 35 shall be by
35 petition for review, to the Supreme Court which petition shall be filed within 30 days after the date of
36 the decision in such manner as provided by the rules of the Supreme Court.

number of persons in excess of the maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4) of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been made.

(3) The owner of any building or other structure closed under subsection (2) of this section shall have immediate access to the circuit court for the county in which the building or other structure is located for review of the order of exclusion or removal. Such access may be in the form of *[a writ of review or other]* any appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

(4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS 476.030.

2 Section 30. ORS 553.360 is amended to read:

553.360. (1) After the filing of the report of the appraisers, the court shall enter an order fixing the time and place for a hearing on the report and directing the secretary of the district to give notice of the hearing by publication. The notice shall contain a description of each tract of land appraised, together with the names of the owners, if known, and shall state that the appraisers appointed to assess the benefits and damages to the lands described and to appraise the cash value of the lands necessary to be taken for rights of way and other works within or without the limits of the subdistrict, have filed their report with the court and that the owner of each tract of land included therein is given notice that he may examine the report and file objections to the report or to any determination of benefits or damages on or before the date set for the hearing.

(2) The district or any person owning or having any interest in the lands described, or the owner of any tract of land within the subdistrict for which the appraisals were made, may file exceptions to the report of the appraisers or to any determination of benefits or damages determined to accrue to lands upon the construction of the proposed works or to the determination of the cash value of the lands necessary to be taken for rights of way or other works.

(3) The court shall hear all objections and make such amendments and modifications to the report of the appraisers as to the court may seem equitable. Upon the conclusion of the hearing the court shall enter its order in which shall be given the description of each tract of land appraised, the value of the benefits and damages which the court determines will accrue to each tract, and the value of lands necessary to be taken for rights of way and other works.

(4) Any party interested may take an appeal from such order in the manner set forth in ORS ~~553.815~~ chapter 35. The order shall be filed in the office of the county clerk of the county in which the court is situated, and a certified copy of the order shall be filed with the county clerk of each other county in which lands within the subdistrict are located. Notwithstanding ORS 2.516, the only review which shall be allowed from the decision of the circuit court under ORS chapter 35 shall be by petition for review, to the Supreme Court which petition shall be filed within 30 days after the date of the decision in such manner as provided by the rules of the Supreme Court.

1 Section 31. ORS 553.815 is amended to read:

2 553.815. Owners of any property against which an assessment or tax has been levied may seek a
3 review thereof under ORS 34.010 to 34.100. Notwithstanding ORS 2.516, the only review which shall
4 be allowed from the decision of the circuit court under ORS 34.010 to 34.100 shall be by petition for
5 review to the Supreme Court which petition shall be filed within 30 days after the date of the decision in
6 such manner as provided by the rules of the Supreme Court.

Senate Bill 435

Sponsored by Representatives HANLON, GRANNELL (at the request of Law Improvement Committee Advisory Committee on Writs of Review)

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.

Revises manner for review of land use and certain other decisions. Appropriates \$50,000 out of General Fund to Court of Appeals for necessary administrative expenses.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending ORS 34.030, 34.040, 34.050, 34.070, 181.350, 197.300, 198.785, 199.461, 203.060, 215.416, 215.422, 227.173, 227.180, 311.860, 330.101, 330.123, 330.557, 341.185, 341.573, 459.155, 476.835, 479.195, 553.360 and 553.815; repealing ORS 34.055 and 203.200; and appropriating money.

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

SECTION 1. Sections 2, 3 and 3a of this Act are added to and made a part of ORS 197.005 to 197.430.

SECTION 2. (1) Judicial review of any quasi-judicial decision by a city, county or special district governing body alleged to be in violation of the state-wide planning goals or the comprehensive plan, or zoning, subdivision or other land use ordinance or regulation of the city, county or special district is conferred upon the Court of Appeals.

(2) Any person who has standing may petition the Court of Appeals for judicial review under this section. A person shall be deemed to have standing to file such petition if the person:

(a) Appeared before the city, county or special district governing body in some manner, orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed, or was a person who has a substantial interest in the decision.

(3) The petition shall be filed not later than 30 days following the date the written decision sought to be reviewed is signed or the date the city, county or special district mails the notice of the decision to the petitioner and to persons who have requested such notice in writing not later than five days following the close of the final hearing regarding the decision, whichever last occurs.

(4) The petition shall state the nature of the decision the petitioner desires reviewed, and shall state by supporting affidavit, the facts showing how the petitioner has standing to have the decision reviewed. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit and any findings of facts made by a Master as provided in subsection (6) of this section, whether or not the petitioner has standing to have the decision reviewed. Copies of the petition shall be served upon the city, county or special district governing body, the Land Conservation and Development Commission, and the applicant of record in the city, county or special district governing body proceeding. Notice that the petition has been filed shall be served upon all participants below who requested such notice.

(5) Within 30 days after service of the petition, or within such further time as the court may allow, the city, county or special district governing body shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. In addition to exercising its discretion in awarding costs under subsection (9) of this section, the court

1 may tax the costs of transcription of record to a party filing a frivolous petition for review as the
2 court may determine.

3 (6) Review of a decision under this section shall be confined to the record; the court shall not
4 substitute its judgment for that of the city, county or special district governing body as to any issue
5 of fact. In the case of disputed allegations of unconstitutionality of the decision, standing, ex parte
6 contacts or other procedural irregularities not shown in the record which, if proved, would warrant
7 reversal or remand, the Court of Appeals pursuant to rules adopted by the court to carry out this
8 subsection, may refer the allegations to a Master appointed by the court to take evidence and make
9 findings of fact upon them.

10 (7) In accordance with the rules of the court, the Land Conservation and Development
11 Commission may submit to the court a brief upon any alleged violation of the state-wide planning
12 goals as applied to the facts before the court.

13 (8) In addition to transmitting the record as provided in subsection (5) of this section, the city,
14 county or special district governing body may participate in the proceedings under this section by
15 filing briefs or otherwise subject to rules adopted by the court.

16 (9) Upon judicial review of a decision under this section, the Court of Appeals may, in its
17 discretion, award costs, including the cost of preparing the record, to any party.

18 (10) The court may affirm, reverse or remand the decision. The court shall reverse or remand
19 the decision only if it finds that:

20 (a) The city, county or special district governing body exceeded its jurisdiction;

21 (b) The city, county or special district governing body failed to follow the procedure applicable
22 to the matter before it;

23 (c) The decision was not supported by substantial evidence in the whole record;

24 (d) The city, county or special district governing body improperly construed the applicable law;

25 or

26 (e) The decision is unconstitutional.

27 (11)(a) As used in this subsection:

28 (A) "Developer" means a person or persons proposing a land development project.

29 (B) "Land development project" or "project" means any proposed use of land for which
30 approval or authority is required pursuant to ORS 215.010 to 215.190, 215.402 to 215.422, 227.010 to
31 227.300, or any ordinance or rule adopted pursuant thereto.

32 (b) Where a petition for review under this section alleges that city, county or special district
33 governing body has erred, based upon one or more of the grounds described in subsection (10) of
34 this section, in approving or authorizing a land development project, then before allowing the
35 petition containing a stay of proceedings authorized by subsection (12) of this section, the court
36 shall require the petitioner to give an undertaking with good and sufficient surety, to be approved by
37 the court, in an amount not to exceed \$1,000, to the effect that the petitioner will pay actual damages
38 of the developer in an amount not to exceed the amount of the undertaking if the court affirms the
39 decision approving or authorizing the project.

1 (c) The petitioner may request a hearing on the amount of the undertaking required by the court
2 under paragraph (b) of this subsection. At such hearing the developer shall offer proof as to the
3 amount of his investment in the project and actual damages which may be caused by delaying the
4 land development project.

5 (d) Based upon the length of time which it may take for the court to render a judgment on the
6 matter being reviewed, the amount of the developer's investment in the project and the actual
7 damages which may be caused by delaying the project, the court shall set the amount of the
8 undertaking which the petitioner will be required to give.

9 (e) If upon a review, described in this section, the court affirms the decision approving or
10 authorizing the project, the court may award actual damages to the developer in an amount not to
11 exceed the amount of the undertaking required under this subsection.

12 (12) (a) Except as otherwise provided in paragraph (b) of this subsection, the court, in its
13 discretion, may require that the defendant desist from further proceedings in the matter to be
14 reviewed, whereupon the proceedings shall be stayed accordingly.

15 (b) The court reviewing a land development project as defined in subsection (11) of this section
16 may not require the defendant to desist from further proceedings regarding the project unless the
17 undertaking required by subsection (11) of this section has been given to the court.

18 **SECTION 3.** (1) If the Land Conservation and Development Commission has not issued an
19 order under ORS 197.251 granting compliance acknowledgment to a city or county, review of any
20 legislative decision regarding any comprehensive plan provision or any zoning, subdivision or other
21 ordinance or regulation alleged to be in violation of the state-wide planning goals shall be by the
22 Land Conservation and Development Commission in the manner provided for in ORS 197.300 to
23 197.315.

24 (2) If the commission has issued an order under ORS 197.251 granting compliance
25 acknowledgment to a city or county, review of:

26 (a) Any legislative decision regarding a major revision of a comprehensive plan alleged to be in
27 violation of the state-wide planning goals shall be by the Land Conservation and Development
28 Commission in the manner provided for in ORS 197.300 to 197.315.

29 (b) Any legislative decision regarding any zoning, subdivision or other ordinance or regulation
30 alleged to be in violation of the comprehensive plan shall be by the circuit court of the county in
31 which the decision was made in the manner provided in ORS chapter 28 or 32.

32 (3) Notwithstanding subsection (1) of this section, if a city or county received compliance
33 acknowledgment under ORS 197.251 at the time a decision of the city, county or special district is
34 pending with the Land Conservation and Development Commission under subsection (1) of this
35 section, then the commission may transfer review of the matter to the circuit court for proceedings
36 pursuant to paragraph (b) of subsection (2) of this section.

37 **SECTION 3a.** If the court or commission determines that a petition filed under any of the
38 provisions of this 1979 Act, ORS chapter 28, ORS 34.010 to 34.100 or 34.110 to 34.240, properly

belongs in a different forum, the court or commission shall transfer review of the petition to the appropriate forum effective upon the date of filing of the original petition.

SECTION 4. Section 5 of this Act is added to and made a part of ORS 34.010 to 34.100.

SECTION 5. Notwithstanding ORS 34.030, judicial review of any quasi-judicial decision of a city, county or special district governing body alleged to be in violation of the state-wide planning goals or a comprehensive plan or zoning, subdivision or other land use ordinance or regulation shall be by the Court of Appeals pursuant to section 2 of this 1979 Act.

Section 6. ORS 197.300 is amended to read:

197.300. (1) In the manner provided in ORS 197.305 to 197.315, the commission shall review upon:

(a) Petition by a county, city, special district governing body, or state agency, a comprehensive plan provision or any zoning, subdivision or other ordinance or regulation adopted by a state agency, city, county or special district that the governing body or state agency considers to be in conflict with state-wide planning goals approved under ORS 197.240.

(b) Petition by a city, county, special district governing body, or state agency, a land conservation and development action taken by a state agency, city, county or special district that the governing body or state agency considers to be in conflict with state-wide planning goals approved under ORS 197.240.

(c) Petition by a state agency, city, county or special district, any county governing body action that the state agency, city, county or special district considers to be improperly taken or outside the scope of the governing body's authority under ORS 197.190, 197.225 and 197.260.

(d) Petition by any person or group of persons whose interests are substantially affected, a legislative decision regarding any comprehensive plan provision or any zoning, subdivision or other ordinance or regulation alleged to be in violation of state-wide planning goals approved under ORS 197.240 except as provided in paragraph (b) of subsection (2) of section 3 of this 1979 Act.

(2) A petition filed with the commission pursuant to subsection (1) of this section must be filed not later than *[60 days after the date of the final adoption or approval of the action or comprehensive plan upon which the petition is based]* 30 days following the date the written decision sought to be reviewed is signed or the date the city, county, state agency or special district mails the notice to the petitioner and to persons who have requested such notice in writing not later than five days following the close of the final hearing regarding the decision, whichever last occurs.

[(3) No city, county, state agency, special district or person shall have a petition pending before the commission pursuant to paragraphs (a), (b) or (d) of subsection (1) of this section and at the same time have a petition pending before a court which make the same or substantially similar allegations of violations of any state-wide planning goal involving the same legal or factual issues. In the case of such pending petitions with the commission and a court, the same or substantially similar allegations in the later filing shall be stricken.]

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Court of Appeals for the biennium beginning July 1, 1979, out of the General Fund, the sum of

1 \$50,000 for paying necessary administrative expenses incurred in carrying out subsection (6) of
2 section 2 of this Act.

3 SECTION 8. ORS 34.055 is repealed.

4 Section 9. ORS 34.050 is amended to read:

5 34.050. [*Except as provided in ORS 34.055,*] Before allowing the writ, the court [*or judge*] shall
6 require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of
7 \$100, to the effect that he will pay all costs and disbursements that may be adjudged to the
8 defendant on the review. [*The court or judge may allow the undertaking to be given in a sum not less*
9 *than \$50, when it is probable that such sum will be sufficient.*]

10 Section 9a. ORS 34.030 is amended to read:

11 34.030. The writ shall be allowed by the circuit court [*or judge thereof*], or, in counties where the
12 county court has judicial functions, by the county court [*or judge of the county*] wherein the decision
13 or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the
14 decision or determination with convenient certainty, and setting forth the errors alleged to have
15 been committed therein. The petition shall be signed by the plaintiff or his attorney, and verified by
16 the certificate of an attorney to the effect that he has examined the process or proceeding, and the
17 decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not
18 be allowed unless the petition therefor is made within 60 days from the date of the decision or
19 determination sought to be reviewed.

20 Section 10. ORS 34.070 is amended to read:

21 34.070. [(1) *Except as otherwise provided in subsection (2) of this section,*] In the discretion of
22 the court [*or judge*] issuing the writ, the writ may contain a requirement that the defendant desist
23 from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed
24 accordingly.

25 [(2) *A court or judge issuing a writ involving a land development project as defined in ORS 34.055*
26 *may not require the defendant to desist from further proceedings regarding the project unless the*
27 *undertaking required by ORS 34.055 has been given to the court or judge.*]

28 Section 10a. ORS 215.416 is amended to read:

29 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
30 an owner of land may apply in writing to such persons as the governing body designates, for a
31 permit, in the manner prescribed by the governing body.

32 (2) The hearings officer shall hold at least one public hearing on the application and within 90
33 days after receiving it deny or approve it. However, with the agreement of the county and the
34 applicant, the proceeding on the application may be extended for a reasonable period of time, as
35 determined by the hearings officer, but not to exceed six months from the date of the first public
36 hearing on the application.

37 (3) The application shall not be approved if the proposed use of land is found to be in conflict
38 with the comprehensive plan of the county and other applicable ordinance provisions. The approval
39 may include such conditions as are authorized by statute or county legislation.

1 (4) Hearings under this section shall be held only after notice to the applicant and also notice to
2 other persons as otherwise provided by law.

3 (5) Approval or denial of a permit application shall be based on standards and criteria which
4 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county
5 and which shall relate approval or denial of a permit application to the zoning ordinance and
6 comprehensive plan for the area in which the proposed use of land would occur and to the zoning
7 ordinance and comprehensive plan for the county as a whole.

8 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement
9 that explains the criteria and standards considered relevant to the decision, states the facts relied
10 upon in rendering the decision and explains the justification for the decision based on the criteria,
11 standards and facts set forth.

12 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

13 Section 10b. ORS 227.173 is amended to read:

14 227.173. (1) Notice of approval or denial of a discretionary permit application shall be based on
15 standards and criteria, which shall be set forth in the development ordinance and which shall relate
16 approval or denial of a discretionary permit application to the development ordinance and to the
17 comprehensive plan for the area in which the development would occur and to the development
18 ordinance and comprehensive plan for the city as a whole.

19 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief
20 statement that explains the criteria and standards considered relevant to the decision, states the
21 facts relied upon in rendering the decision and explains the justification for the decision based on
22 the criteria, standards and facts set forth.

23 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

24 Section 11. ORS 215.422 is amended to read:

25 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the
26 planning commission or county governing body, or both, however the governing body prescribes.
27 The appellate authority on its own motion may review the action. The procedure and type of hearing
28 for such an appeal or review shall be prescribed by the governing body. *[An appeal or review*
29 *proceeding shall be based upon, but not limited to, the record of the hearings officer's action.]*

30 (2) A party aggrieved by the final determination may have the determination reviewed under
31 *[ORS 34.010 to 34.100] section 2 of this 1979 Act.*

32 Section 12. ORS 227.180 is amended to read:

33 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the
34 planning commission or council of the city, or both, however the council prescribes. The appellate
35 authority on its own motion may review the action. The procedure for such an appeal or review shall
36 be prescribed by the council, but shall include a hearing at least for argument. Upon appeal or
37 review the appellate authority shall consider the record of the hearings officer's action. That record
38 need not set forth evidence verbatim.

39 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or

1 zone change may have the determination reviewed under [ORS 34.010 to 34.100] section 2 of this
2 1979 Act.

3 Section 13. ORS 34.040 is amended to read:

4 34.040. The writ shall be allowed in all cases where the inferior court, officer, or tribunal other
5 than a **district court** or an agency as defined in subsection (1) of ORS 183.310 in the exercise of
6 judicial or quasi-judicial functions appears to have:

7 (1) Exceeded its [*or his*] jurisdiction;

8 (2) Failed to follow the procedure applicable to the matter before it [*or him*];

9 (3) Made a finding or order not supported by [*reliable, probative and*] substantial evidence in the
10 whole record; [*or*]

11 (4) Improperly construed the applicable law; or

12 (5) Rendered a decision that is unconstitutional,

13 to the injury of some substantial [*right*] interest of the plaintiff, and not otherwise. The fact that the
14 right of appeal exists is no bar to the issuance of the writ.

15 SECTION 14. Section 15 of this Act is added to and made a part of ORS 221.310 to 221.390.

16 SECTION 15. Nothing in ORS 221.310 to 221.390 shall be construed to prevent an interlocutory
17 order which involves the constitutionality of a statute or ordinance or of the proceedings which may
18 affect the final judgment from being reviewed in the circuit court for errors in law appearing upon
19 the face of the judgment or the proceedings connected therewith, as provided in ORS 34.010 to
20 34.100.

21 Section 16. ORS 181.350 is amended to read:

22 181.350. The decisions of the trial board shall be subject to review by the [*circuit court of the*
23 *county in which the hearing was held*] **Court of Appeals**. The procedure for review shall be as
24 provided in ORS [*34.010 to 34.100*] 183.482.

25 Section 17. ORS 198.785 is amended to read:

26 198.785. [(1) A proceeding may not be maintained to contest the validity of a formation or change
27 of organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30
28 days after the date the formation of the district or change of organization is complete.]

29 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of
30 organization, or if the county board refuses to call a special election as provided by ORS 198.705 to
31 198.955, any citizen of the affected district or territory may apply within 10 days after such refusal
32 to the circuit court of the principal county for a writ of mandamus to compel the county board or
33 county clerk to do so. If it is decided by the circuit court that the petition for formation or change of
34 organization is legally sufficient and the requisite number of signatures is attached, the circuit court
35 shall direct the county board to call the election. The suit shall be advanced on the docket and
36 decided by the circuit court as quickly as possible. Either party may appeal [*to the Supreme Court*]
37 as provided for appeals in other proceedings.

1 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding
2 may also be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

3 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or
4 change of organization, the formation or change shall be considered complete and final upon the
5 date the order of formation or the order, resolution or statement announcing a change of
6 organization is filed with the county clerk as provided by ORS 198.780.

7 Section 18. ORS 199.461 is amended to read:

8 199.461. (1) When the boundary commission receives a petition in a boundary change
9 proceeding, it shall:

10 (a) Cause a study to be made of the proposal offered by the petition.

11 (b) Conduct one or more public hearings on the proposal.

12 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a
13 petition for formation or a minor boundary change of a city or district or in a petition for
14 consolidation of cities so as either to include or exclude territory. If the commission determines that
15 any land has been improperly omitted from the proposal and that the owner of the land has not
16 appeared at the hearing, in person or by his representative designated in writing, the commission
17 shall continue the hearing on the petition and shall order notice given to the nonappearing owner
18 requiring him to appear before the commission and show cause, if any, why his land should not be
19 included in the proposal. Notice to nonappearing owners may be given by personal service or by
20 letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
21 continued. The required notice may be waived by the nonappearing owner.

22 (3) On the basis of the study and after hearing, the boundary commission shall approve the
23 proposed boundary change as presented or as modified by the commission or disapprove the
24 proposed change, by an order stating the reasons for the decision of the commission. Any person
25 interested in a boundary change may[, *within 30 days after the date of a final order, appeal the order*
26 *for review under ORS 34.010 to 34.100*] **appeal the order in accordance with the provisions of ORS**
27 **183.480 to 183.500 governing judicial review of contested cases.**

28 (4) Immediately after the effective date of a final order entered under subsection (3) of this
29 section and a proclamation declaring a minor boundary change approved if any is entered under
30 subsection (3) of ORS 199.505, the commission shall file a copy of the order and proclamation, if
31 any, with the Secretary of State, the assessor and the county clerk of each county in which the
32 affected territory, city or district is located, and the clerk of the affected city or district. If the
33 commission disapproves a minor boundary change, it shall send a copy of the final order to the
34 person who actually filed the petition and to the affected city or district.

35 Section 19. ORS 203.060 is amended to read:

36 203.060. **Except as otherwise provided in sections 2 and 3 of this 1979 Act:**

37 (1) **County legislative decisions, including ordinances adopted under ORS 203.030 to 203.065,**
38 **shall be subject to judicial review and invalidation under the provisions of ORS chapter 28 on account**

1 of unreasonableness, procedural error in adoption, or conflict with paramount state law or
2 constitutional provision.

3 (2) County quasi-judicial decisions alleged to be in error upon one or more of the grounds described
4 in subsections (1) to (5) of ORS 34.040 shall be subject to judicial review as provided in ORS 34.010 to
5 34.100.

6 (3) All other county decisions shall be subject to judicial review as provided in ORS 34.110 to
7 34.240.

8 SECTION 20. ORS 203.200 is repealed.

9 Section 21. ORS 311.860 is amended to read:

10 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the
11 necessary preliminary construction permits or certificates and the governing body of any taxing unit
12 obligated to furnish services and facilities in the area in which the construction is to take place may
13 enter into an agreement to carry out the purposes of ORS 311.850. An agreement entered into under
14 this section shall contain provisions pertaining to and in accordance with the following:

15 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit
16 prior in time to or during the period of the construction.

17 (b) The amounts of the payments to be made by the person proposing to construct the facility
18 and the dates for making the payments.

19 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of
20 the taxing unit entering into the agreement for each year of a period of years, not to exceed 10,
21 commencing on or in the course of completion of the construction of the facility. The amount of
22 reduction allowed by the agreement shall be a percentage amount, not to exceed 50 percent, of the
23 true cash value of the facility as of any assessment date affected by the reduction, and may be fixed
24 or graduated over the period of years for which the reduction is allowed. The total reduction
25 allowed by the agreement shall result in a tax benefit for the facility that is estimated to be
26 equivalent to the total amount of payments made under the agreement to the taxing unit, plus
27 interest at the maximum rate of eight percent per annum from the date of each payment; however,
28 in no event shall the total reduction in true cash value during the period of years of reduction cause a
29 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

30 (2) A copy of an agreement entered into under this section shall be filed with the county assessor
31 of each county in which a taxing unit which is a party to the agreement is located.

32 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the
33 governing body of the taxing unit that is a party to the agreement may certify to the county assessor
34 that all payments have been made to the taxing unit in accordance with the terms of the agreement.
35 The county assessor shall not grant the exemption for any year unless he has received such
36 certificate. Review of denial of an exemption under this section shall be as provided by ORS [34.010
37 to 34.100] 305.275.

38 Section 22. ORS 330.101 is amended to read:

39 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in

1 the manner provided in ORS 331.010 of the proposed change and the proposals and the session of
2 the board at which they will be considered. If no remonstrance is submitted requiring an election as
3 provided in subsection (2) of this section and if the board makes the findings set forth in subsection
4 (2) of ORS 330.090, the board shall declare that the change and proposals shall become effective as
5 provided in ORS 330.103.

6 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the
7 qualified voters in a school district or area affected by the proposed change is filed with the district
8 boundary board within 20 days after the date set to consider the proposed change and the proposals
9 and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
10 submit the question of the proposed change and the proposals to the qualified voters of each
11 affected district or area from which a remonstrance was filed as nearly as possible in the manner
12 prescribed for annual school elections with the district boundary board acting in the place of the
13 local school districts. Separate elections shall be held in sequence, commencing with the least
14 populous district or area and progressing in order of population to the most populous district or
15 area. If the majority of votes in each election favor the change and the proposals, an election shall
16 be held in the next most populous district or area. The boundary board shall give notice of each
17 election in the manner provided in ORS 331.010.

18 (3) If the majority of votes cast in any affected district or area oppose the change and the
19 proposals, the change and the proposals shall be defeated, and the same or a substantially similar
20 change combined with substantially similar proposals shall not be considered until 12 months have
21 elapsed from the date of the election at which the change and the proposals were defeated. If the
22 vote is favorable in all remonstrating districts or areas, the district boundary board shall declare the
23 change and proposals effective as provided in ORS 330.103 without further elections.

24 (4) In an election to add districts to a union high school district, if the district boundary board
25 determines that the proposition carried in the union high school district by a majority of votes cast,
26 and also carried in one or more of the common school districts by a majority of the votes cast in
27 each district, it shall declare the proposition carried as to those common school districts only in
28 which the proposition prevailed, and shall immediately proceed to change the boundaries of the
29 union high school district to include those districts desiring to be added thereto.

30 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition
31 signed by 100 percent of the owners of record or the contract purchasers of real property and 100
32 percent of the qualified voters of an area requesting that the area be annexed to another school
33 district to which it is contiguous is presented to the district boundary board, the board, if it makes
34 the findings set forth in subsection (2) of ORS 330.090, shall order the change to be made effective
35 on the following May 31, providing a remonstrance signed by the school boards of any affected
36 district or by the original petitioners is not presented to the State Board of Education within 30 days
37 of the date of the order. If such a remonstrance is presented to the State Board of Education, the
38 board shall set a time for a hearing, give notice of the same, and hear the case in the area affected.
39 If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After

1 considering the testimony, the board shall confirm or reject the action of the boundary board and
2 such determination shall be final.

3 (6) **Judicial review of an action taken under this section shall be by the Court of Appeals in the**
4 **manner provided in ORS 183.482.** [*A petition for a writ of review to review the action taken may be*
5 *filed with the circuit court within the time permitted by law.*]

6 Section 23. ORS 330.123 is amended to read:

7 330.123. (1) When changes in school district boundaries are made by the detachment of territory
8 or annexation of less than an entire school district to another, the district school boards of the
9 districts affected by each change shall immediately after the change make an equitable division of
10 the then existing assets and liabilities between the districts affected by such change and provide the
11 manner of consummating the division.

12 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be
13 decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by
14 each of the boards of the school districts affected and an additional member appointed by the other
15 appointees.

16 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
17 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators
18 selected fail to appoint the additional arbitrator within 30 days after the appointment of the
19 arbitrator last appointed, the Superintendent of Public Instruction shall notify the judge of the
20 circuit court senior in service of the county in which the administrative office of the most populous
21 school district is located. Within 10 days after receiving such notice, the judge shall appoint the
22 additional arbitrator.

23 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each
24 day's service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus
25 incurred shall be equally apportioned among the districts concerned.

26 (5) The decision of the arbitrators is final and may be reviewed [*by a writ of review*] in the
27 manner provided in ORS 33.320 to 33.340.

28 (6) Assets include all school property and moneys belonging to the district at the time of the
29 division. Liabilities include all debts for which the respective districts in their corporate capacities
30 are liable at the time of division. In determining the assets, school property shall be estimated at its
31 fair value. The assets and liabilities shall be divided between the districts in proportion to the last
32 assessed value of the real and personal property. The district retaining the real property shall pay
33 the other districts concerned such sums as are determined in accordance with the provisions of this
34 section. All funds to be apportioned during the current school year, after such division, shall be
35 made in proportion to the resident average daily membership of the districts divided, as shown by
36 the report of such districts for the period ending the preceding June 30 as certified by the districts to
37 the administrative office of the county.

38 Section 24. ORS 330.557 is amended to read:

39 330.557. (1) Any person residing or owning or occupying real property within the area affected

1 by any final plan of reorganization adopted by the committee for the organization of an
2 administrative school district may petition the State Board of Education to have the plan revised or
3 modified in particulars set forth in such petition. Such petition shall be filed with the secretary of the
4 State Board of Education and a copy thereof shall be delivered to the secretary of the committee in
5 person or by certified mail within 30 days after adoption of such plan by the committee. The
6 petitioner shall have the right to be heard at the hearing provided by ORS 330.560 and to be
7 represented by counsel and to offer evidence and argument in support of such petition. The
8 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel
9 and to offer evidence and argument in opposition to such petition.

10 (2) Any petitioner may petition *[the circuit court for writ of review in the manner provided by*
11 *ORS 34.010 to 34.100 to review]* **the Court of Appeals in the manner provided by ORS 183.482 for**
12 **judicial review of the decision or determination of the State Board of Education denying or**
13 **overruling the petition of such petitioner to revise or modify the final plan of reorganization in the**
14 **particulars set forth in the petition, provided that such petition for [writ of] review shall be filed with**
15 **the [circuit court within 30] Court of Appeals within 60 days after the State Board of Education**
16 **approves the final plan of reorganization.**

17 Section 25. ORS 341.185 is amended to read:

18 341.185. Any qualified voter of a district aggrieved by the adjustment of or failure to adjust
19 boundaries of a zone pursuant to subsection (1) of ORS 341.175 on the basis that population is not as
20 nearly equal as is feasible is entitled to appear before the board at a public hearing to present his
21 case. If the board refuses to make the requested adjustment in the boundaries, he may appeal from
22 the decision of the board *[to the circuit court. The appeal shall be by writ of review]* **to the Court of**
23 **Appeals in the manner provided in ORS 183.482.**

24 Section 26. ORS 341.573 is amended to read:

25 341.573. (1) When changes in district boundaries are made by the detachment of territory or an
26 annexation of territory and another community college district is affected, the boards of the districts
27 shall make an equitable division of the then existing assets and liabilities between the districts
28 affected by such change and provide the manner of consummating the division.

29 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be
30 decided by a board of arbitrators. The board of arbitrators shall consist of one member appointed by
31 each of the boards of the affected districts and an additional member appointed by the other
32 appointees.

33 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of
34 Education shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the
35 additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the State
36 Board of Education shall notify the judge senior in service of the circuit court of the principal
37 county. Within 10 days after receiving such notice, the judge shall appoint one additional arbitrator.

1 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each
2 day's service, and necessary expenses, while serving in his official capacity. Expenses thus incurred
3 shall be equally apportioned among the districts concerned.

4 (5) The decision of the arbitrators is final and may be reviewed [*only by a writ of review*] in the
5 manner provided in ORS 33.320 to 33.340.

6 (6) Assets include all property and moneys belonging to the district at the time of division.
7 Liabilities include all debts for which the respective districts in their corporate capacities are liable
8 at the time of division. In determining the assets, property shall be estimated at its fair value. The
9 assets and liabilities shall be divided between the districts in proportion to the last assessed value of
10 the real and personal property. The district retaining the real property shall pay the other districts
11 concerned such sums as are determined in accordance with the provisions of this section. All funds
12 to be apportioned during the current fiscal year, after such division, shall be made in proportion to
13 the number of persons in each district according to the latest federal census.

14 Section 27. ORS 459.155 is amended to read:

15 459.155. Review of any action of the board taken pursuant to ORS [*459.140 to 459.155, or any*
16 *ordinance adopted pursuant thereto,*] 459.150 shall be taken solely and exclusively by writ of review
17 in the manner set forth in ORS 34.010 to 34.100.

18 Section 28. ORS 476.835 is amended to read:

19 476.835. (1) Within [*30*] 60 days after receiving written notice of the findings of the board, any
20 fire service personnel aggrieved by the findings and order of the board may file an appeal from the
21 final order of the board with the [*Circuit Court in Marion County. The appeal shall be heard on a*
22 *writ of review. If an appeal is filed, the order of the board shall not take effect until the court decides*
23 *the appeal*] Court of Appeals in the manner provided for in ORS 183.482.

24 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820
25 and 476.825 and subsection (1) of this section may reapply for accreditation at any time after the
26 expiration of two years after the date on which the order of the board revoking his accreditation
27 became final.

28 Section 29. ORS 479.195 is amended to read:

29 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and
30 every place of public assembly not having fixed seats and having a capacity of more than 100
31 persons shall post and keep posted a notice of the maximum number of persons allowed at any one
32 time as established by regulations of the State Fire Marshal or by the approved authority when such
33 public assemblies are located within the jurisdiction of a governmental subdivision granted the
34 exemption provided by subsection (4) of ORS 476.030. All such capacity notices shall be on a form
35 approved or provided by the State Fire Marshal and shall be securely fixed and posted in a
36 conspicuous place so as to be readily visible to the occupants of such place of assembly.

37 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the
38 approved authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection
39 finds a building or other structure described in subsection (1) of this section, to be occupied by a

1 number of persons in excess of the maximum number of persons allowed at any one time as set
2 forth in the capacity notice, the State Fire Marshal, or his deputies, assistants as defined in ORS
3 476.060, or the approved authority, as provided in subsection (4) of ORS 476.030, may close the
4 building or other structure for use or occupancy until compliance has been made.

5 (3) The owner of any building or other structure closed under subsection (2) of this section shall
6 have immediate access to the circuit court for the county in which the building or other structure is
7 located for review of the order of exclusion or removal. Such access may be in the form of [*a writ of*
8 *review or other*] any appropriate judicial proceeding and shall be given priority over all other cases
9 on the docket of the circuit court.

10 (4) The closure provided for in subsection (2) of this section shall not exclude any other
11 remedies available to the State Fire Marshal, his deputies, or the approved authority, as provided by
12 subsection (4) of ORS 476.030.

13 Section 30. ORS 553.360 is amended to read:

14 553.360. (1) After the filing of the report of the appraisers, the court shall enter an order fixing
15 the time and place for a hearing on the report and directing the secretary of the district to give notice
16 of the hearing by publication. The notice shall contain a description of each tract of land appraised,
17 together with the names of the owners, if known, and shall state that the appraisers appointed to
18 assess the benefits and damages to the lands described and to appraise the cash value of the lands
19 necessary to be taken for rights of way and other works within or without the limits of the
20 subdistrict, have filed their report with the court and that the owner of each tract of land included
21 therein is given notice that he may examine the report and file objections to the report or to any
22 determination of benefits or damages on or before the date set for the hearing.

23 (2) The district or any person owning or having any interest in the lands described, or the owner
24 of any tract of land within the subdistrict for which the appraisals were made, may file exceptions to
25 the report of the appraisers or to any determination of benefits or damages determined to accrue to
26 lands upon the construction of the proposed works or to the determination of the cash value of the
27 lands necessary to be taken for rights of way or other works.

28 (3) The court shall hear all objections and make such amendments and modifications to the
29 report of the appraisers as to the court may seem equitable. Upon the conclusion of the hearing the
30 court shall enter its order in which shall be given the description of each tract of land appraised, the
31 value of the benefits and damages which the court determines will accrue to each tract, and the
32 value of lands necessary to be taken for rights of way and other works.

33 (4) Any party interested may take an appeal from such order in the manner set forth in ORS
34 [553.815] chapter 35. The order shall be filed in the office of the county clerk of the county in which
35 the court is situated, and a certified copy of the order shall be filed with the county clerk of each
36 other county in which lands within the subdistrict are located. Notwithstanding ORS 2.516, the only
37 review which shall be allowed from the decision of the circuit court under ORS chapter 35 shall be by
38 petition for review, to the Supreme Court which petition shall be filed within 30 days after the date of
39 the decision in such manner as provided by the rules of the Supreme Court.

1 Section 31. ORS 553.815 is amended to read:

2 553.815. Owners of any property against which an assessment or tax has been levied may seek a
3 review thereof under ORS 34.010 to 34.100. Notwithstanding ORS 2.516, the only review which shall
4 be allowed from the decision of the circuit court under ORS 34.010 to 34.100 shall be by petition for
5 review to the Supreme Court which petition shall be filed within 30 days after the date of the decision in
6 such manner as provided by the rules of the Supreme Court.

1 MEASURE SUMMARY

- 2 Revises manner for review of land use and certain other
3 decisions.

A BILL FOR AN ACT

Relating to judicial review; creating new provisions; amending
ORS 34.030, 34.040, 34.050, 34.070, 181.350, 197.300,
198.785, 199.461, 203.060, 215.416, 215.422, 227.173,
227.180, 311.860, 330.101, 330.123, 330.557, 341.185,
341.573, 459.155, 476.335, 479.195, 553.360 and 553.815;
repealing ORS 34.055 and 203.200; and appropriating money.

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

SECTION 1. Sections 2, 3 and 3a of this Act are added to and
made a part of ORS 197.005 to 197.430.

SECTION 2. (1) Judicial review of any quasi-judicial
decision by a city, county or special district governing body
alleged to be in violation of the state-wide planning goals or
the comprehensive plan, or zoning, subdivision or other land use
ordinance or regulation of the city, county or special district
is conferred upon the Court of Appeals.

(2) Any person who has standing may petition the Court of
Appeals for judicial review under this section. A person shall
be deemed to have standing to file such petition if the person:

(a) Appeared before the city, county or special district
governing body in some manner, orally or in writing; and

(b) Was a person entitled as of right to notice and hearing
prior to the decision to be reviewed, or was a person who has a
substantial interest in the decision.

(3) The petition shall be filed not later than 30 days
following the date the written decision sought to be reviewed is
signed or the date the city, county or special district mails

1 the notice of the decision to the petitioner and to persons who
2 have requested such notice in writing not later than five days
3 following the close of the final hearing regarding the decision,
4 whichever last occurs.

5 (4) The petition shall state the nature of the decision the
6 petitioner desires reviewed, and shall state by supporting
7 affidavit, the facts showing how the petitioner has standing to
8 have the decision reviewed. Before deciding the issues raised by
9 the petition for review, the Court of Appeals shall decide, from
10 facts set forth in the affidavit and any findings of facts made
11 by a Master as provided in subsection (6) of this section,
12 whether or not the petitioner has standing to have the decision
13 reviewed. Copies of the petition shall be served upon the city,
14 county or special district governing body, the Land Conservation
15 and Development Commission, and the applicant of record in the
16 city, county or special district governing body proceeding.
17 Notice that the petition has been filed shall be served upon all
18 participants below who requested such notice.

19 (5) Within 30 days after service of the petition, or within
20 such further time as the court may allow, the city, county or
21 special district governing body shall transmit to the reviewing
22 court the original or a certified copy of the entire record of
23 the proceeding under review, but, by stipulation of all parties
24 to the review proceeding, the record may be shortened. Any party
25 unreasonably refusing to stipulate to limit the record may be
26 taxed by the court for the additional costs. The court may
27 require or permit subsequent corrections or additions to the

1 record when deemed desirable. In addition to exercising its
2 discretion in awarding costs under subsection (9) of this
3 section, the court may tax the costs of transcription of record
4 to a party filing a frivolous petition for review as the court
5 may determine.

6 (6) Review of a decision under this section shall be
7 confined to the record; the court shall not substitute its
8 judgment for that of the city, county or special district
9 governing body as to any issue of fact. In the case of disputed
10 allegations of unconstitutionality of the decision, standing, ex
11 parte contacts or other procedural irregularities not shown in
12 the record which, if proved, would warrant reversal or remand,
13 the Court of Appeals pursuant to rules adopted by the court to
14 carry out this subsection, may refer the allegations to a Master
15 appointed by the court to take evidence and make findings of
16 fact upon them.

17 (7) In accordance with the rules of the court, the Land
18 Conservation and Development Commission may submit to the court
19 a brief upon any alleged violation of the state-wide planning
20 goals as applied to the facts before the court.

21 (8) In addition to transmitting the record as provided in
22 subsection (5) of this section, the city, county or special
23 district governing body may participate in the proceedings under
24 this section by filing briefs or otherwise subject to rules
25 adopted by the court.

1 (9) Upon judicial review of a decision under this section,
2 the Court of Appeals may, in its discretion, award costs,
3 including the cost of preparing the record, to any party.

4 (10) The court may affirm, reverse or remand the decision.
5 The court shall reverse or remand the decision only if it finds
6 that:

7 (a) The city, county or special district governing body
8 exceeded its jurisdiction;

9 (b) The city, county or special district governing body
10 failed to follow the procedure applicable to the matter before
11 it;

12 (c) The decision was not supported by substantial evidence
13 in the whole record;

14 (d) The city, county or special district governing body
15 improperly construed the applicable law; or

16 (e) The decision is unconstitutional.

17 (11)(a) As used in this subsection:

18 (A) "Developer" means a person or persons proposing a land
19 development project.

20 (B) "Land development project" or "project" means any
21 proposed use of land for which approval or authority is required
22 pursuant to ORS 215.010 to 215.190, 215.402 to 215.422, 227.010
23 to 227.300, or any ordinance or rule adopted pursuant thereto.

24 (b) Where a petition for review under this section alleges
25 that city, county or special district governing body has erred,
26 based upon one or more of the grounds described in subsection

27 (10) of this section, in approving or authorizing a land

1 development project, then before allowing the petition
2 containing a stay of proceedings authorized by subsection (12)
3 of this section, the court shall require the petitioner to give
4 an undertaking with good and sufficient surety, to be approved
5 by the court, in an amount not to exceed \$1,000, to the effect
6 that the petitioner will pay actual damages of the developer in
7 an amount not to exceed the amount of the undertaking if the
8 court affirms the decision approving or authorizing the project.

9 (c) The petitioner may request a hearing on the amount of
10 the undertaking required by the court under paragraph (b) of
11 this subsection. At such hearing the developer shall offer proof
12 as to the amount of his investment in the project and actual
13 damages which may be caused by delaying the land development
14 project.

15 (d) Based upon the length of time which it may take for the
16 court to render a judgment on the matter being reviewed, the
17 amount of the developer's investment in the project and the
18 actual damages which may be caused by delaying the project, the
19 court shall set the amount of the undertaking which the
20 petitioner will be required to give.

21 (e) If upon a review, described in this section, the court
22 affirms the decision approving or authorizing the project, the
23 court may award actual damages to the developer in an amount not
24 to exceed the amount of the undertaking required under this
25 subsection.

26 (12) (a) Except as otherwise provided in paragraph (b) of
27 this subsection, the court, in its discretion, may require that

1 the defendant desist from further proceedings in the matter to
2 be reviewed, whereupon the proceedings shall be stayed
3 accordingly.

4 (b) The court reviewing a land development project as
5 defined in subsection (11) of this section may not require the
6 defendant to desist from further proceedings regarding the
7 project unless the undertaking required by subsection (11) of
8 this section has been given to the court.

9 SECTION 3. (1) If the Land Conservation and Development
10 Commission has not issued an order under ORS 197.251 granting
11 compliance acknowledgment to a city or county, review of any
12 legislative decision regarding any comprehensive plan provision
13 for any zoning, subdivision or other ordinance or regulation
14 alleged to be in violation of the state-wide planning goals
15 shall be by the Land Conservation and Development Commission in
16 the manner provided for in ORS 197.300 to 197.315.

17 (2) If the commission has issued an order under ORS 197.251
18 granting compliance acknowledgment to a city or county, review
19 of:

20 (a) Any legislative decision regarding a major revision of a
21 comprehensive plan alleged to be in violation of the state-wide
22 planning goals shall be by the Land Conservation and Development
23 Commission in the manner provided for in ORS 197.300 to 197.315.

24 (b) Any legislative decision regarding any zoning,
25 subdivision or other ordinance or regulation alleged to be in
26 violation of the comprehensive plan shall be by the circuit

1 court of the county in which the decision was made in the manner
2 provided in ORS chapter 28 or 32.

3 (3) Notwithstanding subsection (1) of this section, if a
4 city or county received compliance acknowledgment under ORS
5 197.251 at the time a decision of the city, county or special
6 district is pending with the Land Conservation and Development
7 Commission under subsection (1) of this section, then the
8 commission may transfer review of the matter to the circuit
9 court for proceedings pursuant to paragraph (b) of subsection
10 (2) of this section.

11 SECTION 3a. If the court or commission determines that a
12 petition filed under any of the provisions of this 1979 Act, ORS
13 chapter 28, ORS 34.010 to 34.100 or 34.110 to 34.240, properly
14 belongs in a different forum, the court or commission shall
15 transfer review of the petition to the appropriate forum
16 effective upon the date of filing of the original petition.

17 SECTION 4. Section 5 of this Act is added to and made a part
18 of ORS 34.010 to 34.100.

19 SECTION 5. Notwithstanding ORS 34.030, judicial review of
20 any quasi-judicial decision of a city, county or special
21 district governing body alleged to be in violation of the state-
22 wide planning goals or a comprehensive plan or zoning,
23 subdivision or other land use ordinance or regulation shall be
24 by the Court of Appeals pursuant to section 2 of this 1979 Act.

25 Section 6. ORS 197.300 is amended to read:

26 197.300. (1) In the manner provided in ORS 197.305 to
27 197.315, the commission shall review upon:

1 (a) Petition by a county, city, special district governing
2 body, or state agency, a comprehensive plan provision or any
3 zoning, subdivision or other ordinance or regulation adopted by
4 a state agency, city, county or special district that the
5 governing body or state agency considers to be in conflict with
6 state-wide planning goals approved under ORS 197.240.

7 (b) Petition by a city, county, special district governing
8 body, or state agency, a land conservation and development
9 action taken by a state agency, city, county or special district
10 that the governing body or state agency considers to be in
11 conflict with state-wide planning goals approved under ORS
12 197.240.

13 (c) Petition by a state agency, city, county or special
14 district, any county governing body action that the state
15 agency, city, county or special district considers to be
16 improperly taken or outside the scope of the governing body's
17 authority under ORS 197.190, 197.225 and 197.260.

18 (d) Petition by any person or group of persons whose
19 interests are substantially affected, a legislative decision
20 regarding any comprehensive plan provision or any zoning,
21 subdivision or other ordinance or regulation alleged to be in
22 violation of state-wide planning goals approved under ORS
23 197.240 except as provided in paragraph (b) of subsection (2) of
24 section 3 of this 1979 Act.

25 (2) A petition filed with the commission pursuant to
26 subsection (1) of this section must be filed not later than [60
27 days after the date of the final adoption or approval of the

1 action or comprehensive plan upon which the petition is based]
2 30 days following the date the written decision sought to be
3 reviewed is signed or the date the city, county, state agency or
4 special district mails the notice to the petitioner and to
5 persons who have requested such notice in writing not later than
6 five days following the close of the final hearing regarding the
7 decision, whichever last occurs.

8 [(3) No city, county, state agency, special district or
9 person shall have a petition pending before the commission
10 pursuant to paragraphs (a), (b) or (d) of subsection (1) of this
11 section and at the same time have a petition pending before a
12 court which make the same or substantially similar allegations
13 of violations of any state-wide planning goal involving the same
14 legal or factual issues. In the case of such pending petitions
15 with the commission and a court, the same or substantially
16 similar allegations in the later filing shall be stricken.]

17 SECTION 7. In addition to and not in lieu of any other
18 appropriation, there is appropriated to the Court of Appeals for
19 the biennium beginning July 1, 1979, out of the General Fund,
20 the sum of \$50,000 for paying necessary administrative expenses
21 incurred in carrying out subsection (6) of section 2 of this
22 Act.

23 SECTION 8. ORS 34.055 is repealed.

24 Section 9. ORS 34.050 is amended to read:

25 34.050. [Except as provided in ORS 34.055,] Before allowing
26 the writ, the court [or judge] shall require the plaintiff to
27 give an undertaking to its approval, with one or more sureties,

1 in the sum of \$100, to the effect that he will pay all costs and
2 disbursements that may be adjudged to the defendant on the
3 review. [The court or judge may allow the undertaking to be
4 given in a sum not less than \$50, when it is probable that such
5 sum will be sufficient.]

6 Section 9a. ORS 34.030 is amended to read:

7 34.030. The writ shall be allowed by the circuit court [or
8 judge thereof], or, in counties where the county court has
9 judicial functions, by the county court [or judge of the county]
10 wherein the decision or determination sought to be reviewed was
11 made, upon the petition of the plaintiff, describing the
12 decision or determination with convenient certainty, and setting
13 forth the errors alleged to have been committed therein. The
14 petition shall be signed by the plaintiff or his attorney, and
15 verified by the certificate of an attorney to the effect that he
16 has examined the process or proceeding, and the decision or
17 determination therein, and that it is erroneous as alleged in
18 the petition. A writ shall not be allowed unless the petition
19 therefor is made within 60 days from the date of the decision or
20 determination sought to be reviewed.

21 Section 10. ORS 34.070 is amended to read:

22 34.070. [(1) Except as otherwise provided in subsection (2)
23 of this section,] In the discretion of the court [or judge]
24 issuing the writ, the writ may contain a requirement that the
25 defendant desist from further proceedings in the matter to be
26 reviewed, whereupon the proceedings shall be stayed accordingly.

1 [(2) A court or judge issuing a writ involving a land
2 development project as defined in ORS 34.055 may not require the
3 defendant to desist from further proceedings regarding the
4 project unless the undertaking required by ORS 34.055 has been
5 given to the court or judge.]

6 Section 10a. ORS 215.416 is amended to read:

7 215.416. (1) When required or authorized by the ordinances,
8 rules and regulations of a county, an owner of land may apply in
9 writing to such persons as the governing body designates, for a
10 permit, in the manner prescribed by the governing body.

11 (2) The hearings officer shall hold at least one public
12 hearing on the application and within 90 days after receiving it.
13 deny or approve it. However, with the agreement of the county
14 and the applicant, the proceeding on the application may be
15 extended for a reasonable period of time, as determined by the
16 hearings officer, but not to exceed six months from the date of
17 the first public hearing on the application.

18 (3) The application shall not be approved if the proposed
19 use of land is found to be in conflict with the comprehensive
20 plan of the county and other applicable ordinance provisions.
21 The approval may include such conditions as are authorized by
22 statute or county legislation.

23 (4) Hearings under this section shall be held only after
24 notice to the applicant and also notice to other persons as
25 otherwise provided by law.

26 (5) Approval or denial of a permit application shall be
27 based on standards and criteria which shall be set forth in the

1 zoning ordinance or other appropriate ordinance or regulation of
2 the county and which shall relate approval or denial of a permit
3 application to the zoning ordinance and comprehensive plan for
4 the area in which the proposed use of land would occur and to
5 the zoning ordinance and comprehensive plan for the county as a
6 whole.

7 (6) Approval or denial of a permit shall be based upon and
8 accompanied by a brief statement that explains the criteria and
9 standards considered relevant to the decision, states the facts
10 relied upon in rendering the decision and explains the
11 justification for the decision based on the criteria, standards
12 and facts set forth.

13 (7) Written notice of the approval or denial shall be given
14 to all parties to the proceeding.

15 Section 10b. ORS 227.173 is amended to read:

16 227.173. (1) Notice of approval or denial of a discretionary
17 permit application shall be based on standards and criteria,
18 which shall be set forth in the development ordinance and which
19 shall relate approval or denial of a discretionary permit
20 application to the development ordinance and to the
21 comprehensive plan for the area in which the development would
22 occur and to the development ordinance and comprehensive plan
23 for the city as a whole.

24 (2) Approval or denial of a permit application shall be
25 based upon and accompanied by a brief statement that explains
26 the criteria and standards considered relevant to the decision,
27 states the facts relied upon in rendering the decision and

1 explains the justification for the decision based on the
2 criteria, standards and facts set forth.

3 (3) Written notice of the approval or denial shall be given
4 to all parties to the proceeding.

5 Section 11. ORS 215.422 is amended to read:

6 215.422. (1) A party aggrieved by the action of a hearings
7 officer may appeal the action to the planning commission or
8 county governing body, or both, however the governing body
9 prescribes. The appellate authority on its own motion may review
10 the action. The procedure and type of hearing for such an appeal
11 or review shall be prescribed by the governing body. [An appeal
12 or review proceeding shall be based upon, but not limited to,
13 the record of the hearings officer's action.]

14 (2) A party aggrieved by the final determination may have
15 the determination reviewed under [ORS 34.010 to 34.100] section
16 2 of this 1979 Act.

17 Section 12. ORS 227.180 is amended to read:

18 227.180. (1) A party aggrieved by the action of a hearings
19 officer may appeal the action to the planning commission or
20 council of the city, or both, however the council prescribes.
21 The appellate authority on its own motion may review the action.
22 The procedure for such an appeal or review shall be prescribed
23 by the council, but shall include a hearing at least for
24 argument. Upon appeal or review the appellate authority shall
25 consider the record of the hearings officer's action. That
26 record need not set forth evidence verbatim.

1 (2) A party aggrieved by the final determination in a
2 proceeding for a discretionary permit or zone change may have
3 the determination reviewed under [ORS 34.010 to 34.100] section
4 2 of this 1979 Act.

5 Section 13. ORS 34.040 is amended to read:

6 34.040. The writ shall be allowed in all cases where the
7 inferior court, officer, or tribunal other than a district court
8 or an agency as defined in subsection (1) of ORS 183.310 in the
9 exercise of judicial or quasi-judicial functions appears to
10 have:

11 (1) Exceeded its [or his] jurisdiction;

12 (2) Failed to follow the procedure applicable to the matter
13 before it [or him];

14 (3) Made a finding or order not supported by [reliable,
15 probative and] substantial evidence in the whole record; [or]

16 (4) Improperly construed the applicable law; or

17 (5) Rendered a decision that is unconstitutional,

18 to the injury of some substantial [right] interest of the
19 plaintiff, and not otherwise. The fact that the right of appeal
20 exists is no bar to the issuance of the writ.

21 SECTION 14. Section 15 of this Act is added to and made a
22 part of ORS 221.310 to 221.390.

23 SECTION 15. Nothing in ORS 221.310 to 221.390 shall be
24 construed to prevent an interlocutory order which involves the
25 constitutionality of a statute or ordinance or of the
26 proceedings which may affect the final judgment from being

1 reviewed in the circuit court for errors in law appearing upon
2 the face of the judgment or the proceedings connected therewith,
3 as provided in ORS 34.010 to 34.100.

4 Section 16. ORS 181.350 is amended to read:

5 181.350. The decisions of the trial board shall be subject
6 to review by the [circuit court of the county in which the
7 hearing was held] Court of Appeals. The procedure for review
8 shall be as provided in ORS [34.010 to 34.100] 183.482.

9 Section 17. ORS 198.785 is amended to read:

10 198.785. [(1) A proceeding may not be maintained to contest
11 the validity of a formation or change of organization proceeding
12 conducted under ORS 198.705 to 198.955 unless commenced within
13 30 days after the date the formation of the district or change
14 of organization is complete.]

15 [(2)] (1) If the county clerk refuses to accept and file a
16 petition for formation or for change of organization, or if the
17 county board refuses to call a special election as provided by
18 ORS 198.705 to 198.955, any citizen of the affected district or
19 territory may apply within 10 days after such refusal to the
20 circuit court of the principal county for a writ of mandamus to
21 compel the county board or county clerk to do so. If it is
22 decided by the circuit court that the petition for formation or
23 change of organization is legally sufficient and the requisite
24 number of signatures is attached, the circuit court shall direct
25 the county board to call the election. The suit shall be
26 advanced on the docket and decided by the circuit court as

1 quickly as possible. Either party may appeal [to the Supreme
2 Court] as provided for appeals in other proceedings.

3 [(3)] (2) An action to determine the validity of a formation
4 or change of organization proceeding may also be brought
5 pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

6 [(4)] (3) For the purpose of an action to determine or
7 contest the validity of a formation or change of organization,
8 the formation or change shall be considered complete and final
9 upon the date the order of formation or the order, resolution or
10 statement announcing a change of organization is filed with the
11 county clerk as provided by ORS 193.780.

12 Section 18. ORS 199.461 is amended to read:

13 199.461. (1) When the boundary commission receives a
14 petition in a boundary change proceeding, it shall:

15 (a) Cause a study to be made of the proposal offered by the
16 petition.

17 (b) Conduct one or more public hearings on the proposal.

18 (2) After the study and hearings, the boundary commission
19 may alter the boundaries set out in a petition for formation or
20 a minor boundary change of a city or district or in a petition
21 for consolidation of cities so as either to include or exclude
22 territory. If the commission determines that any land has been
23 improperly omitted from the proposal and that the owner of the
24 land has not appeared at the hearing, in person or by his
25 representative designated in writing, the commission shall
26 continue the hearing on the petition and shall order notice
27 given to the nonappearing owner requiring him to appear before

1 the commission and show cause, if any, why his land should not
2 be included in the proposal. Notice to nonappearing owners may
3 be given by personal service or by letter sent by first-class
4 mail, at least 10 days prior to the date to which the hearing
5 has been continued. The required notice may be waived by the
6 nonappearing owner.

7 (3) On the basis of the study and after hearing, the
8 boundary commission shall approve the proposed boundary change
9 as presented or as modified by the commission or disapprove the
10 proposed change, by an order stating the reasons for the
11 decision of the commission. Any person interested in a boundary
12 change may[, within 30 days after the date of a final order,
13 appeal the order for review under ORS 34.010 to 34.100] appeal
14 the order in accordance with the provisions of ORS 183.480 to
15 183.500 governing judicial review of contested cases.

16 (4) Immediately after the effective date of a final order
17 entered under subsection (3) of this section and a proclamation
18 declaring a minor boundary change approved if any is entered
19 under subsection (3) of ORS 199.505, the commission shall file a
20 copy of the order and proclamation, if any, with the Secretary
21 of State, the assessor and the county clerk of each county in
22 which the affected territory, city or district is located, and
23 the clerk of the affected city or district. If the commission
24 disapproves a minor boundary change, it shall send a copy of the
25 final order to the person who actually filed the petition and to
26 the affected city or district.

27 Section 19. ORS 203.060 is amended to read:

1 203.060. Except as otherwise provided in sections 2 and 3 of
2 this 1979 Act:

3 (1) County legislative decisions, including ordinances
4 adopted under ORS 203.030 to 203.065, shall be subject to
5 judicial review and invalidation under the provisions of ORS
6 chapter 23 on account of unreasonableness, procedural error in
7 adoption, or conflict with paramount state law or constitutional
8 provision.

9 (2) County quasi-judicial decisions alleged to be in error
10 upon one or more of the grounds described in subsections (1) to
11 (5) of ORS 34.040 shall be subject to judicial review as
12 provided in ORS 34.010 to 34.100.

13 (3) All other county decisions shall be subject to judicial
14 review as provided in ORS 34.110 to 34.240.

15 SECTION 20. ORS 203.200 is repealed.

16 Section 21. ORS 311.860 is amended to read:

17 311.860. (1) Any person proposing to construct a facility
18 who has applied for and obtained the necessary preliminary
19 construction permits or certificates and the governing body of
20 any taxing unit obligated to furnish services and facilities in
21 the area in which the construction is to take place may enter
22 into an agreement to carry out the purposes of ORS 311.850. An
23 agreement entered into under this section shall contain
24 provisions pertaining to and in accordance with the following:

25 (a) The payment of moneys by the person proposing to
26 construct the facility to the taxing unit prior in time to or
27 during the period of the construction.

1 (b) The amounts of the payments to be made by the person
2 proposing to construct the facility and the dates for making the
3 payments.

4 (c) A reduction in true cash value for the facility for
5 purposes of computing the rate of levy of the taxing unit
6 entering into the agreement for each year of a period of years,
7 not to exceed 10, commencing on or in the course of completion
8 of the construction of the facility. The amount of reduction
9 allowed by the agreement shall be a percentage amount, not to
10 exceed 50 percent, of the true cash value of the facility as of
11 any assessment date affected by the reduction, and may be fixed
12 or graduated over the period of years for which the reduction is
13 allowed. The total reduction allowed by the agreement shall
14 result in a tax benefit for the facility that is estimated to be
15 equivalent to the total amount of payments made under the
16 agreement to the taxing unit, plus interest at the maximum rate
17 of eight percent per annum from the date of each payment;
18 however, in no event shall the total reduction in true cash
19 value during the period of years of reduction cause a total
20 reduction in taxes which exceeds the total amount of moneys
21 previously paid plus interest.

22 (2) A copy of an agreement entered into under this section
23 shall be filed with the county assessor of each county in which
24 a taxing unit which is a party to the agreement is located.

25 (3) Prior to April 1 of the first year for which the
26 exemption granted by ORS 311.865 applies, the governing body of
27 the taxing unit that is a party to the agreement may certify to

1 the county assessor that all payments have been made to the
2 taxing unit in accordance with the terms of the agreement. The
3 county assessor shall not grant the exemption for any year
4 unless he has received such certificate. Review of denial of an
5 exemption under this section shall be as provided by ORS [34.010
6 to 34.100] 305.275.

7 Section 22. ORS 330.101 is amended to read:

8 330.101. (1) Before the proposed change is made, the
9 district boundary board shall give notice in the manner provided
10 in ORS 331.010 of the proposed change and the proposals and the
11 session of the board at which they will be considered. If no
12 remonstrance is submitted requiring an election as provided in
13 subsection (2) of this section and if the board makes the
14 findings set forth in subsection (2) of ORS 330.090, the board
15 shall declare that the change and proposals shall become
16 effective as provided in ORS 330.103.

17 (2) If a remonstrance signed by at least five percent or at
18 least 500, whichever is less, of the qualified voters in a
19 school district or area affected by the proposed change is filed
20 with the district boundary board within 20 days after the date
21 set to consider the proposed change and the proposals and if the
22 board makes the findings set forth in subsection (2) of ORS
23 330.090, the board shall submit the question of the proposed
24 change and the proposals to the qualified voters of each
25 affected district or area from which a remonstrance was filed as
26 nearly as possible in the manner prescribed for annual school
27 elections with the district boundary board acting in the place

1 of the local school districts. Separate elections shall be held
2 in sequence, commencing with the least populous district or area
3 and progressing in order of population to the most populous
4 district or area. If the majority of votes in each election
5 favor the change and the proposals, an election shall be held in
6 the next most populous district or area. The boundary board
7 shall give notice of each election in the manner provided in ORS
8 331.010.

9 (3) If the majority of votes cast in any affected district
10 or area oppose the change and the proposals, the change and the
11 proposals shall be defeated, and the same or a substantially
12 similar change combined with substantially similar proposals
13 shall not be considered until 12 months have elapsed from the
14 date of the election at which the change and the proposals were
15 defeated. If the vote is favorable in all remonstrating
16 districts or areas, the district boundary board shall declare
17 the change and proposals effective as provided in ORS 330.103
18 without further elections.

19 (4) In an election to add districts to a union high school
20 district, if the district boundary board determines that the
21 proposition carried in the union high school district by a
22 majority of votes cast, and also carried in one or more of the
23 common school districts by a majority of the votes cast in each
24 district, it shall declare the proposition carried as to those
25 common school districts only in which the proposition prevailed,
26 and shall immediately proceed to change the boundaries of the

1 union high school district to include those districts desiring
2 to be added thereto.

3 (5) Notwithstanding the provisions of subsections (1), (2)
4 and (3) of this section, if a petition signed by 100 percent of
5 the owners of record or the contract purchasers of real property
6 and 100 percent of the qualified voters of an area requesting
7 that the area be annexed to another school district to which it
8 is contiguous is presented to the district boundary board, the
9 board, if it makes the findings set forth in subsection (2) of
10 ORS 330.090, shall order the change to be made effective on the
11 following May 31, providing a remonstrance signed by the school
12 boards of any affected district or by the original petitioners
13 is not presented to the State Board of Education within 30 days
14 of the date of the order. If such a remonstrance is presented to
15 the State Board of Education, the board shall set a time for a
16 hearing, give notice of the same, and hear the case in the area
17 affected. If the board deems it advisable, the board may appoint
18 a hearings officer to hold the hearing. After considering the
19 testimony, the board shall confirm or reject the action of the
20 boundary board and such determination shall be final.

21 (6) Judicial review of an action taken under this section
22 shall be by the Court of Appeals in the manner provided in ORS
23 183.482. [A petition for a writ of review to review the action
24 taken may be filed with the circuit court within the time
25 permitted by law.]

26 Section 23. ORS 330.123 is amended to read:

330.123. (1) When changes in school district boundaries are
made by the detachment of territory or annexation of less than
an entire school district to another, the district school boards
of the districts affected by each change shall immediately after
the change make an equitable division of the then existing
assets and liabilities between the districts affected by such
change and provide the manner of consummating the division.

(2) In case of failure to agree within 20 days from the time
of such change, the matter shall be decided by a board of
arbitrators. The board of arbitrators shall consist of one
member appointed by each of the boards of the school districts
affected and an additional member appointed by the other
appointees.

(3) In the event any such district school board fails to
appoint an arbitrator within 30 days, the Superintendent of
Public Instruction shall appoint such arbitrator. In the event
the arbitrators selected fail to appoint the additional
arbitrator within 30 days after the appointment of the
arbitrator last appointed, the Superintendent of Public
Instruction shall notify the judge of the circuit court senior
in service of the county in which the administrative office of
the most populous school district is located. Within 10 days
after receiving such notice, the judge shall appoint the
additional arbitrator.

(4) Each member of the board of arbitrators shall be
entitled to the sum of \$20 per day for each day's service, and
necessary traveling expenses, while sitting in his official

1 capacity. Expenses thus incurred shall be equally apportioned
2 among the districts concerned.

3 (5) The decision of the arbitrators is final and may be
4 reviewed [by a writ of review] in the manner provided in ORS
5 33.320 to 33.340.

6 (6) Assets include all school property and moneys belonging
7 to the district at the time of the division. Liabilities include
8 all debts for which the respective districts in their corporate
9 capacities are liable at the time of division. In determining
10 the assets, school property shall be estimated at its fair
11 value. The assets and liabilities shall be divided between the
12 districts in proportion to the last assessed value of the real
13 and personal property. The district retaining the real property
14 shall pay the other districts concerned such sums as are
15 determined in accordance with the provisions of this section.
16 All funds to be apportioned during the current school year,
17 after such division, shall be made in proportion to the resident
18 average daily membership of the districts divided, as shown by
19 the report of such districts for the period ending the preceding
20 June 30 as certified by the districts to the administrative
21 office of the county.

22 Section 24. ORS 330.557 is amended to read:

23 330.557. (1) Any person residing or owning or occupying X
24 real property within the area affected by any final plan of
25 reorganization adopted by the committee for the organization of
26 an administrative school district may petition the State Board
27 of Education to have the plan revised or modified in particulars

1 set forth in such petition. Such petition shall be filed with
2 the secretary of the State Board of Education and a copy thereof
3 shall be delivered to the secretary of the committee in person
4 or by certified mail within 30 days after adoption of such plan
5 by the committee. The petitioner shall have the right to be
6 heard at the hearing provided by ORS 330.560 and to be
7 represented by counsel and to offer evidence and argument in
8 support of such petition. The committee likewise shall be
9 entitled to be heard at such hearing and to be represented by
10 counsel and to offer evidence and argument in opposition to such
11 petition.

12 (2) Any petitioner may petition [the circuit court for writ
13 of review in the manner provided by ORS 34.010 to 34.100 to
14 review] the Court of Appeals in the manner provided by ORS
15 183.482 for judicial review of the decision or determination of
16 the State Board of Education denying or overruling the petition
17 of such petitioner to revise or modify the final plan of
18 reorganization in the particulars set forth in the petition,
19 provided that such petition for [writ of] review shall be filed
20 with the [circuit court within 30] Court of Appeals within 60
21 days after the State Board of Education approves the final plan
22 of reorganization.

23 Section 25. ORS 341.185 is amended to read:

24 341.185. () Any qualified voter of a district aggrieved by the
25 adjustment of or failure to adjust boundaries of a zone pursuant
26 to subsection (1) of ORS 341.175 on the basis that population is
27 not as nearly equal as is feasible is entitled to appear before

1 the board at a public hearing to present his case. If the board
2 refuses to make the requested adjustment in the boundaries, he
3 may appeal from the decision of the board [to the circuit court.
4 The appeal shall be by writ of review] to the Court of Appeals
5 in the manner provided in ORS 183.482.

6 Section 26. ORS 341.573 is amended to read:

7 341.573. (1) When changes in district boundaries are made by
8 the detachment of territory or an annexation of territory and
9 another community college district is affected, the boards of
10 the districts shall make an equitable division of the then
11 existing assets and liabilities between the districts affected
12 by such change and provide the manner of consummating the
13 division.

14 (2) In case of failure to agree within 20 days from the time
15 of such change, the matter shall be decided by a board of
16 arbitrators. The board of arbitrators shall consist of one
17 member appointed by each of the boards of the affected districts
18 and an additional member appointed by the other appointees.

19 (3) In the event any such board fails to appoint an
20 arbitrator within 30 days, the State Board of Education shall
21 appoint such arbitrator. In the event the arbitrators selected
22 fail to appoint the additional arbitrator within 30 days after
23 the appointment of the arbitrator last appointed, the State
24 Board of Education shall notify the judge senior in service of
25 the circuit court of the principal county. Within 10 days after
26 receiving such notice, the judge shall appoint one additional
27 arbitrator.

1 (4) Each member of the board of arbitrators shall be
2 entitled to the sum of \$100 per day for each day's service, and
3 necessary expenses, while serving in his official capacity.
4 Expenses thus incurred shall be equally apportioned among the
5 districts concerned.

6 (5) The decision of the arbitrators is final and may be
7 reviewed [only by a writ of review] in the manner provided in
8 ORS 33.320 to 33.340.

9 (6) Assets include all property and moneys belonging to the
10 district at the time of division. Liabilities include all debts
11 for which the respective districts in their corporate capacities
12 are liable at the time of division. In determining the assets,
13 property shall be estimated at its fair value. The assets and
14 liabilities shall be divided between the districts in proportion
15 to the last assessed value of the real and personal property.
16 The district retaining the real property shall pay the other
17 districts concerned such sums as are determined in accordance
18 with the provisions of this section. All funds to be apportioned
19 during the current fiscal year, after such division, shall be
20 made in proportion to the number of persons in each district
21 according to the latest federal census.

22 Section 27. ORS 459.155 is amended to read:

23 459.155. () Review of any action of the board taken pursuant
24 to ORS [459.140 to 459.155, or any ordinance adopted pursuant
25 thereto,] 459.150 shall be taken solely and exclusively by writ
26 of review in the manner set forth in ORS 34.010 to 34.100.

27 Section 28. ORS 476.835 is amended to read:

1 476.835. (1) Within [30] 60 days after receiving written
2 notice of the findings of the board, any fire service personnel
3 aggrieved by the findings and order of the board may file an
4 appeal from the final order of the board with the [Circuit Court
5 in Marion County. The appeal shall be heard on a writ of review.
6 If an appeal is filed, the order of the board shall not take
7 effect until the court decides the appeal] Court of Appeals in
8 the manner provided for in ORS 183.482.

9 (2) Any fire service personnel who has suffered a loss of
10 accreditation pursuant to ORS 476.820 and 476.825 and subsection
11 (1) of this section may reapply for accreditation at any time
12 after the expiration of two years after the date on which the
13 order of the board revoking his accreditation became final.

14 Section 29. ORS 479.195 is amended to read:

15 479.195. (1) After January 1, 1968, all dance halls, clubs,
16 amusement halls, auditoriums and every place of public assembly
17 not having fixed seats and having a capacity of more than 100
18 persons shall post and keep posted a notice of the maximum
19 number of persons allowed at any one time as established by
20 regulations of the State Fire Marshal or by the approved
21 authority when such public assemblies are located within the
22 jurisdiction of a governmental subdivision granted the exemption
23 provided by subsection (4) of ORS 476.030. All such capacity
24 notices shall be on a form approved or provided by the State
25 Fire Marshal and shall be securely fixed and posted in a
26 conspicuous place so as to be readily visible to the occupants
27 of such place of assembly.

1 (2) If the State Fire Marshal, or his deputies, assistants
2 as defined in ORS 476.060, or the approved authority, as proved
3 by subsection (4) of ORS 476.030, upon examination or inspection
4 finds a building or other structure described in subsection (1)
5 of this section, to be occupied by a number of persons in excess
6 of the maximum number of persons allowed at any one time as set
7 forth in the capacity notice, the State Fire Marshal, or his
8 deputies, assistants as defined in ORS 476.060, or the approved
9 authority, as provided in subsection (4) of ORS 476.030, may
10 close the building or other structure for use or occupancy until
11 compliance has been made.

12 (3) The owner of any building or other structure closed
13 under subsection (2) of this section shall have immediate access
14 to the circuit court for the county in which the building or
15 other structure is located for review of the order of exclusion
16 or removal. Such access may be in the form of [a writ of review
17 or other] any appropriate judicial proceeding and shall be given
18 priority over all other cases on the docket of the circuit
19 court.

20 (4) The closure provided for in subsection (2) of this
21 section shall not exclude any other remedies available to the
22 State Fire Marshal, his deputies, or the approved authority, as
23 provided by subsection (4) of ORS 476.030.

24 Section 30. ORS 553.360 is amended to read:

25 553.360. (1) After the filing of the report of the
26 appraisers, the court shall enter an order fixing the time and
27 place for a hearing on the report and directing the secretary of

1 the district to give notice of the hearing by publication. The
2 notice shall contain a description of each tract of land
3 appraised, together with the names of the owners, if known, and
4 shall state that the appraisers appointed to assess the benefits
5 and damages to the lands described and to appraise the cash
6 value of the lands necessary to be taken for rights of way and
7 other works within or without the limits of the subdistrict,
8 have filed their report with the court and that the owner of
9 each tract of land included therein is given notice that he may
10 examine the report and file objections to the report or to any
11 determination of benefits or damages on or before the date set
12 for the hearing.

13 (2) The district or any person owning or having any interest
14 in the lands described, or the owner of any tract of land within
15 the subdistrict for which the appraisals were made, may file
16 exceptions to the report of the appraisers or to any
17 determination of benefits or damages determined to accrue to
18 lands upon the construction of the proposed works or to the
19 determination of the cash value of the lands necessary to be
20 taken for rights of way or other works.

21 (3) The court shall hear all objections and make such
22 amendments and modifications to the report of the appraisers as
23 to the court may seem equitable. Upon the conclusion of the
24 hearing the court shall enter its order in which shall be given
25 the description of each tract of land appraised, the value of
26 the benefits and damages which the court determines will accrue

1 to each tract, and the value of lands necessary to be taken for
2 rights of way and other works.

3 (4) Any party interested may take an appeal from such order
4 in the manner set forth in ORS [553.815] chapter 35. The order
5 shall be filed in the office of the county clerk of the county
6 in which the court is situated, and a certified copy of the
7 order shall be filed with the county clerk of each other county
8 in which lands within the subdistrict are located.

9 Notwithstanding ORS 2.516, the only review which shall be
10 allowed from the decision of the circuit court under ORS chapter
11 35 shall be by petition for review, to the Supreme Court which
12 petition shall be filed within 30 days after the date of the
13 decision in such manner as provided by the rules of the Supreme
14 Court.

15 Section 31. ORS 553.815 is amended to read:

16 553.815. Owners of any property against which an assessment
17 or tax has been levied may seek a review thereof under ORS
18 34.010 to 34.100. Notwithstanding ORS 2.516, the only review
19 which shall be allowed from the decision of the circuit court
20 under ORS 34.010 to 34.100 shall be by petition for review to
21 the Supreme Court which petition shall be filed within 30 days
22 after the date of the decision in such manner as provided by the
23 rules of the Supreme Court.

SENATE BILL BACK

✓ CROSS OUT INAPPLICABLE WORDS ✓

BILL

~~XXXXXXXXXX~~

NUMBER

435

~~MEMORIAL~~

Title:

Relating to judicial review; creating new provisions; amending ORS 14.030, 34.040, 34.050 and others.

Sponsored by Senator Hanlon and Representative Grannell
Committee on: Legislative Counsel

At the request of:

Law Improvement Committee
Advisory Committee on Writs of Review.

All agencies, organizations and persons that have formally requested the measure are named herein in accordance with ORS 171.127.

Charles Hanlon Bill Grannell
CHIEF SPONSOR

SPONSORS Senate	Principal Additional		SPONSORS House	Principal Additional		SPONSORS House	Principal Additional	
Boe			Achilles			Klein		
Brown			Bauman			Lindquist		
Bullock			Bellamy			Lombard		
Burbidge			Brogoitti			Magruder		
Cook			Bugas			Markham		
Day			Burrows			Mason		
Fadeley			Byers			Monroe		
Gardner			Campbell			Myers		
Groener			Cease			Otto		
Hallock			Cherry			Pisha		
Hanlon		CH	Chrest			Priestley		
Hannon			Cohen			Richards		
Hartung			Davis			Riebel		
Heard			Duff			Rijken		
Isham			Edwards			Rogers		
Jernstedt			Fadeley			Rutherford		
Kafoury			Fawbush			Ryles		
Kulongoski			Ford			Schoon		
McCoy			Frohnmayr			Simpson, J.		
Meeker			Gardner			Simpson, M.		
Potts			Gilmour			Smith		
Powell			Grannell			Starr		
Ragsdale			Hanneman			Stevenson		
Ripper			Johnson, C.			Throop		
Roberts			Johnson, E.			Van Vliet		
Smith			Jones			Whallon		
Thorne			Kafoury			Wilhelms		
Trow			Katz			Wolfer		
Wingard			Kerans			Yih		
Wyers			Kitzhaber			Zajonc		

Enrolled
C-Engrossed

Senate Bill 435

Ordered by the House June 28
(Including Amendments by Senate May 24 and June 1
and by House June 28)

Sponsored by Senator HANLON, Representative GRANNELL (at the request of Law Improvement Committee, Advisory Committee on Writs of Review)

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.

Declares legislative policy. Creates Land Use Board of Appeals. Specifies membership of the board. Requires board to conduct review proceedings prescribed by this Act and to establish rules governing such proceedings. Requires board to prepare recommendations concerning allegations of violations of state-wide planning goals contained in petitions filed for review. Permits party to proceedings to file written exceptions to board's recommendation. Permits party to seek judicial review by Court of Appeals of the final order issued in proceedings.

Effective [*January 1, 1980*] November 1, 1979. Repeals board July 1, 1983.

A BILL FOR AN ACT

1
2 Relating to judicial review; creating new provisions; amending ORS 34.020, 34.030, 34.040, 34.050, 34.070,
3 181.350, 197.015, 197.090, 197.252, 197.265, 197.395, 198.785, 199.461, 215.416, 215.422, 227.173, 227.180,
4 311.860, 330.101, 330.123, 330.557, 341.573, 459.155, 476.835 and 479.195; repealing ORS 34.055, 197.300,
5 197.305, 197.310, 197.315 and 203.200; and prescribing an effective date.

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

7 **SECTION 1.** Sections 1a to 6a of this Act are added to and made a part of ORS 197.005 to 197.430.

8 **SECTION 1a.** It is the policy of the Legislative Assembly that time is of the essence in reaching final
9 decisions in matters involving land use and that those decisions be made consistently with sound principles
10 governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979
11 Act to accomplish these objectives.

12 **SECTION 2.** (1) There is hereby created a Land Use Board of Appeals consisting of not more than five
13 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS
14 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the
15 Governor considers necessary. The members of the board first appointed by the Governor shall be appointed
16 by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the
17 members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the
18 board shall not be reduced during the period of service of the member.

19 (2) The Governor may at any time remove any member of the board for inefficiency, incompetence,
20 neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the
21 Governor shall give the member a copy of the charges against the member and shall fix the time when the
22 member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The
23 hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar.

SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in section 4 of this 1979 Act.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions, except as provided in section 6 of this 1979 Act.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under sections 4 to 6 of this 1979 Act.

SECTION 3. As used in sections 4 to 6 of this 1979 Act:

(1) "Land use decision" means:

(a) A final decision or determination made by a city, county or special district governing body that concerns the adoption, amendment or application of:

(A) The state-wide planning goals;

(B) A comprehensive plan provision; or

(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or

(b) A final decision or determination of a state agency other than the Land Conservation and Development Commission, with respect to which the agency is required to apply the state-wide planning goals.

(2) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind.

SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive jurisdiction to review any land use decision of a city, county or special district governing body or a state agency in the manner provided in sections 5 and 6 of this 1979 Act.

(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of that decision or may, within a reasonable time after a petition for review of that decision has been filed with the board, intervene in and be made a party to any review proceeding pending before the board.

(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may petition the board for review of a quasi-judicial land use decision if the person:

(a) Appeared before the city, county or special district governing body or state agency orally or in writing; and

(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a person whose interests are adversely affected or who was aggrieved by the decision.

1 (4) A notice of intent to appeal a land use decision shall be filed not later than 30 days after the date the
2 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
3 special district governing body or state agency and the applicant of record, if any, in the city, county or special
4 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
5 prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs of \$150.
6 In the event a petition for review is not filed with the board as required in subsection (6) of this section, then the
7 filing fee and deposit shall be awarded to the city, county, special district or state agency as cost of preparation
8 of the record.

9 (5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
10 may allow, the city, county or special district governing body or state agency shall transmit to the board the
11 original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to
12 the review proceeding the record may be shortened. The board may require or permit subsequent corrections
13 to the record.

14 (6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
15 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
16 reviewed and shall state:

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

18 (b) The date of the decision.

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

20 (7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In the
21 case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
22 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
23 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
24 fact of the city, county or special district governing body or state agency for which there is substantial evidence
25 in the whole record.

26 (8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
27 not issued within 90 days and no extension of time has been stipulated to by the parties, the decision being
28 reviewed shall be considered affirmed and the decision may then be appealed in the manner provided in section
29 6a of this 1979 Act.

30 (9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
31 including the cost of preparation of the record if the prevailing party is the city, county or special district
32 governing body or state agency whose decision is under review. The deposit required by subsection (4) of this
33 section shall be applied to any costs charged against the petitioner.

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

35 (11) The board shall provide for the publication of its orders and those previously issued by the
36 commission which are of general public interest in the form it deems best adapted for public convenience.
37 Publications shall constitute the official reports of the board and the commission and shall be made available
38 for distribution in the manner provided in ORS 2.160 and 9.790.

39 (12) All fees collected by the board under this section that are not awarded as costs shall be paid over to the
40 State Treasurer to be credited to the General Fund.

1 **SECTION 5.** (1) Where a petition for review contains only allegations that a land use decision violates the
2 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
3 Act.

4 (2) Where a petition for review contains no allegations that a land use decision violates the state-wide
5 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
6 the decision.

7 (3) Where a petition for review contains both allegations that a land use decision violates the state-wide
8 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
9 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
10 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
11 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
12 issued until the commission has reviewed the recommendation of the board on the issues concerning the
13 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
14 incorporate the determination of the commission into the final order to be issued under this subsection.

15 (4) The board shall reverse or remand the land use decision under review only if:

16 (a) The board finds that the city, county or special district governing body:

17 (A) Exceeded its jurisdiction;

18 (B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
19 substantial rights of the petitioner;

20 (C) Made a decision that was not supported by substantial evidence in the whole record;

21 (D) Improperly construed the applicable law; or

22 (E) Made a decision that was unconstitutional; or

23 (b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
24 the city, county or special district governing body or state agency violated the state-wide planning goals.

25 (5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section 6a
26 of this 1979 Act.

27 **SECTION 6.** (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the board
28 shall prepare a recommendation to the commission concerning any allegations of violation of the state-wide
29 planning goals contained in the petition and shall submit a copy of its recommendation to the commission and to
30 each party to the proceeding. The recommendation shall include a general summary of the evidence contained
31 in the record and proposed findings of fact and conclusions of law concerning the allegations of violation of the
32 state-wide planning goals. The recommendation shall also state whether the petition raises matters of such
33 importance that the commission should hear oral argument from the parties.

34 (2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board's
35 recommendation, including that portion of the recommendation stating whether oral argument should be
36 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

37 (3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
38 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
39 recommends that oral argument not be allowed and the commission concurs with the board's recommendation.
40 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
41 which there is substantial evidence in the record. The commission shall issue its determination on the

1 recommendation of the board and return the determination to the board for inclusion in the board's order under
2 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
3 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
4 commission shall obtain the consent of the parties for a postponement.

5 (4) No determination of the commission issued under subsection (3) of this section is valid unless all
6 members of the commission have received the recommendation of the board in the matter and any exceptions
7 thereto that were timely filed with the board and at least four members of the commission concur in its action in
8 the matter.

9 (5) If the commission receives a recommendation from the board concerning a petition alleging that a
10 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
11 state-wide goals, and the commission has received a request from the city or county which adopted such
12 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
13 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251, the commission
14 may suspend its consideration of the request for compliance acknowledgment until it has issued its
15 determination on the recommendation of the board and the board has issued a final order. In any event the
16 commission shall issue its determination on the recommendation of the board within the time limits established
17 in subsection (3) of this section.

18 (6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
19 brought before it for determination under this section.

20 **SECTION 6a.** (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6 of
21 this 1979 Act, may seek judicial review of a final order issued in those proceedings.

22 (2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
23 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

24 (3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
25 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The
26 petition shall be filed within 30 days only following the date the order upon which the petition is based is
27 served. Date of service shall be the date on which the board delivered or mailed its order.

28 (4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
29 shall be served by registered or certified mail upon the board, and all other parties of record in the board
30 proceeding.

31 (5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
32 upon a showing of:

33 (A) Irreparable injury to the petitioner; and

34 (B) A colorable claim of error in the order.

35 (b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall grant
36 the stay unless the board determines that substantial public harm will result if the order is stayed. If the board
37 denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would
38 result from the granting of the stay.

39 (c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or other
40 undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of
41 Appeals within specified reasonable periods of time.

(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules as the court may establish.

(6) Within 20 days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the court shall not substitute its judgment for that of the board as to any issue of fact.

(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record.

Section 7. ORS 197.015 is amended to read:

197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

(1) "Activity of state-wide significance" means a land conservation and development activity designated pursuant to ORS 197.400.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

[(2)] (3) "Commission" means the Land Conservation and Development Commission.

[(3)] (4) "Committee" means the Joint Legislative Committee on Land Use.

[(4)] (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[(5)] (6) "Department" means the Department of Land Conservation and Development.

[(6)] (7) "Director" means the Director of the Department of Land Conservation and Development.

[(7)] (8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.430.

[(8)] (9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and

1 special districts in the preparation, adoption and implementation of plans, programs and regulations in
2 compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and
3 special districts to a single approach.

4 [(9)] (10) "Special district" means any unit of local government, other than a city or county, authorized
5 and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port
6 districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit
7 districts and sanitary districts.

8 [(10)] (11) "Voluntary association of local governments" means a regional planning agency in this state
9 officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95
10 as a regional clearinghouse.

11 Section 7a. ORS 197.252 is amended to read:

12 197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS
13 197.251, the commission may condition the compliance schedule for the city or county to direct the city or
14 county to apply specified goal requirements in approving or denying future land conservation and development
15 actions if the commission finds that past approvals or denials would have constituted violations of the
16 state-wide planning goals and:

17 (a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
18 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
19 achieving the state-wide planning goals through performance of the compliance schedule; or

20 (b) The commission finds that a past approval or denial was of more than local impact and substantially
21 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
22 compliance schedule.

23 (2) Conditions may be imposed under this section only at the time of:

24 (a) Annual phased review of the satisfactory progress of the city or county;

25 (b) Approval of a planning assistance grant agreement with the city or county; or

26 (c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date by
27 the city or county.

28 (3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
29 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
30 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
31 Replacement Part) and 197.251 and 197.320.

32 Section 7b. 197.265 is amended to read:

33 197.265. (1) As used in this section, "action or suit" includes but is not limited to a [writ of review]
34 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
35 ORS 197.300] sections 4 to 6 of this 1979 Act.

36 (2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
37 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
38 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
39 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred

1 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
2 appropriated to the commission therefor.

3 Section 7c. ORS 197.395 is amended to read:

4 197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
5 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
6 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
7 and any other information required by the city or county as prescribed by rule of the commission.

8 (2) If the city or county finds after review of the application that the proposed activity complies with
9 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
10 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
11 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
12 approved.

13 (3) The city or county may prescribe and include in the permit any conditions or restrictions that it
14 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
15 the cities or counties affected by the activity.

16 (4) Actions pursuant to this section are subject to review *[pursuant to ORS 197.300]* under sections 4 to 6 of
17 this 1979 Act.

18 Section 7d. ORS 197.090 is amended to read:

19 "197.090. Subject to policies adopted by the commission, the director shall:

20 (1) Be the administrative head of the department.

21 (2) Coordinate the activities of the department in its land conservation and development functions with
22 such functions of federal agencies, other state agencies, cities, counties and special districts.

23 (3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department,
24 prescribe their duties and fix their compensation, subject to the State Merit System Law.

25 (4) Represent this state before any agency of this state, any other state or the United States with respect to
26 land conservation and development within this state.

27 (5) Provide clerical and other necessary support services for the Land Use Board of Appeals.

28 Section 8. ORS 34.020 is amended to read:

29 34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for
30 which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by
31 any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as
32 provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate
33 order involving the merits and necessarily affecting the decision or determination sought to be reviewed.

34 Section 9. ORS 34.050 is amended to read:

35 34.050. *[Except as provided in ORS 34.055,]* Before allowing the writ, the court *[or judge]* shall require the
36 plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that
37 he will pay all costs and disbursements that may be adjudged to the defendant on the review. *[The court or*

1 *judge may allow the undertaking to be given in a sum not less than \$50, when it is probable that such sum will be*
2 *sufficient.]*

3 Section 9a. ORS 34.030 is amended to read:

4 34.030. The writ shall be allowed by the circuit court [*or judge thereof*], or, in counties where the county
5 court has judicial functions, by the county court [*or judge of the county*] wherein the decision or determination
6 sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination
7 with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition
8 shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney to the effect that he
9 has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as
10 alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the
11 date of the decision or determination sought to be reviewed.

12 Section 10. ORS 34.070 is amended to read:

13 34.070. [*(1) Except as otherwise provided in subsection (2) of this section,*] In the discretion of the court [*or*
14 *judge*] issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in
15 the matter to be reviewed, whereupon the proceedings shall be stayed accordingly.

16 [*(2) A court or judge issuing a writ involving a land development project as defined in ORS 34.055 may not*
17 *require the defendant to desist from further proceedings regarding the project unless the undertaking required by*
18 *ORS 34.055 has been given to the court or judge.*]

19 Section 10a. ORS 215.416 is amended to read:

20 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of
21 land may apply in writing to such persons as the governing body designates, for a permit, in the manner
22 prescribed by the governing body.

23 (2) The hearings officer shall hold at least one public hearing on the application and within 90 days after
24 receiving it deny or approve it. However, with the agreement of the county and the applicant, the proceeding
25 on the application may be extended for a reasonable period of time, as determined by the hearings officer, but
26 not to exceed six months from the date of the first public hearing on the application.

27 (3) The application shall not be approved if the proposed use of land is found to be in conflict with the
28 comprehensive plan of the county and other applicable ordinance provisions. The approval may include such
29 conditions as are authorized by statute or county legislation.

30 (4) Hearings under this section shall be held only after notice to the applicant and also notice to other
31 persons as otherwise provided by law.

32 (5) Approval or denial of a permit application shall be based on standards and criteria which shall be set
33 forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate
34 approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which
35 the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a
36 whole.

37 (6) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains
38 the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the

1 decision and explains the justification for the decision based on the criteria, standards and facts set forth.

2 (7) Written notice of the approval or denial shall be given to all parties to the proceeding.

3 Section 10b. ORS 227.173 is amended to read:

4 227.173. (1) Approval or denial of a discretionary permit application shall be based on standards and
5 criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a
6 discretionary permit application to the development ordinance and to the comprehensive plan for the area in
7 which the development would occur and to the development ordinance and comprehensive plan for the city as a
8 whole.

9 (2) Approval or denial of a permit application shall be based upon and accompanied by a brief statement
10 that explains the criteria and standards considered relevant to the decision, states the facts relied upon in
11 rendering the decision and explains the justification for the decision based on the criteria, standards and facts
12 set forth.

13 (3) Written notice of the approval or denial shall be given to all parties to the proceeding.

14 Section 11. ORS 215.422 is amended to read:

15 215.422. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
16 commission or county governing body, or both, however the governing body prescribes. The appellate
17 authority on its own motion may review the action. The procedure and type of hearing for such an appeal or
18 review shall be prescribed by the governing body. *[An appeal or review proceeding shall be based upon, but not*
19 *limited to, the record of the hearings officer's action.]*

20 (2) A party aggrieved by the final determination may have the determination reviewed *[under ORS 34.010*
21 *to 34.100]* in the manner provided in sections 4 to 6 of this 1979 Act.

22 Section 12. ORS 227.180 is amended to read:

23 227.180. (1) A party aggrieved by the action of a hearings officer may appeal the action to the planning
24 commission or council of the city, or both, however the council prescribes. The appellate authority on its own
25 motion may review the action. The procedure for such an appeal or review shall be prescribed by the council,
26 but shall include a hearing at least for argument. Upon appeal or review the appellate authority shall consider
27 the record of the hearings officer's action. That record need not set forth evidence verbatim.

28 (2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change
29 may have the determination reviewed under *[ORS 34.010 to 34.100]* sections 4 to 6 of this 1979 Act.

30 Section 13. ORS 34.040 is amended to read:

31 34.040. The writ shall be allowed in all cases where the inferior court **including a district court**, officer, or
32 tribunal other than an agency as defined in subsection (1) of ORS 183.310 in the exercise of judicial or
33 quasi-judicial functions appears to have:

34 (1) Exceeded its *[or his]* jurisdiction;

35 (2) Failed to follow the procedure applicable to the matter before it *[or him]*;

36 (3) Made a finding or order not supported by *[reliable, probative and]* substantial evidence **in the whole**
37 **record**; *[or]*

38 (4) Improperly construed the applicable law; or

39 (5) Rendered a decision that is unconstitutional,

40 to the injury of some substantial *[right]* interest of the plaintiff, and not otherwise. The fact that the right of

1 appeal exists is no bar to the issuance of the writ.

2 Section 14. ORS 181.350 is amended to read:

3 181.350. The decisions of the trial board shall be subject to review by the [*circuit court of the county in*
4 *which the hearing was held*] Court of Appeals. The procedure for review shall be as provided in ORS [*34.010 to*
5 *34.100*] 183.482.

6 Section 15. ORS 198.785 is amended to read:

7 198.785. [(1) *A proceeding may not be maintained to contest the validity of a formation or change of*
8 *organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the*
9 *date the formation of the district or change of organization is complete.*]

10 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
11 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
12 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
13 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
14 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
15 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
16 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
17 [*to the Supreme Court*] as provided for appeals in other proceedings.

18 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
19 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

20 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
21 organization, the formation or change shall be considered complete and final upon the date the order of
22 formation or the order, resolution or statement announcing a change of organization is filed with the county
23 clerk as provided by ORS 198.780.

24 Section 15a. If House Bill 2642 becomes law, section 15 of this Act is repealed and ORS 198.785, as
25 amended by section 7, chapter _____, Oregon Laws 1979 (Enrolled House Bill 2642), is further amended to
26 read:

27 "198.785. [(1) *A proceeding may not be maintained to contest the validity of a formation or change of*
28 *organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the*
29 *date the formation of the district or change of organization is complete.*]

30 [(2)] (1) If the county clerk refuses to accept and file a petition for formation or for change of organization,
31 or if the county board refuses to call a special election as provided by ORS 198.705 to 198.955, any citizen of
32 the affected district or territory may apply within 10 days after such refusal to the circuit court of the principal
33 county for a writ of mandamus to compel the county board or county clerk to do so. If it is decided by the
34 circuit court that the petition for formation or change of organization is legally sufficient and the requisite
35 number of signatures is attached, the circuit court shall direct the county board to call the election. The suit
36 shall be advanced on the docket and decided by the circuit court as quickly as possible. Either party may appeal
37 [*to the Court of Appeals*] as provided for appeals in other proceedings.

38 [(3)] (2) An action to determine the validity of a formation or change of organization proceeding may also
39 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

40 [(4)] (3) For the purpose of an action to determine or contest the validity of a formation or change of
41 organization, the formation or change shall be considered complete and final upon the date the order of

1 formation or the order, resolution or statement announcing a change of organization is filed with the county
2 clerk as provided by ORS 198.780.

3 Section 16. ORS 199.461 is amended to read:

4 199.461. (1) When the boundary commission receives a petition in a boundary change proceeding, it shall:

5 (a) Cause a study to be made of the proposal offered by the petition.

6 (b) Conduct one or more public hearings on the proposal.

7 (2) After the study and hearings, the boundary commission may alter the boundaries set out in a petition
8 for formation or a minor boundary change of a city or district or in a petition for consolidation of cities so as
9 either to include or exclude territory. If the commission determines that any land has been improperly omitted
10 from the proposal and that the owner of the land has not appeared at the hearing, in person or by his
11 representative designated in writing, the commission shall continue the hearing on the petition and shall order
12 notice given to the nonappearing owner requiring him to appear before the commission and show cause, if any,
13 why his land should not be included in the proposal. Notice to nonappearing owners may be given by personal
14 service or by letter sent by first-class mail, at least 10 days prior to the date to which the hearing has been
15 continued. The required notice may be waived by the nonappearing owner.

16 (3) On the basis of the study and after hearing, the boundary commission shall approve the proposed
17 boundary change as presented or as modified by the commission or disapprove the proposed change, by an
18 order stating the reasons for the decision of the commission. Any person interested in a boundary change may[,
19 *within 30 days after the date of a final order, appeal the order for review under ORS 34.010 to 34.100*] appeal the
20 order in accordance with the provisions of ORS 183.480 to 183.500 governing judicial review of agency orders or, if
21 the decision of the boundary commission involves application of the state-wide planning goals, in accordance with
22 the provisions of sections 4 to 6 of this 1979 Act.

23 (4) Immediately after the effective date of a final order entered under subsection (3) of this section and a
24 proclamation declaring a minor boundary change approved if any is entered under subsection (3) of ORS
25 199.505, the commission shall file a copy of the order and proclamation, if any, with the Secretary of State, the
26 assessor and the county clerk of each county in which the affected territory, city or district is located, and the
27 clerk of the affected city or district. If the commission disapproves a minor boundary change, it shall send a
28 copy of the final order to the person who actually filed the petition and to the affected city or district.

29 SECTION 17. ORS 203.200 is repealed.

30 Section 18. ORS 311.860 is amended to read:

31 311.860. (1) Any person proposing to construct a facility who has applied for and obtained the necessary
32 preliminary construction permits or certificates and the governing body of any taxing unit obligated to furnish
33 services and facilities in the area in which the construction is to take place may enter into an agreement to carry
34 out the purposes of ORS 311.850. An agreement entered into under this section shall contain provisions
35 pertaining to and in accordance with the following:

36 (a) The payment of moneys by the person proposing to construct the facility to the taxing unit prior in time
37 to or during the period of the construction.

38 (b) The amounts of the payments to be made by the person proposing to construct the facility and the dates
39 for making the payments.

40 (c) A reduction in true cash value for the facility for purposes of computing the rate of levy of the taxing
41 unit entering into the agreement for each year of a period of years, not to exceed 10, commencing on or in the

1 course of completion of the construction of the facility. The amount of reduction allowed by the agreement
2 shall be a percentage amount, not to exceed 50 percent, of the true cash value of the facility as of any
3 assessment date affected by the reduction, and may be fixed or graduated over the period of years for which
4 the reduction is allowed. The total reduction allowed by the agreement shall result in a tax benefit for the
5 facility that is estimated to be equivalent to the total amount of payments made under the agreement to the
6 taxing unit, plus interest at the maximum rate of eight percent per annum from the date of each payment;
7 however, in no event shall the total reduction in true cash value during the period of years of reduction cause a
8 total reduction in taxes which exceeds the total amount of moneys previously paid plus interest.

9 (2) A copy of an agreement entered into under this section shall be filed with the county assessor of each
10 county in which a taxing unit which is a party to the agreement is located.

11 (3) Prior to April 1 of the first year for which the exemption granted by ORS 311.865 applies, the governing
12 body of the taxing unit that is a party to the agreement may certify to the county assessor that all payments
13 have been made to the taxing unit in accordance with the terms of the agreement. The county assessor shall not
14 grant the exemption for any year unless he has received such certificate. Review of denial of an exemption
15 under this section shall be as provided by ORS ~~[34.010 to 34.100]~~ 305.275.

16 Section 19. ORS 330.101 is amended to read:

17 330.101. (1) Before the proposed change is made, the district boundary board shall give notice in the
18 manner provided in ORS 331.010 of the proposed change and the proposals and the session of the board at
19 which they will be considered. If no remonstrance is submitted requiring an election as provided in subsection
20 (2) of this section and if the board makes the findings set forth in subsection (2) of ORS 330.090, the board shall
21 declare that the change and proposals shall become effective as provided in ORS 330.103.

22 (2) If a remonstrance signed by at least five percent or at least 500, whichever is less, of the qualified
23 voters in a school district or area affected by the proposed change is filed with the district boundary board
24 within 20 days after the date set to consider the proposed change and the proposals and if the board makes the
25 findings set forth in subsection (2) of ORS 330.090, the board shall submit the question of the proposed change
26 and the proposals to the qualified voters of each affected district or area from which a remonstrance was filed
27 as nearly as possible in the manner prescribed for annual school elections with the district boundary board
28 acting in the place of the local school districts. Separate elections shall be held in sequence, commencing with
29 the least populous district or area and progressing in order of population to the most populous district or area.
30 If the majority of votes in each election favor the change and the proposals, an election shall be held in the next
31 most populous district or area. The boundary board shall give notice of each election in the manner provided in
32 ORS 331.010.

33 (3) If the majority of votes cast in any affected district or area oppose the change and the proposals, the
34 change and the proposals shall be defeated, and the same or a substantially similar change combined with
35 substantially similar proposals shall not be considered until 12 months have elapsed from the date of the
36 election at which the change and the proposals were defeated. If the vote is favorable in all remonstrating
37 districts or areas, the district boundary board shall declare the change and proposals effective as provided in
38 ORS 330.103 without further elections.

39 (4) In an election to add districts to a union high school district, if the district boundary board determines
40 that the proposition carried in the union high school district by a majority of votes cast, and also carried in one
41 or more of the common school districts by a majority of the votes cast in each district, it shall declare the

1 proposition carried as to those common school districts only in which the proposition prevailed, and shall
2 immediately proceed to change the boundaries of the union high school district to include those districts
3 desiring to be added thereto.

4 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, if a petition signed by 100
5 percent of the owners of record or the contract purchasers of real property and 100 percent of the qualified
6 voters of an area requesting that the area be annexed to another school district to which it is contiguous is
7 presented to the district boundary board, the board, if it makes the findings set forth in subsection (2) of ORS
8 330.090, shall order the change to be made effective on the following May 31, providing a remonstrance signed
9 by the school boards of any affected district or by the original petitioners is not presented to the State Board of
10 Education within 30 days of the date of the order. If such a remonstrance is presented to the State Board of
11 Education, the board shall set a time for a hearing, give notice of the same, and hear the case in the area
12 affected. If the board deems it advisable, the board may appoint a hearings officer to hold the hearing. After
13 considering the testimony, the board shall confirm or reject the action of the boundary board and such
14 determination shall be final.

15 (6) Judicial review of an action taken under this section shall be by the Court of Appeals in the manner
16 provided in ORS 183.482. *[A petition for a writ of review to review the action taken may be filed with the circuit*
17 *court within the time permitted by law.]*

18 Section 20. ORS 330.123 is amended to read:

19 330.123. (1) When changes in school district boundaries are made by the detachment of territory or
20 annexation of less than an entire school district to another, the district school boards of the districts affected by
21 each change shall immediately after the change make an equitable division of the then existing assets and
22 liabilities between the districts affected by such change and provide the manner of consummating the division.

23 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
24 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
25 the school districts affected and an additional member appointed by the other appointees.

26 (3) In the event any such district school board fails to appoint an arbitrator within 30 days, the
27 Superintendent of Public Instruction shall appoint such arbitrator. In the event the arbitrators selected fail to
28 appoint the additional arbitrator within 30 days after the appointment of the arbitrator last appointed, the
29 Superintendent of Public Instruction shall notify the judge of the circuit court senior in service of the county in
30 which the administrative office of the most populous school district is located. Within 10 days after receiving
31 such notice, the judge shall appoint the additional arbitrator.

32 (4) Each member of the board of arbitrators shall be entitled to the sum of \$20 per day for each day's
33 service, and necessary traveling expenses, while sitting in his official capacity. Expenses thus incurred shall be
34 equally apportioned among the districts concerned.

35 (5) The decision of the arbitrators is final and may be reviewed *[by a writ of review]* in the manner provided
36 in ORS 33.320 to 33.340.

37 (6) Assets include all school property and moneys belonging to the district at the time of the division.
38 Liabilities include all debts for which the respective districts in their corporate capacities are liable at the time
39 of division. In determining the assets, school property shall be estimated at its fair value. The assets and
40 liabilities shall be divided between the districts in proportion to the last assessed value of the real and personal
41 property. The district retaining the real property shall pay the other districts concerned such sums as are

1 determined in accordance with the provisions of this section. All funds to be apportioned during the current
2 school year, after such division, shall be made in proportion to the resident average daily membership of the
3 districts divided, as shown by the report of such districts for the period ending the preceding June 30 as
4 certified by the districts to the administrative office of the county.

5 Section 21. ORS 330.557 is amended to read:

6 330.557. (1) Any person residing or owning or occupying real property within the area affected by any final
7 plan of reorganization adopted by the committee for the organization of an administrative school district may
8 petition the State Board of Education to have the plan revised or modified in particulars set forth in such
9 petition. Such petition shall be filed with the secretary of the State Board of Education and a copy thereof shall
10 be delivered to the secretary of the committee in person or by certified mail within 30 days after adoption of
11 such plan by the committee. The petitioner shall have the right to be heard at the hearing provided by ORS
12 330.560 and to be represented by counsel and to offer evidence and argument in support of such petition. The
13 committee likewise shall be entitled to be heard at such hearing and to be represented by counsel and to offer
14 evidence and argument in opposition to such petition.

15 (2) Any petitioner may petition *[the circuit court for writ of review in the manner provided by ORS 34.010 to*
16 *34.100 to review]* the Court of Appeals in the manner provided by ORS 183.482 for judicial review of the decision
17 or determination of the State Board of Education denying or overruling the petition of such petitioner to revise
18 or modify the final plan of reorganization in the particulars set forth in the petition, provided that such petition
19 for *[writ of]* review shall be filed with the *[circuit court within 30]* Court of Appeals within 60 days after the State
20 Board of Education approves the final plan of reorganization.

21 Section 22. ORS 341.573 is amended to read:

22 341.573. (1) When changes in district boundaries are made by the detachment of territory or an annexation
23 of territory and another community college district is affected, the boards of the districts shall make an
24 equitable division of the then existing assets and liabilities between the districts affected by such change and
25 provide the manner of consummating the division.

26 (2) In case of failure to agree within 20 days from the time of such change, the matter shall be decided by a
27 board of arbitrators. The board of arbitrators shall consist of one member appointed by each of the boards of
28 the affected districts and an additional member appointed by the other appointees.

29 (3) In the event any such board fails to appoint an arbitrator within 30 days, the State Board of Education
30 shall appoint such arbitrator. In the event the arbitrators selected fail to appoint the additional arbitrator within
31 30 days after the appointment of the arbitrator last appointed, the State Board of Education shall notify the
32 judge senior in service of the circuit court of the principal county. Within 10 days after receiving such notice,
33 the judge shall appoint one additional arbitrator.

34 (4) Each member of the board of arbitrators shall be entitled to the sum of \$100 per day for each day's
35 service, and necessary expenses, while serving in his official capacity. Expenses thus incurred shall be equally
36 apportioned among the districts concerned.

37 (5) The decision of the arbitrators is final and may be reviewed *[only by a writ of review]* in the manner
38 provided in ORS 33.320 to 33.340.

39 (6) Assets include all property and moneys belonging to the district at the time of division. Liabilities
40 include all debts for which the respective districts in their corporate capacities are liable at the time of division.
41 In determining the assets, property shall be estimated at its fair value. The assets and liabilities shall be divided

1 between the districts in proportion to the last assessed value of the real and personal property. The district
2 retaining the real property shall pay the other districts concerned such sums as are determined in accordance
3 with the provisions of this section. All funds to be apportioned during the current fiscal year, after such
4 division, shall be made in proportion to the number of persons in each district according to the latest federal
5 census.

6 Section 23. ORS 459.155 is amended to read:

7 459.155. Review of any action of the board taken pursuant to ORS [*459.140 to 459.155, or any ordinance*
8 *adopted pursuant thereto,*] 459.150 shall be taken solely and exclusively by writ of review in the manner set
9 forth in ORS 34.010 to 34.100.

10 Section 24. ORS 476.835 is amended to read:

11 476.835. (1) Within [*30*] 60 days after receiving written notice of the findings of the board, any fire service
12 personnel aggrieved by the findings and order of the board may file an appeal from the final order of the board
13 with the [*Circuit Court in Marion County. The appeal shall be heard on a writ of review. If an appeal is filed, the*
14 *order of the board shall not take effect until the court decides the appeal*] Court of Appeals in the manner
15 provided for in ORS 183.482.

16 (2) Any fire service personnel who has suffered a loss of accreditation pursuant to ORS 476.820 and
17 476.825 and subsection (1) of this section may reapply for accreditation at any time after the expiration of two
18 years after the date on which the order of the board revoking his accreditation became final.

19 Section 25. ORS 479.195 is amended to read:

20 479.195. (1) After January 1, 1968, all dance halls, clubs, amusement halls, auditoriums and every place of
21 public assembly not having fixed seats and having a capacity of more than 100 persons shall post and keep
22 posted a notice of the maximum number of persons allowed at any one time as established by regulations of the
23 State Fire Marshal or by the approved authority when such public assemblies are located within the jurisdiction
24 of a governmental subdivision granted the exemption provided by subsection (4) of ORS 476.030. All such
25 capacity notices shall be on a form approved or provided by the State Fire Marshal and shall be securely fixed
26 and posted in a conspicuous place so as to be readily visible to the occupants of such place of assembly.

27 (2) If the State Fire Marshal, or his deputies, assistants as defined in ORS 476.060, or the approved
28 authority, as proved by subsection (4) of ORS 476.030, upon examination or inspection finds a building or other
29 structure described in subsection (1) of this section, to be occupied by a number of persons in excess of the
30 maximum number of persons allowed at any one time as set forth in the capacity notice, the State Fire Marshal,
31 or his deputies, assistants as defined in ORS 476.060, or the approved authority, as provided in subsection (4)
32 of ORS 476.030, may close the building or other structure for use or occupancy until compliance has been
33 made.

34 (3) The owner of any building or other structure closed under subsection (2) of this section shall have
35 immediate access to the circuit court for the county in which the building or other structure is located for
36 review of the order of exclusion or removal. Such access may be in the form of [*a writ of review or other*] any
37 appropriate judicial proceeding and shall be given priority over all other cases on the docket of the circuit court.

38 (4) The closure provided for in subsection (2) of this section shall not exclude any other remedies available

1 to the State Fire Marshal, his deputies, or the approved authority, as provided by subsection (4) of ORS
2 476.030.

3 **SECTION 26.** ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.

4 **SECTION 27.** This Act takes effect on November 1, 1979.

5 **SECTION 28.** (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

6 (2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals
7 before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of
8 Appeals under sections 4 to 6 of this Act.

9 **SECTION 29.** The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review
10 of land use decisions to be filed on or after November 1, 1979. Any petition before the Land Conservation and
11 Development Commission or any circuit court still pending on November 1, 1979, shall be finally determined by
12 the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the
13 effective date of this Act.

HOUSE COMMITTEE REPORT

Salem, Oregon June 27, 19 79

Mr. Speaker:

SB 435

Your Committee on Judiciary to whom was referred B - Eng. having had the same under consideration, respectfully reports it back with the recommendation that it:

- ☐ Do pass. ☒ Do pass with _____ House amendments (x) and be printed engrossed.
- ☐ Be adopted. ☐ Be adopted with _____ House amendments () and be printed engrossed.
- ☐ Be referred to: () Ways and Means by prior reference.
- () _____.

See attached amendments.

FOR INFORMATION ONLY-NOT PART OF COMMITTEE REPORT

Voting no: _____

Voting aye: Bugas, Cohen, Frohnmayer, Gardner, Lombard, Mason, Richards, Rutherford, Smith

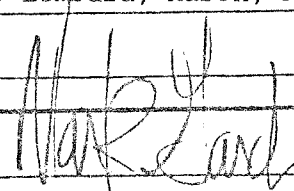
Excused: _____

2 copies if no amendments

Submit: 7 copies if amendments

7 copies if to be printed engrossed

Retain: 1 copy for committee file

 Chairman

Rep. Smith will lead floor discussion on this measure.

PROPOSED AMENDMENTS TO PRINTED B-ENGROSSED SENATE BILL 435

On page 1 of the printed B-engrossed bill, line 15, after "board" insert "first appointed by the Governor" and after "shall" delete the rest of the line and insert "be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983."

In line 16, delete "Governor and their" and insert "The" and after "salaries" insert "of the members" and after the period insert "The salary of a member of the board shall not be reduced during the period of service of the member."

After line 16, insert:

"(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500."

In line 17, delete "(2)" and insert "(3)".

On page 2, line 11, after the first "agency", insert "other than the Land Conservation and Development Commission,".

1 In line 31, delete "20" and insert "30".

2 In line 35, delete "\$200" and insert "\$50 and a deposit for
3 costs of \$150".

4 In line 36, after "fee" insert "and deposit".

5 In line 40, delete ", if any,".

6 On page 3, line 9, delete ", if any".

7 In line 16, after "days" insert "and no extension of time has
8 been stipulated to by the parties" and before the period insert
9 "and the decision may then be appealed in the manner provided in
10 section 6a of this 1979 Act".

11 In line 19, after the period insert "The deposit required by
12 subsection (4) of this section shall be applied to any costs
13 charged against the petitioner.".

14 After line 24, insert:

15 "(12) All fees collected by the board under this section that
16 are not awarded as costs shall be paid over to the State Treasurer
17 to be credited to the General Fund.".

18 On page 9, line 26, delete "Notice of".

19 On page 10, line 12, after "court" insert "including a district
20 court" and delete "a".

21 In line 13, delete "district court or",

22 On page 11, after line 4, insert:

23 "Section 15a. If House Bill 2642 becomes law, section 15 of
24 this Act is repealed and ORS 198.785, as amended by section 7,
25 chapter _____, Oregon Laws 1979 (Enrolled House Bill 2642), is
26 further amended to read:

1 //198.785. [(1) A proceeding may not be maintained to contest the
2 validity of a formation or change of organization proceeding
3 conducted under ORS 198.705 to 198.955 unless commenced within 30
4 days after the date the formation of the district or change of
5 organization is complete.]

6 //[(2)] (1) If the county clerk refuses to accept and file a
7 petition for formation or for change of organization, or if the
8 county board refuses to call a special election as provided by ORS
9 198.705 to 198.955, any citizen of the affected district or
10 territory may apply within 10 days after such refusal to the
11 circuit court of the principal county for a writ of mandamus to
12 compel the county board or county clerk to do so. If it is decided
13 by the circuit court that the petition for formation or change of
14 organization is legally sufficient and the requisite number of
15 signatures is attached, the circuit court shall direct the county
16 board to call the election. The suit shall be advanced on the
17 docket and decided by the circuit court as quickly as possible.
18 Either party may appeal [to the Court of Appeals] as provided for
19 appeals in other proceedings.

20 //[(3)] (2) An action to determine the validity of a formation or
21 change of organization proceeding may also be brought pursuant to
22 ORS 33.710 and 33.720 or 34.010 to 34.100.

23 //[(4)] (3) For the purpose of an action to determine or contest
24 the validity of a formation or change of organization, the
25 formation or change shall be considered complete and final upon the
26 date the order of formation or the order, resolution or statement

1 announcing a change of organization is filed with the county clerk
2 as provided by ORS 198.780."

3 In line 22, before the period insert "or, if the decision of
4 the boundary commission involves application of the state-wide
5 planning goals, in accordance with the provisions of sections 4 to
6 6 of this 1979 Act".

7 On page 16, line 4, delete "January 1, 1980" and insert
8 "November 1, 1979".

9 In line 10, delete "January 1, 1980" and insert "November 1,
10 1979".

11 In line 11, delete "January 1, 1980" and insert "November 1,
12 1979".

HOUSE AMENDMENTS TO PRINTED B-ENGROSSED SENATE BILL 435

By COMMITTEE ON JUDICIARY

June 28

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2 and after "shall" delete the rest of the line and insert "be appointed by the Governor to serve for a term
3 beginning November 1, 1979, and ending July 1, 1983."

4 In line 16, delete "Governor and their" and insert "The" and after "salaries" insert "of the members"
5 and after the period insert "The salary of a member of the board shall not be reduced during the period of
6 service of the member."

7 "(2) The Governor may at any time remove any member of the board for inefficiency, incompetence,
8 neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the
9 Governor shall give the member a copy of the charges against the member and shall fix the time when the
10 member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The
11 hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS
12 183.310 to 183.500. The decision of the Governor to remove a member of the board shall be subject to judicial
13 review in the same manner as provided for review of contested cases under ORS 183.480 to 183.500."

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16 Commission,".

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3 read:

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5 organization proceeding conducted under ORS 198.705 to 198.955 unless commenced within 30 days after the
6 date the formation of the district or change of organization is complete.]

7 "[2] (1) If the county clerk refuses to accept and file a petition for formation or for change of
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9 any citizen of the affected district or territory may apply within 10 days after such refusal to the circuit court of
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16 be brought pursuant to ORS 33.710 and 33.720 or 34.010 to 34.100.

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20 clerk as provided by ORS 198.780."

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22 the state-wide planning goals, in accordance with the provisions of sections 4 to 6 of this 1979 Act".

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By COMMITTEE ON JUDICIARY

June 28

JUN 28 1979

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1977 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION

1. Measure Number SB 435	2. Status C-Engrossed	3. Fiscal Impact Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4. Subject Revision of judicial review of land use and certain other decisions		
5. Government Unit or Program Affected Land Conservation and Development Commission; Appellate Courts		
6. Budget and Management Analyst Date	7. Legislative Fiscal Analyst Dan Simmons	Date 6-29-79
8. Fiscal Analysis		

Under current law, land use planning decisions may be appealed to Circuit Courts or in certain instances to the Land Conservation and Development Commission. SB 435 modifies the procedure so that initial appeals are directed to the newly created Land Use Board of Appeals. The Land Conservation and Development Commission now retains private attorneys to perform its hearings and by consolidating this workload with the appeals which have been submitted to the Circuit Courts, some overall economies of scale should result. However, records are not available to determine the number of cases which have been submitted to the Circuit Courts and hence there is no basis to project what the combined workload will be. There will be a transfer of costs from the Circuit Courts which are financed primarily by county funds to the Department of Land Conservation and Development and its principal funding source, the State General Fund.

The measure provides for up to five referees to be appointed and preliminary indications are that three will be needed. Salaries are to be established by the Governor and it is anticipated that a very high salary will be required to attract qualified individuals.

The Department of Land Conservation and Development's 1979-81 budget includes approximately \$400,000 to finance land use decision appeals. An additional appropriation will probably be required to implement Senate Bill 435, but the amount cannot be determined. To some extent the new \$50 fee and \$150 deposit will offset amounts appropriated from the General Fund.

OREGON STATE SENATE

60th Legislative Assembly

STAFF MEASURE ANALYSIS

Measure: B-Engrossed Senate Bill 435

Committee: Trade and Economic Development

Hearing Dates: 3/14, 3/26, 4/19, 4/24, 5/2, 5/10, 5/14, 5/23, 5/24, and 5/30/79.

Explanation Prepared By: Patricia K. Middelburg

Title: Executive Officer

Problem addressed. This bill addresses two problems. First, when local governing bodies make a decision on a land use matter, an individual who wants to contest that decision may request a review of the decision by filing a writ of review with a circuit court or seek a declaratory judgement from the Land Conservation and Development Commission. This procedure may be lengthy and costly to all parties involved in the land use matter. Second, existing statutes allow decisions of certain state agencies to be appealed using the writ of review procedure rather than following the appeals process in the Administrative Procedures Act.

Function and purpose of measure as reported out. /

Sections 1-12 deals with land use matters. Sections 1-6a establishes a procedure for seeking a review of a land use decision. It creates a Land Use Board of Appeals, with the hearings referees appointed by the Governor, subject to Senate confirmation. It prescribes the procedure for filing a petition with the Board for requesting a review of the land use decision. Defines land use decision. A time requirement for the Board or the Commission to issue its final decision on the petition is imposed. Sections 7-12 make technical changes to existing statutes to reflect the new process for appealing land use decisions.

Section 13 eliminates the use of the writ as an alternative appeal route to the circuit courts for decisions of the Oregon District Court.

Sections 14-24 relates to other provisions of the Oregon law where reference is made to the writ of review process for appealing state agency decisions. It changes these statutes by requiring that decisions of certain state agencies would now be appealed under the provisions of the Administrative Procedures Act. These agencies include: State Police Trial Board, boundary commissions, State Board of Education, and the Fire Standards and Accreditation Board, to name a few.

MAJOR ISSUES DISCUSSED: The Committee discussed at length the land use appeals process and alternative proposals to the present system. It also discussed definitions of land use decisions, who has standing, when decisions are made, and the work load on the Court of Appeals.

Effect of committee amendments.

The Committee amendments deleted the provisions in the original bill relating to appealing land use decisions directly to the Court of Appeals or LCDC, depending on whether it was a quasi-judicial or legislative decision. It established a new procedure for appealing land use decisions to a Land Use Board of Appeals.

OREGON STATE SENATE

60th Legislative Assembly

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SENATE COMMITTEE REPORT

Date May 30, 1979

Mr. President:

Your Committee on Trade and Economic Development to whom was referred A-Engrossed SB 435, having had the same under consideration, respectfully report it back recommending:

(adoption)

_____ passage.

(~~XXXXXX~~)

XX passage with amendments. (see attached)

(adoption)

_____ passage with amendments

to the _____ engrossed measure.

_____ that the measure be printed engrossed and rereferred to committee for further consideration.

_____ that the measure be referred to another committee as the President may direct.

(SR 9.01 (2))

(adoption)

_____ passage with amendments to resolve conflicts. (SR 9.35)

_____ that _____ be substituted therefor and rereferred to Committee.

(SR 9.45)

Other: _____

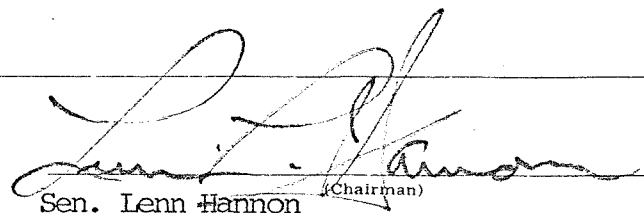
NOT CONCURRING (SR 9.15 (2)) Senator(s) _____

_____ Referred to Committee on Ways and Means by prior reference.

Submit:

2 copies if no amdts.

7 copies if amdts.


Sen. Lenn Hannon (Chairman)

Sen. Ragsdale

will lead floor discussion.

PROPOSED AMENDMENTS TO PRINTED A-ENGROSSED SENATE BILL 435

On page 1 of the printed A-engrossed bill, line 3, after
"197.015," insert "197.090,".

Delete lines 12 through 16 and insert:

"SECTION 2. (1) There is hereby created a Land Use Board of
Appeals consisting of not more than five members appointed by the
Governor subject to confirmation by the Senate in the manner
provided in ORS 171.560 and 171.570. The board shall consist of a
chief hearings referee and such other referees as the Governor
considers necessary. The members of the board shall hold their
positions at the pleasure of the Governor and their salaries shall
be fixed by the Governor unless otherwise provided for by law."

Delete lines 19 and 20.

On page 3, line 24, after "orders" insert "and those previously
issued by the commission".

In line 25, after "board" insert "and the commission".

On page 4, line 35, delete "The commission may, in its sole
discretion, continue its review of" and insert "If the commission
receives a recommendation from the board concerning".

In line 37, delete "if" and insert "and".

In line 39, delete the period and insert a comma and delete the
rest of the line and lines 40 and 41 and insert "the commission may
suspend its consideration of the request for compliance
acknowledgment until it has issued its determination on the
recommendation of the board and the board has issued a final order.
In any event the commission shall issue its determination on the

1 recommendation of the board within the time limits established in
2 subsection (3) of this section."

3 On page 5, delete lines 1 and 2.

4 On page 8, after line 2, insert:

5 "Section 7a. ORS 197.090 is amended to read:

6 "197.090. Subject to policies adopted by the commission, the
7 director shall:

8 "(1) Be the administrative head of the department.

9 "(2) Coordinate the activities of the department in its land
10 conservation and development functions with such functions of
11 federal agencies, other state agencies, cities, counties and
12 special districts.

13 "(3) Appoint, reappoint, assign and reassign all subordinate
14 officers and employees of the department, prescribe their duties and
15 fix their compensation, subject to the State Merit System Law.

16 "(4) Represent this state before any agency of this state, any
17 other state or the United States with respect to land conservation
18 and development within this state.

19 "(5) Provide clerical and other necessary support services for
20 the Land Use Board of Appeals."

21 On page 15, after line 35, insert:

22 "SECTION 28. (1) Sections 1 to 8 and 11 and 12 of this Act are
23 repealed July 1, 1983. ess

24 "(2) Notwithstanding subsection (1) of this section, any
25 petition filed with the Land Use Board of Appeals before July 1,
26 1983, that is still pending on that date, shall be finally

1 determined by the Land Use Board of Appeals under sections 4 to 6
2 of this Act.

3 "SECTION 29. The provisions of sections 1 to 8 and 11 and 12 of
4 this Act first apply to petitions for review of land use decisions
5 to be filed on or after January 1, 1980. Any petition before the
6 Land Conservation and Development Commission or any circuit court
7 still pending on January 1, 1980, shall be finally determined by
8 the commission or the court in the manner provided in ORS 34.010 to
9 34.100, 197.300 to 197.315 before the effective date of this Act."

SENATE COMMITTEE REPORT

Date May 24, 1979

Mr. President:

Your Committee on Trade and Economic Development to whom was referred Senate Bill 435, having had the same under consideration, respectfully report it back recommending:

_____ (adoption)
_____ passage.
_____ (adoption)
_____ passage with amendments.
_____ (adoption)
_____ passage with amendments
to the _____ engrossed measure.

XXXX that the measure be printed engrossed and rereferred to committee for further consideration.

_____ that the measure be referred to another committee as the President may direct.
(SR 9.01 (2))
(adoption)
_____ passage with amendments to resolve conflicts. (SR 9.35)
_____ that _____ be substituted therefor and rereferred to Committee.
(SR 9.45)

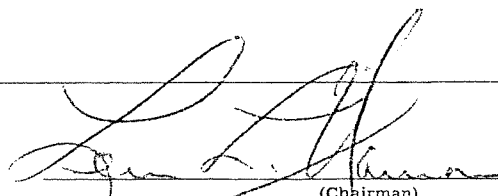
_____ Other: _____

NOT CONCURRING (SR 9.15 (2)) Senator(s) _____

_____ Referred to Committee on Ways and Means by prior reference.

Submit:
2 copies if no amdts.
6 copies if amdts.

Sen. _____ will lead floor discussion.



Senator Hannon
(Chairman)

PROPOSED AMENDMENTS TO SENATE BILL 435

On page 2 of the printed bill, line 1, after "ORS" insert
"34.020,".

In line 3, delete "197.300" and insert "197.015, 197.252,
and delete "203.060,"
197.265, 197.395". *the line and insert "and 479.195;"*

In line 4, delete "341.185," and after "476.835" delete the rest of
In line 5, after "34.055" insert ", 197.300, 197.305, 197.310,
197.315" and ~~after the semicolon delete "and" and after "money"~~ *"appropriating money" and*
insert ~~"; and"~~ *"* prescribing an effective date". *ess*

In line 7, delete "2, 3 and 3a" and insert "1a to 6a".

Delete lines 9 through 38 and pages 3 and 4. *through 5*

On page ⁶5, delete lines 1 through ³37 and insert:

"SECTION 1a. It is the policy of the Legislative Assembly that
time is of the essence in reaching final decisions in matters
involving land use and that those decisions be made consistently
with sound principles governing judicial review. It is the intent
of the Legislative Assembly in enacting sections 1a to 6a of this
1979 Act to accomplish these objectives.

"SECTION 2. (1) The Land Use Board of Appeals is established
within the Department of Land Conservation and Development. With
the approval of the Governor, the commission shall appoint a chief
hearings referee and such other referees as the commission
considers necessary to serve as members of the board. The members
of the board shall hold their positions at the pleasure of the
commission and their salaries shall be fixed by the commission
unless otherwise provided by law.

1 "(2) Referees appointed under subsection (1) of this section
2 shall be members in good standing of the Oregon State Bar.

3 "(3) The members of the board shall not be assigned any duties
4 that would interfere with or influence the discharge of their
5 duties under sections 2a and 4 of this 1979 Act.

6 "SECTION 2a. (1) The board shall conduct review proceedings
7 upon petitions filed in the manner prescribed in section 4 of this
8 1979 Act.

9 "(2) In conducting review proceedings the members of the board
10 may sit together or separately as the chief hearings referee shall
11 decide.

12 "(3) The chief hearings referee shall apportion the business of
13 the board among the members of the board. Each member shall have
14 the power to hear and issue orders on petitions filed with the
15 board and on all issues arising under those petitions, except as
16 provided in section 6 of this 1979 Act.

17 "(4) The board shall adopt rules governing the conduct of
18 review proceedings brought before it under sections 4 to 6 of this
19 1979 Act.

20 "SECTION 3. As used in sections 4 to 6 of this 1979 Act:

21 "(1) 'Land use decision' means:

22 "(a) A final decision or determination made by a city, county
23 or special district governing body that concerns the adoption,
24 amendment or application of:

25 "(A) The state-wide planning goals;

26 "(B) A comprehensive plan provision; or

1 "(C) A zoning, subdivision or other ordinance that implements a
2 comprehensive plan; or

3 "(b) A final decision or determination of a state agency with
4 respect to which the agency is required to apply the state-wide
5 planning goals.

6 "(2) 'Person' means any individual, partnership, corporation,
7 association, governmental subdivision or agency or public or
8 private organization of any kind.

9 "SECTION 4. (1) Review of land use decisions under sections 4
10 to 6 of this 1979 Act shall be commenced by filing a notice of
11 intent to appeal with the Land Use Board of Appeals. Subject to the
12 provisions of section 6a of this 1979 Act relating to judicial
13 review by the Court of Appeals, the board shall have exclusive
14 jurisdiction to review any land use decision of a city, county or
15 special district governing body or a state agency in the manner
16 provided in sections 5 and 6 of this 1979 Act.

17 "(2) Except as provided in subsection (3) of this section, any
18 person whose interests are adversely affected or who is aggrieved
19 by a land use decision and who has filed a notice of intent to
20 appeal as provided in subsection (4) of this section may petition
21 the board for review of that decision or may, within a reasonable
22 time after a petition for review of that decision has been filed
23 with the board, intervene in and be made a party to any review
24 proceeding pending before the board.

1 "(3) Any person who has filed a notice of intent to appeal as
2 provided in subsection (4) of this section may petition the board
3 for review of a quasi-judicial land use decision if the person:

4 "(a) Appeared before the city, county or special district
5 governing body or state agency orally or in writing; and

6 "(b) Was a person entitled as of right to notice and hearing
7 prior to the decision to be reviewed or was a person whose
8 interests are adversely affected or who was aggrieved by the
9 decision.

10 "(4) A notice of intent to appeal a land use decision shall be
11 filed not later than 20 days after the date the decision sought to
12 be reviewed becomes final. Copies of the notice shall be served
13 upon the city, county or special district governing body or state
14 agency and the applicant of record, if any, in the city, county or
15 special district governing body or state agency proceeding. The
16 notice shall be ^{served} ~~serve~~ and filed in the form and manner prescribed
17 by rule of the board and shall be accompanied by a filing fee of
18 \$200. In the event a petition for review is not filed with the
19 board as required in subsection (6) of this section, then the
20 filing fee shall be awarded to the city, county, special district
21 or state agency as cost of preparation of the record.

22 "(5) Within 20 days after service of the notice of intent to
23 appeal, or within such further time as the board may allow, the
24 city, county or special district governing body or state agency
25 shall transmit to the board the original or a certified copy of the
26 entire record, if any, of the proceeding under review. By

1 stipulation of all parties to the review proceeding the record may
2 be shortened. The board may require or permit subsequent
3 corrections to the record.

4 "(6) Within 20 days after the date of transmittal of the
5 record, a petition for review of the land use decision and
6 supporting brief shall be filed with the board. The petition shall
7 include a copy of the decision sought to be reviewed and shall
8 state:

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

10 "(b) The date of the decision.

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

12 "(7) Review of a decision under sections 4 to 6 of this 1979
13 Act shall be confined to the record, if any. In the case of
14 disputed allegations of unconstitutionality of the decision,
15 standing, ex parte contacts or other procedural irregularities not
16 shown in the record which, if proved, would warrant reversal or
17 remand, the board may take evidence and make findings of fact on
18 those allegations. The board shall be bound by any finding of fact
19 of the city, county or special district governing body or state
20 agency for which there is substantial evidence in the whole record.

21 "(8) The board shall issue a final order within 90 days after
22 the date of filing of the petition. If the order is not issued
23 within 90 days, the decision being reviewed shall be considered
24 affirmed.

25 "(9) Upon entry of its final order the board may, in its
26 discretion, award costs to the prevailing party including the cost of

1 preparation of the record if the prevailing party is the city,
2 county or special district governing body or state agency whose
3 decision is under review.

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

6 "(11) The board shall provide for the publication of its orders
7 which are of general public interest in the form it deems best
8 adapted for public convenience. Publications shall constitute the
9 official reports of the board and shall be made available for
10 distribution in the manner provided in ORS 2.160 and 9.790.

11 "SECTION 5. (1) Where a petition for review contains only
12 allegations that a land use decision violates the state-wide
13 planning goals, the board shall review the decision and proceed as
14 provided in section 6 of this 1979 Act.

15 "(2) Where a petition for review contains no allegations that a
16 land use decision violates the state-wide planning goals, the board
17 shall review the decision and prepare a final order affirming,
18 reversing or remanding the decision.

19 "(3) Where a petition for review contains both allegations that
20 a land use decision violates the state-wide planning goals and
21 other allegations of error, the board shall review the decision and
22 proceed as provided in section 6 of this 1979 Act with respect to
23 the allegations of violation of the state-wide planning goals, and
24 prepare an order addressing all issues not related to the state-
25 wide planning goals. The decision of the board concerning any
26 issues not related to the state-wide planning goals shall be final,

1 but no final order shall be issued until the commission has
2 reviewed the recommendation of the board on the issues concerning
3 the state-wide planning goals under section 6 of this 1979 Act and
4 issued its determination. The board shall incorporate the
5 determination of the commission into the final order to be issued
6 under this subsection.

7 "(4) The board shall reverse or remand the land use decision
8 under review only if:

9 "(a) The board finds that the city, county or special district
10 governing body:

11 "(A) Exceeded its jurisdiction;

12 "(B) Failed to follow the procedure applicable to the matter
13 before it in a manner that prejudiced the substantial rights of the
14 petitioner;

15 "(C) Made a decision that was not supported by substantial
16 evidence in the whole record;

17 "(D) Improperly construed the applicable law; or

18 "(E) Made a decision that was unconstitutional; or

19 "(b) After review in the manner provided in section 6 of this
20 1979 Act, the commission has determined that the city, county or
21 special district governing body or state agency violated the state-
22 wide planning goals.

23 "(5) Final orders of the board may be appealed to the Court of
24 Appeals in the manner provided in section 6a of this 1979 Act.

25 "SECTION 6. (1) At the conclusion of a review proceeding under
26 sections 4 and 5 of this 1979 Act, the board shall prepare a

1 recommendation to the commission concerning any allegations of
2 violation of the state-wide planning goals contained in the
3 petition and shall submit a copy of its recommendation to the
4 commission and to each party to the proceeding. The recommendation
5 shall include a general summary of the evidence contained in the
6 record and proposed findings of fact and conclusions of law
7 concerning the allegations of violation of the state-wide planning
8 goals. The recommendation shall also state whether the petition
9 raises matters of such importance that the commission should hear
oral argument from the parties.

11 "(2) Each party to the proceeding shall have the opportunity to
12 submit written exceptions to the board's recommendation, including
13 that portion of the recommendation stating whether oral argument
14 should be allowed. The exceptions shall be filed with the board and
15 submitted to the commission for review.

16 "(3) The commission shall review the recommendation of the
17 board and any exceptions filed thereto. The commission shall allow
18 the parties an opportunity to present oral argument to the
19 commission unless the board recommends that oral argument not be
20 allowed and the commission concurs with the board's recommendation.
21 The commission shall be bound by any finding of fact of the city,
22 county, special district or state agency for which there is
23 substantial evidence in the record. The commission shall issue its
24 determination on the recommendation of the board and return the
25 determination to the board for inclusion in the board's order under
26 section 5 of this 1979 Act within such time as is necessary to

1 allow the board to prepare and issue a final order in compliance
2 with the requirements of section 4 of this 1979 Act. If additional
3 time is required, the commission shall obtain the consent of the
4 parties for a postponement.

5 "(4) No determination of the commission issued under subsection
6 (3) of this section is valid unless all members of the commission
7 have received the recommendation of the board in the matter and any
8 exceptions thereto that were timely filed with the board and at
9 least four members of the commission concur in its action in the
10 matter.

11 "(5) The commission may, in its sole discretion, continue its
12 review of a petition alleging that a comprehensive plan provision
13 or a zoning, subdivision or other ordinance or regulation is in
14 violation of the state-wide goals, if the commission has received a
15 request from the city or county which adopted such comprehensive
16 plan provision or zoning, subdivision or other ordinance or
17 regulation asking that the commission grant a compliance
18 acknowledgment pursuant to subsection (1) of ORS 197.251. Following
19 entry of an order on the request for compliance acknowledgment, the
20 commission shall resume its review of the petition, unless the
21 findings and conclusions in the acknowledgment order are
22 dispositive of the matters raised in the petition, in which event
23 the commission may dismiss the allegations of violation of the
24 state-wide planning goals in the petition.

1 "(6) The commission shall adopt such rules as it considers
2 necessary for the conduct of review proceedings brought before it
3 for determination under this section."

4 "SECTION 6a. (1) Any party to a proceeding before the Land Use
5 Board of Appeals under sections 4 to 6 of this 1979 Act, may seek
6 judicial review of a final order issued in those proceedings.

7 "(2) Notwithstanding the provisions of ORS 183.480 to 183.500,
8 judicial review of orders issued under sections 4 to 6 of this 1979
9 Act shall be solely as provided in this section.

10 "(3) Jurisdiction for judicial review of proceedings under
11 sections 4 to 6 of this 1979 Act is conferred upon the Court of
12 Appeals. Proceedings for review shall be instituted by filing a
13 petition in the Court of Appeals. The petition shall be filed
14 within 30 days only following the date the order upon which the
15 petition is based is served. Date of service shall be the date on
16 which the board delivered or mailed its order.

17 "(4) The petition shall state the nature of the order the
18 petitioner desires reviewed. Copies of the petition shall be served
19 by registered or certified mail upon the board, and all other
20 parties of record in the board proceeding.

21 "(5) (a) The filing of the petition shall not stay enforcement
22 of the board order, but the board may do so upon a showing of:

23 "(A) Irreparable injury to the petitioner; and

24 "(B) A colorable claim of error in the order.

25 "(b) When a petitioner makes the showing required by paragraph
26 (a) of this subsection, the board shall grant the stay unless the

1 board determines that substantial public harm will result if the
2 order is stayed. If the board denies the stay, the denial shall be
3 in writing and shall specifically state the substantial public harm
4 that would result from the granting of the stay.

5 "(c) When the board grants a stay it may impose such reasonable
6 conditions as the giving of a bond or other undertaking and that
7 the petitioner file all documents necessary to bring the matter to
8 issue before the Court of Appeals within specified reasonable
9 periods of time.

10 "(d) Denial of a motion for stay by the board is subject to
11 review by the Court of Appeals under such rules as the court may
12 establish.

13 "(6) Within 20 days after service of the petition, or within
14 such further time as the court may allow, the board shall transmit
15 to the court the original or a certified copy of the entire record
16 of the proceeding under review, but, by stipulation of all parties
17 to the review proceeding, the record may be shortened. Any party
18 unreasonably refusing to stipulate to limit the record may be taxed
19 by the court for the additional costs. The court may require or
20 permit subsequent corrections or additions to the record when
21 deemed desirable. Except as specifically provided in this
22 subsection, the cost of the record shall not be taxed to the
23 petitioner or any intervening party. However, the court may tax
24 such costs and the cost of transcription of record to a party
25 filing a frivolous petition for review.

1 "(7) Review of an order issued under sections 4 to 6 of this
2 1979 Act shall be confined to the record, the court shall not
3 substitute its judgment for that of the board as to any issue of
4 fact.

5 "(8) The court may affirm, reverse or remand the order. The
6 court shall reverse or remand the order only if it finds:

7 "(a) The order to be unlawful in substance or procedure, but
8 error in procedure shall not be cause for reversal or remand unless
9 the court shall find that substantial rights of the petitioner were
10 prejudiced thereby;

11 "(b) The order to be unconstitutional; or

12 "(c) The order is not supported by substantial evidence in the
13 whole record."

14 ~~Delete lines 38 and 39.~~

15 ~~On page 6, delete lines 1 through 3 and insert:~~

16 "Section 7. ORS 197.015 is amended to read:

17 "197.015. As used in ORS 197.005 to 197.430 and 469.350, unless
18 the context requires otherwise:

19 "(1) 'Activity of state-wide significance' means a land
20 conservation and development activity designated pursuant to ORS
21 197.400.

22 "(2) 'Board' means the Land Use Board of Appeals or any member
23 thereof.

24 "[(2)] (3) 'Commission' means the Land Conservation and
25 Development Commission.

1 "[(3)] (4) 'Committee' means the Joint Legislative Committee on
2 Land Use.

3 "[(4)] (5) 'Comprehensive plan' means a generalized,
4 coordinated land use map and policy statement of the governing body
5 of a state agency, city, county or special district that
6 interrelates all functional and natural systems and activities
7 relating to the use of lands, including but not limited to sewer
8 and water systems, transportation systems, educational systems,
9 recreational facilities, and natural resources and air and water
10 quality management programs. 'Comprehensive' means all-inclusive,
11 both in terms of the geographic area covered and functional and
12 natural activities and systems occurring in the area covered by the
13 plan. 'General nature' means a summary of policies and proposals in
14 broad categories and does not necessarily indicate specific
15 locations of any area, activity or use. A plan is 'coordinated'
16 when the needs of all levels of governments, semipublic and private
17 agencies and the citizens of Oregon have been considered and
18 accommodated as much as possible. 'Land' includes water, both
19 surface and subsurface, and the air.

20 "[(5)] (6) 'Department' means the Department of Land
21 Conservation and Development.

22 "[(6)] (7) 'Director' means the Director of the Department of
23 Land Conservation and Development.

24 "[(7)] (8) 'Goals' mean the mandatory state-wide planning
25 standards adopted by the commission pursuant to ORS 197.005 to
26 197.430.

1 "[~~(8)~~] (9) 'Guidelines' mean suggested approaches designed to
2 aid cities and counties in preparation, adoption and implementation
3 of comprehensive plans in compliance with goals and to aid state
4 agencies and special districts in the preparation, adoption and
5 implementation of plans, programs and regulations in compliance
6 with goals. Guidelines shall be advisory and shall not limit state
7 agencies, cities, counties and special districts to a single
8 approach.

9 "[~~(9)~~] (10) 'Special district' means any unit of local
0 government, other than a city or county, authorized and regulated
11 by statute and includes, but is not limited to: Water control
12 districts, irrigation districts, port districts, regional air
13 quality control authorities, fire districts, school districts,
14 hospital districts, mass transit districts and sanitary districts.

15 "[~~(10)~~] (11) 'Voluntary association of local governments' means
16 a regional planning agency in this state officially designated by
17 the Governor pursuant to the federal Office of Management and
3 Budget Circular A-95 as a regional clearinghouse.

19 "Section 7a. ORS 197.252 is amended to read:

20 "197.252. (1) Even if a city or county has not agreed to a
21 condition in a compliance schedule under ORS 197.251, the
22 commission may condition the compliance schedule for the city or
23 county to direct the city or county to apply specified goal
24 requirements in approving or denying future land conservation and
25 development actions if the commission finds that past approvals or

1 denials would have constituted violations of the state-wide
2 planning goals and:

3 "(a) The commission finds that the past approvals or denials
4 represent a pattern or practice of decisions which make continued
5 utilization of the existing comprehensive plan, ordinances and
6 regulations ineffective in achieving the state-wide planning goals
7 through performance of the compliance schedule; or

8 "(b) The commission finds that a past approval or denial was of
9 more than local impact and substantially impairs the ability of the
10 city or county to achieve the state-wide planning goals through the
11 performance of the compliance schedule.

12 "(2) Conditions may be imposed under this section only at the
13 time of:

14 "(a) Annual phased review of the satisfactory progress of the
15 city or county;

16 "(b) Approval of a planning assistance grant agreement with the
17 city or county; or

18 "(c) Revision of a compliance schedule due to delays of 60 days
19 or more in the approved compliance date by the city or county.

20 "(3) Nothing in this section is intended to limit or modify the
21 powers of the commission ^{or} ~~on the board~~ under ORS 197.251, [197.300
22 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers
23 of the commission under this section are intended to be in addition
24 to, and not in lieu of, ORS 197.005 to 197.430 (1975 Replacement
25 Part) and 197.251 and 197.320.

26 "Section 7b. 197.265 is amended to read:

X

1 "197.265. (1) As used in this section, "action or suit"
2 includes but is not limited to a [writ of review] proceeding under
3 [ORS 34.010 to 34.100 and any review proceeding conducted by the
4 commission pursuant to ORS 197.300] sections 4 to 6 of this 1979
5 Act.

6 "(2) If any suit or action is brought against a city or county
7 challenging any comprehensive plan, zoning, subdivision or other
8 ordinance or regulation or action of such city or county which was
9 adopted or taken for the primary purpose of complying with the
10 state-wide planning goals approved under ORS 197.240 and which does
11 in fact comply with such goals, then the commission shall pay
12 reasonable attorney fees and court costs incurred by such city or
13 county in the action or suit including any appeal, to the extent
14 funds have been specifically appropriated to the commission
15 therefor.

16 "Section 7c. ORS 197.395 is amended to read:

17 "197.395. (1) Any person or public agency desiring to initiate
18 an activity which the state may regulate or control which occurs
19 upon federal land shall apply to the cities or counties in which
20 the activity will take place for a permit. The application shall
21 contain an explanation of the activity to be initiated, the plans
22 for the activity and any other information required by the city or
23 county as prescribed by rule of the commission.

24 "(2) If the city or county finds after review of the
25 application that the proposed activity complies with state-wide
26 goals and the comprehensive plans of the cities or counties

1 affected by the activity, it shall approve the application and
2 issue a permit for the activity to the person or public agency
3 applying therefor. Action shall be taken by the governing body
4 within 60 days of receipt of the application, or the application is
5 deemed approved.

6 "(3) The city or county may prescribe and include in the permit
7 any conditions or restrictions that it considers necessary to
8 assure that the activity complies with state-wide goals and the
9 comprehensive plans of the cities or counties affected by the
10 activity.

11 "(4) Actions pursuant to this section are subject to review
12 [pursuant to ORS 197.300] under sections 4 to 6 of this 1979 Act.

13 "Section 8. ORS 34.020 is amended to read:

14 "34.020. Except for a proceeding resulting in a land use
15 decision as defined in section 3 of this 1979 Act for which review
16 is provided in sections 4 to 6 of this 1979 Act, any party to any
17 process or proceeding before or by any inferior court, officer, or
18 tribunal may have the decision or determination thereof reviewed
19 for errors, as provided in ORS 34.010 to 34.100, and not otherwise.
20 Upon a review, the court may review any intermediate order
21 involving the merits and necessarily affecting the decision or
22 determination sought to be reviewed."

23 On page 7, line 30, delete "under" and insert "in the manner
24 provided in sections 4 to 6 of this 1979 Act."

25 Delete line 31.

1 On page 8, line 1, after "under" delete the rest of the line
2 and line 2 and insert "sections 4 to 6 of this 1979 Act."
3 Delete lines 15 through 20.
4 In line 21, delete "16" and insert "14".
5 In line 25, delete "17" and insert "15".
6 On page 9, line 7, delete "18" and insert "16".
7 In line 27, delete "contested cases" and insert "agency
8 orders".
9 Delete lines 35 through 38.
10 On page 10, delete lines 1 through 7.
11 In line 8, delete "20" and insert "17".
12 In line 9, delete "21" and insert "18".
13 In line 38, delete "22" and insert "19".
14 On page 12, line 6, delete "23" and insert "20".
15 In line 38, delete "24" and insert "21".
16 On page 13, delete lines 17 through 23.
17 In line 24, delete "26" and insert "22".
18 On page 14, line 14, delete "27" and insert "23".
19 In line 18, delete "28" and insert "24".
20 In line 28, delete "29" and insert "25".
21 On page 15, delete lines 13 through 39 and page 16 and insert:
22 "SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315
23 are repealed.
24 "SECTION 27. This Act takes effect on January 1, 1980.".

Trade

CONFLICT REPORT FOR SB 435

PAGE 01

4-20-79
REPORT 05

SB 435	S. 017	AMENDS
HB 2642	S. 007	AMENDS

ORS 198.785
ORS 198.785

Trade

CONFLICT REPORT FOR SB 435

PAGE 01

4-10-79
REPORT 04

SB	435	S. 006	AMENDS
HB	3067	S. 016	AMENDS

ORS 197.300
ORS 197.300

1979 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION

1. Measure Number SB 435	2. Status Original	3. Fiscal Impact Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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4. Subject Revision of judicial review of land use and certain other decisions

5. Government Unit or Program Affected

Land Conservation and Development Commission; Appellate Courts

6. Budget and Management Analyst Saralynn Baker	Date 3-6-79	7. Legislative Fiscal Analyst Kay Hutchison	Date 3/13/79
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8. Fiscal Analysis

Effect on Revenue

None

Effect on Expenditures

1979-81

1981-83

The Department of Land Conservation and Development estimates the following cost reductions:

- Savings to appeals budget to mid-1980 assuming a 15% reduction in caseload

\$-26,250

\$ --

- Savings to appeals budget after mid-1980 assuming a 15% reduction in caseload

- 1,800

--

Total

\$-28,050

\$ --

Though caseload is expected to be reduced by 15 percent, staff will still file amicus briefs on each case.

LCDC also indicates local governments could incur administrative costs to determine the appropriate forum for judicial review. Local governments petitioning or responding to a petition may be awarded costs by the court.

It is estimated that the Court of Appeals caseload could increase by 36 cases biennially if this measure is adopted. At an average cost of \$2000 for cases of similar complexity, estimated biennial expenditures would be \$75,600 General Fund on the equivalent of one half judge and staff.

The bill appropriates \$50,000 General Fund for masters provided for in Section 2 (6). The Court estimates a per case cost range of \$1500 to \$2500. It isn't known how many cases would require a master.

Trade

CONFLICT REPORT FOR SB 435

PAGE 01

2-27-79
REPORT 03

SB	64	S. 003	AMENDS
SB	435	S. 010a	AMENDS
HB	2697	S. 001	AMENDS

ORS	215.416
ORS	215.416
ORS	215.416

CONFLICT REPORT FOR SB 435

PAGE 01

2-22-79
REPORT 02

SB	435	S. 017	AMENDS
HB	2642	S. 007	AMENDS

ORS	198.785
ORS	198.785

2-09-79
REPORT 01

SB	65	S. 001	AMENDS	ORS 034.055
SB	435	S. 008	REPEALS	ORS 034.055
HB	2284	S. 001	AMENDS	ORS 034.055
SB	61	S. 001	AMENDS	ORS 034.070
SB	435	S. 010	AMENDS	ORS 034.070
SB	64	S. 003	AMENDS	ORS 215.416
SB	435	S. 010a	AMENDS	ORS 215.416
SB	64	S. 005	AMENDS	ORS 227.173
SB	435	S. 010b	AMENDS	ORS 227.173

Notification of House Amendments to SB 435

To: Sen. Hannon Date 7-2-79

Chairman, Committee on Trade and Economic Development

cc: Sen. Hanlon Principal Sponsor

Message notifying of House passage with amendments read 7-2-79

Action on amendments governed by Senate Rule 11:01.

To assist in preparation of Agenda, would the Committee Chairman please advise the Secretary of action to be recommended.

Secretary of the Senate

X To concur _____ Not to concur

Senator Ragsdale will lead discussion.

Let
(Initial and return to Secretary of the Senate)

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(Initial and return to Secretary of the Senate)

LEGISLATIVE COUNSEL

S101 State Capitol

Date:

6/25/79

H Committee on:

Judiciary

FROM: Legislative Counsel's Office

Your committee has S Bill 435. This bill
conflicts with H Bill 2642 which has passed both
houses.

If this conflict has been taken care of, please disregard
this memo. If not, and you desire our assistance in preparing
a corrective amendment, call Kathleen Beaufait or Mary Wilkerson
at ext. 8148.

1979 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION

1. Measure Number SB 435	2. Status B-Engrossed including Senate Amendments of 5-24-79 and 6-1-79	3. Fiscal Impact Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
4. Subject Revision of judicial review of land use and certain other decisions		
5. Government Unit or Program Affected Land Conservation and Development Commission; Appellate Courts		
6. Budget and Management Analyst Saralynn Baker	Date 6-4-79	7. Legislative Fiscal Analyst Dan Simmons
8. Fiscal Analysis		

The Department of Land Conservation and Development indicates that the 1979-81 agency budget provides \$400,000 for appeal financing. Since the circuit court does not maintain records on the number of writs of review on land use cases, the Department cannot estimate the additional costs that will be necessary to finance Board actions. However, the Department of Land Conservation and Development will expend budgeted funds to finance Board and Departmental cases. If the Department expends the budgeted amount prior to the end of the biennium, the agency may need an additional \$50,000 to finance the unbudgeted workload increase.

Until such time as the Governor determines the salaries of the five-member Land Use Board of Appeals, the additional Personal Services costs cannot be estimated.

Any additional impact to the Court of Appeals and local government is currently indeterminate.

This proposal is not anticipated in the Governor's budget.

**SENATE AMENDMENTS TO PRINTED
A-ENGROSSED SENATE BILL 435**

By COMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT

June 1

1 On page 1 of the printed A-engrossed bill, line 3, after "197.015," insert "197.090,".

2 Delete lines 12 through 16 and insert:

3 "SECTION 2. (1) There is hereby created a Land Use Board of Appeals consisting of not more than five
4 members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS
5 171.560 and 171.570. The board shall consist of a chief hearings referee and such other referees as the
6 Governor considers necessary. The members of the board shall hold their positions at the pleasure of the
7 Governor and their salaries shall be fixed by the Governor unless otherwise provided for by law."

8 Delete lines 19 and 20.

9 On page 3, line 24, after "orders" insert "and those previously issued by the commission".

10 In line 25, after "board" insert "and the commission".

11 On page 4, line 35, delete "The commission may, in its sole discretion, continue its review of" and insert
12 "If the commission receives a recommendation from the board concerning".

13 In line 37, delete "if" and insert "and".

14 In line 39, delete the period and insert a comma and delete the rest of the line and lines 40 and 41 and insert
15 "the commission may suspend its consideration of the request for compliance acknowledgment until it has
16 issued its determination on the recommendation of the board and the board has issued a final order. In any
17 event the commission shall issue its determination on the recommendation of the board within the time limits
18 established in subsection (3) of this section."

19 On page 5, delete lines 1 and 2.

20 On page 8, after line 2, insert:

21 "Section 7d. ORS 197.090 is amended to read:

22 "197.090. Subject to policies adopted by the commission, the director shall:

23 "(1) Be the administrative head of the department.

24 "(2) Coordinate the activities of the department in its land conservation and development functions with
25 such functions of federal agencies, other state agencies, cities, counties and special districts.

26 "(3) Appoint, reappoint, assign and reassign all subordinate officers and employees of the department,
27 prescribe their duties and fix their compensation, subject to the State Merit System Law.

28 "(4) Represent this state before any agency of this state, any other state or the United States with respect
29 to land conservation and development within this state.

30 "(5) Provide clerical and other necessary support services for the Land Use Board of Appeals."

31 On page 15, after line 35, insert:

32 "SECTION 28. (1) Sections 1 to 6a of this Act are repealed July 1, 1983.

33 "(2) Notwithstanding subsection (1) of this section, any petition filed with the Land Use Board of Appeals
34 before July 1, 1983, that is still pending on that date, shall be finally determined by the Land Use Board of

1 Appeals under sections 4 to 6 of this Act.

2 "SECTION 29. The provisions of sections 1 to 8 and 11 and 12 of this Act first apply to petitions for review
3 of land use decisions to be filed on or after January 1, 1980. Any petition before the Land Conservation and
4 Development Commission or any circuit court still pending on January 1, 1980, shall be finally determined by
5 the commission or the court in the manner provided in ORS 34.010 to 34.100, 197.300 to 197.315 before the
6 effective date of this Act."

Trade

CONFLICT REPORT FOR SB 435

PAGE 01

5-28-79
REPORT 06

SB	65	S. 001	AMENDS	ORS 034.055
SB	435	S. 026	REPEALS	ORS 034.055
HB	2284	S. 001	AMENDS	ORS 034.055
SB	61	S. 001	AMENDS	ORS 034.070
SB	435	S. 010	AMENDS	ORS 034.070
SB	411	S. 007	AMENDS	ORS 197.015
SB	435	S. 007	AMENDS	ORS 197.015
HB	3067	S. 002	AMENDS	ORS 197.015
SB	435	S. 007b	AMENDS	ORS 197.265
HB	3067	S. 015	AMENDS	ORS 197.265
SB	435	S. 026	REPEALS	ORS 197.300
HB	3067	S. 016	AMENDS	ORS 197.300
SB	411	S. 010	AMENDS	ORS 197.310
SB	435	S. 026	REPEALS	ORS 197.310
SB	435	S. 015	AMENDS	ORS 198.785
HB	2642	S. 007	AMENDS	ORS 198.785
SB	64	S. 003	AMENDS	ORS 215.416

Trade

CONFLICT REPORT FOR SB 435

PAGE 02

5-28-79
REPORT 06

SB	435	S. 010a	AMENDS	ORS 215.416
HB	2697	S. 001	AMENDS	ORS 215.416
SB	64	S. 005	AMENDS	ORS 227.173
SB	435	S. 010b	AMENDS	ORS 227.173

SENATE AMENDMENTS TO SENATE BILL 435

By COMMITTEE ON TRADE AND ECONOMIC DEVELOPMENT

May 24

1 On page 2 of the printed bill, line 2, after "ORS" insert "34.020,".

2 In line 3, delete "197.300" and insert "197.015, 197.252, 197.265, 197.395" and delete "203.060,".

3 In line 4, delete "341.185," and after "476.835" delete the rest of the line and insert "and 479.195,".

4 In line 5, after "34.055" insert ", 197.300, 197.305, 197.310, 197.315" and delete "appropriating money"
5 and insert "prescribing an effective date".

6 In line 7, delete "2, 3 and 3a" and insert "1a to 6a".

7 Delete lines 9 through 38 and pages 3 through 5.

8 On page 6, delete lines 1 through 3 and insert:

9 "SECTION 1a. It is the policy of the Legislative Assembly that time is of the essence in reaching final
10 decisions in matters involving land use and that those decisions be made consistently with sound principles
11 governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1a to 6a of this 1979
12 Act to accomplish these objectives.

13 "SECTION 2. (1) The Land Use Board of Appeals is established within the Department of Land
14 Conservation and Development. With the approval of the Governor, the commission shall appoint a chief
15 hearings referee and such other referees as the commission considers necessary to serve as members of the
16 board. The members of the board shall hold their positions at the pleasure of the commission and their salaries
17 shall be fixed by the commission unless otherwise provided by law.

18 "(2) Referees appointed under subsection (1) of this section shall be members in good standing of the
19 Oregon State Bar.

20 "(3) The members of the board shall not be assigned any duties that would interfere with or influence the
21 discharge of their duties under sections 2a and 4 of this 1979 Act.

22 "SECTION 2a. (1) The board shall conduct review proceedings upon petitions filed in the manner
23 prescribed in section 4 of this 1979 Act.

24 "(2) In conducting review proceedings the members of the board may sit together or separately as the chief
25 hearings referee shall decide.

26 "(3) The chief hearings referee shall apportion the business of the board among the members of the board.
27 Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues
28 arising under those petitions, except as provided in section 6 of this 1979 Act.

29 "(4) The board shall adopt rules governing the conduct of review proceedings brought before it under
30 sections 4 to 6 of this 1979 Act.

31 "SECTION 3. As used in sections 4 to 6 of this 1979 Act:

32 "(1) 'Land use decision' means:

33 "(a) A final decision or determination made by a city, county or special district governing body that
34 concerns the adoption, amendment or application of:

1 “(A) The state-wide planning goals;
2 “(B) A comprehensive plan provision; or
3 “(C) A zoning, subdivision or other ordinance that implements a comprehensive plan; or
4 “(b) A final decision or determination of a state agency with respect to which the agency is required to
5 apply the state-wide planning goals.

6 “(2) ‘Person’ means any individual, partnership, corporation, association, governmental subdivision or
7 agency or public or private organization of any kind.

8 “SECTION 4. (1) Review of land use decisions under sections 4 to 6 of this 1979 Act shall be commenced
9 by filing a notice of intent to appeal with the Land Use Board of Appeals. Subject to the provisions of section
10 6a of this 1979 Act relating to judicial review by the Court of Appeals, the board shall have exclusive
11 jurisdiction to review any land use decision of a city, county or special district governing body or a state agency
12 in the manner provided in sections 5 and 6 of this 1979 Act.

13 “(2) Except as provided in subsection (3) of this section, any person whose interests are adversely affected
14 or who is aggrieved by a land use decision and who has filed a notice of intent to appeal as provided in
15 subsection (4) of this section may petition the board for review of that decision or may, within a reasonable
16 time after a petition for review of that decision has been filed with the board, intervene in and be made a party
17 to any review proceeding pending before the board.

18 “(3) Any person who has filed a notice of intent to appeal as provided in subsection (4) of this section may
19 petition the board for review of a quasi-judicial land use decision if the person:

20 “(a) Appeared before the city, county or special district governing body or state agency orally or in
21 writing; and

22 “(b) Was a person entitled as of right to notice and hearing prior to the decision to be reviewed or was a
23 person whose interests are adversely affected or who was aggrieved by the decision.

24 “(4) A notice of intent to appeal a land use decision shall be filed not later than 20 days after the date the
25 decision sought to be reviewed becomes final. Copies of the notice shall be served upon the city, county or
26 special district governing body or state agency and the applicant of record, if any, in the city, county or special
27 district governing body or state agency proceeding. The notice shall be served and filed in the form and manner
28 prescribed by rule of the board and shall be accompanied by a filing fee of \$200. In the event a petition for
29 review is not filed with the board as required in subsection (6) of this section, then the filing fee shall be
30 awarded to the city, county, special district or state agency as cost of preparation of the record.

31 “(5) Within 20 days after service of the notice of intent to appeal, or within such further time as the board
32 may allow, the city, county or special district governing body or state agency shall transmit to the board the
33 original or a certified copy of the entire record, if any, of the proceeding under review. By stipulation of all
34 parties to the review proceeding the record may be shortened. The board may require or permit subsequent
35 corrections to the record.

36 “(6) Within 20 days after the date of transmittal of the record, a petition for review of the land use decision
37 and supporting brief shall be filed with the board. The petition shall include a copy of the decision sought to be
38 reviewed and shall state:

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

40 “(b) The date of the decision.

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

1 “(7) Review of a decision under sections 4 to 6 of this 1979 Act shall be confined to the record, if any. In
2 the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other
3 procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board
4 may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of
5 fact of the city, county or special district governing body or state agency for which there is substantial evidence
6 in the whole record.

7 “(8) The board shall issue a final order within 90 days after the date of filing of the petition. If the order is
8 not issued within 90 days, the decision being reviewed shall be considered affirmed.

9 “(9) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party
10 including the cost of preparation of the record if the prevailing party is the city, county or special district
11 governing body or state agency whose decision is under review.

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

13 “(11) The board shall provide for the publication of its orders which are of general public interest in the
14 form it deems best adapted for public convenience. Publications shall constitute the official reports of the
15 board and shall be made available for distribution in the manner provided in ORS 2.160 and 9.790.

16 “SECTION 5. (1) Where a petition for review contains only allegations that a land use decision violates the
17 state-wide planning goals, the board shall review the decision and proceed as provided in section 6 of this 1979
18 Act.

19 “(2) Where a petition for review contains no allegations that a land use decision violates the state-wide
20 planning goals, the board shall review the decision and prepare a final order affirming, reversing or remanding
21 the decision.

22 “(3) Where a petition for review contains both allegations that a land use decision violates the state-wide
23 planning goals and other allegations of error, the board shall review the decision and proceed as provided in
24 section 6 of this 1979 Act with respect to the allegations of violation of the state-wide planning goals, and
25 prepare an order addressing all issues not related to the state-wide planning goals. The decision of the board
26 concerning any issues not related to the state-wide planning goals shall be final, but no final order shall be
27 issued until the commission has reviewed the recommendation of the board on the issues concerning the
28 state-wide planning goals under section 6 of this 1979 Act and issued its determination. The board shall
29 incorporate the determination of the commission into the final order to be issued under this subsection.

30 “(4) The board shall reverse or remand the land use decision under review only if:

31 “(a) The board finds that the city, county or special district governing body:

32 “(A) Exceeded its jurisdiction;

33 “(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the
34 substantial rights of the petitioner;

35 “(C) Made a decision that was not supported by substantial evidence in the whole record;

36 “(D) Improperly construed the applicable law; or

37 “(E) Made a decision that was unconstitutional; or

38 “(b) After review in the manner provided in section 6 of this 1979 Act, the commission has determined that
39 the city, county or special district governing body or state agency violated the state-wide planning goals.

40 “(5) Final orders of the board may be appealed to the Court of Appeals in the manner provided in section
41 6a of this 1979 Act.

1 “SECTION 6. (1) At the conclusion of a review proceeding under sections 4 and 5 of this 1979 Act, the
2 board shall prepare a recommendation to the commission concerning any allegations of violation of the
3 state-wide planning goals contained in the petition and shall submit a copy of its recommendation to the
4 commission and to each party to the proceeding. The recommendation shall include a general summary of the
5 evidence contained in the record and proposed findings of fact and conclusions of law concerning the
6 allegations of violation of the state-wide planning goals. The recommendation shall also state whether the
7 petition raises matters of such importance that the commission should hear oral argument from the parties.

8 “(2) Each party to the proceeding shall have the opportunity to submit written exceptions to the board’s
9 recommendation, including that portion of the recommendation stating whether oral argument should be
10 allowed. The exceptions shall be filed with the board and submitted to the commission for review.

11 “(3) The commission shall review the recommendation of the board and any exceptions filed thereto. The
12 commission shall allow the parties an opportunity to present oral argument to the commission unless the board
13 recommends that oral argument not be allowed and the commission concurs with the board’s recommendation.
14 The commission shall be bound by any finding of fact of the city, county, special district or state agency for
15 which there is substantial evidence in the record. The commission shall issue its determination on the
16 recommendation of the board and return the determination to the board for inclusion in the board’s order under
17 section 5 of this 1979 Act within such time as is necessary to allow the board to prepare and issue a final order
18 in compliance with the requirements of section 4 of this 1979 Act. If additional time is required, the
19 commission shall obtain the consent of the parties for a postponement.

20 “(4) No determination of the commission issued under subsection (3) of this section is valid unless all
21 members of the commission have received the recommendation of the board in the matter and any exceptions
22 thereto that were timely filed with the board and at least four members of the commission concur in its action
23 in the matter.

24 “(5) The commission may, in its sole discretion, continue its review of a petition alleging that a
25 comprehensive plan provision or a zoning, subdivision or other ordinance or regulation is in violation of the
26 state-wide goals, if the commission has received a request from the city or county which adopted such
27 comprehensive plan provision or zoning, subdivision or other ordinance or regulation asking that the
28 commission grant a compliance acknowledgment pursuant to subsection (1) of ORS 197.251. Following entry
29 of an order on the request for compliance acknowledgment, the commission shall resume its review of the
30 petition, unless the findings and conclusions in the acknowledgment order are dispositive of the matters raised
31 in the petition, in which event the commission may dismiss the allegations of violation of the state-wide
32 planning goals in the petition.

33 “(6) The commission shall adopt such rules as it considers necessary for the conduct of review proceedings
34 brought before it for determination under this section.

35 “SECTION 6a. (1) Any party to a proceeding before the Land Use Board of Appeals under sections 4 to 6
36 of this 1979 Act, may seek judicial review of a final order issued in those proceedings.

37 “(2) Notwithstanding the provisions of ORS 183.480 to 183.500, judicial review of orders issued under
38 sections 4 to 6 of this 1979 Act shall be solely as provided in this section.

39 “(3) Jurisdiction for judicial review of proceedings under sections 4 to 6 of this 1979 Act is conferred upon
40 the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The

1 petition shall be filed within 30 days only following the date the order upon which the petition is based is
2 served. Date of service shall be the date on which the board delivered or mailed its order.

3 “(4) The petition shall state the nature of the order the petitioner desires reviewed. Copies of the petition
4 shall be served by registered or certified mail upon the board, and all other parties of record in the board
5 proceeding.

6 “(5) (a) The filing of the petition shall not stay enforcement of the board order, but the board may do so
7 upon a showing of:

8 “(A) Irreparable injury to the petitioner; and

9 “(B) A colorable claim of error in the order.

10 “(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the board shall
11 grant the stay unless the board determines that substantial public harm will result if the order is stayed. If the
12 board denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that
13 would result from the granting of the stay.

14 “(c) When the board grants a stay it may impose such reasonable conditions as the giving of a bond or
15 other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the
16 Court of Appeals within specified reasonable periods of time.

17 “(d) Denial of a motion for stay by the board is subject to review by the Court of Appeals under such rules
18 as the court may establish.

19 “(6) Within 20 days after service of the petition, or within such further time as the court may allow, the
20 board shall transmit to the court the original or a certified copy of the entire record of the proceeding under
21 review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party
22 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The
23 court may require or permit subsequent corrections or additions to the record when deemed desirable. Except
24 as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any
25 intervening party. However, the court may tax such costs and the cost of transcription of record to a party
26 filing a frivolous petition for review.

27 “(7) Review of an order issued under sections 4 to 6 of this 1979 Act shall be confined to the record, the
28 court shall not substitute its judgment for that of the board as to any issue of fact.

29 “(8) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only
30 if it finds:

31 “(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for
32 reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

33 “(b) The order to be unconstitutional; or

34 “(c) The order is not supported by substantial evidence in the whole record.

35 “Section 7. ORS 197.015 is amended to read:

36 “197.015. As used in ORS 197.005 to 197.430 and 469.350, unless the context requires otherwise:

37 “(1) ‘Activity of state-wide significance’ means a land conservation and development activity designated
38 pursuant to ORS 197.400.

39 “(2) ‘Board’ means the Land Use Board of Appeals or any member thereof.

40 “[2] (3) ‘Commission’ means the Land Conservation and Development Commission.

41 “[3] (4) ‘Committee’ means the Joint Legislative Committee on Land Use.

1 “[(4)] (5) ‘Comprehensive plan’ means a generalized, coordinated land use map and policy statement of the
2 governing body of a state agency, city, county or special district that interrelates all functional and natural
3 systems and activities relating to the use of lands, including but not limited to sewer and water systems,
4 transportation systems, educational systems, recreational facilities, and natural resources and air and water
5 quality management programs. ‘Comprehensive’ means all-inclusive, both in terms of the geographic area
6 covered and functional and natural activities and systems occurring in the area covered by the plan. ‘General
7 nature’ means a summary of policies and proposals in broad categories and does not necessarily indicate
8 specific locations of any area, activity or use. A plan is ‘coordinated’ when the needs of all levels of
9 governments, semipublic and private agencies and the citizens of Oregon have been considered and
10 accommodated as much as possible. ‘Land’ includes water, both surface and subsurface, and the air.

11 “[(5)] (6) ‘Department’ means the Department of Land Conservation and Development.

12 “[(6)] (7) ‘Director’ means the Director of the Department of Land Conservation and Development.

13 “[(7)] (8) ‘Goals’ mean the mandatory state-wide planning standards adopted by the commission pursuant
14 to ORS 197.005 to 197.430.

15 “[(8)] (9) ‘Guidelines’ mean suggested approaches designed to aid cities and counties in preparation,
16 adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and
17 special districts in the preparation, adoption and implementation of plans, programs and regulations in
18 compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and
19 special districts to a single approach.

20 “[(9)] (10) ‘Special district’ means any unit of local government, other than a city or county, authorized
21 and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port
22 districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit
23 districts and sanitary districts.

24 “[(10)] (11) ‘Voluntary association of local governments’ means a regional planning agency in this state
25 officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95
26 as a regional clearinghouse.

27 “Section 7a. ORS 197.252 is amended to read:

28 “197.252. (1) Even if a city or county has not agreed to a condition in a compliance schedule under ORS
29 197.251, the commission may condition the compliance schedule for the city or county to direct the city or
30 county to apply specified goal requirements in approving or denying future land conservation and development
31 actions if the commission finds that past approvals or denials would have constituted violations of the
32 state-wide planning goals and:

33 “(a) The commission finds that the past approvals or denials represent a pattern or practice of decisions
34 which make continued utilization of the existing comprehensive plan, ordinances and regulations ineffective in
35 achieving the state-wide planning goals through performance of the compliance schedule; or

36 “(b) The commission finds that a past approval or denial was of more than local impact and substantially
37 impairs the ability of the city or county to achieve the state-wide planning goals through the performance of the
38 compliance schedule.

39 “(2) Conditions may be imposed under this section only at the time of:

40 “(a) Annual phased review of the satisfactory progress of the city or county;

41 “(b) Approval of a planning assistance grant agreement with the city or county; or

1 “(c) Revision of a compliance schedule due to delays of 60 days or more in the approved compliance date
2 by the city or county.

3 “(3) Nothing in this section is intended to limit or modify the powers of the commission or the board under
4 ORS 197.251, [197.300 to 197.315] sections 4 to 6 of this 1979 Act or 197.320. The powers of the commission
5 under this section are intended to be in addition to, and not in lieu of, ORS 197.005 to 197.430 (1975
6 Replacement Part) and 197.251 and 197.320.

7 “Section 7b. 197.265 is amended to read:

8 “197.265. (1) As used in this section, ‘action or suit’ includes but is not limited to a [writ of review]
9 proceeding under [ORS 34.010 to 34.100 and any review proceeding conducted by the commission pursuant to
10 ORS 197.300] sections 4 to 6 of this 1979 Act.

11 “(2) If any suit or action is brought against a city or county challenging any comprehensive plan, zoning,
12 subdivision or other ordinance or regulation or action of such city or county which was adopted or taken for the
13 primary purpose of complying with the state-wide planning goals approved under ORS 197.240 and which does
14 in fact comply with such goals, then the commission shall pay reasonable attorney fees and court costs incurred
15 by such city or county in the action or suit including any appeal, to the extent funds have been specifically
16 appropriated to the commission therefor.

17 “Section 7c. ORS 197.395 is amended to read:

18 “197.395. (1) Any person or public agency desiring to initiate an activity which the state may regulate or
19 control which occurs upon federal land shall apply to the cities or counties in which the activity will take place
20 for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity
21 and any other information required by the city or county as prescribed by rule of the commission.

22 “(2) If the city or county finds after review of the application that the proposed activity complies with
23 state-wide goals and the comprehensive plans of the cities or counties affected by the activity, it shall approve
24 the application and issue a permit for the activity to the person or public agency applying therefor. Action shall
25 be taken by the governing body within 60 days of receipt of the application, or the application is deemed
26 approved.

27 “(3) The city or county may prescribe and include in the permit any conditions or restrictions that it
28 considers necessary to assure that the activity complies with state-wide goals and the comprehensive plans of
29 the cities or counties affected by the activity.

30 “(4) Actions pursuant to this section are subject to review [pursuant to ORS 197.300] under sections 4 to 6
31 of this 1979 Act.

32 “Section 8. ORS 34.020 is amended to read:

33 “34.020. Except for a proceeding resulting in a land use decision as defined in section 3 of this 1979 Act for
34 which review is provided in sections 4 to 6 of this 1979 Act, any party to any process or proceeding before or by
35 any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as
36 provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate
37 order involving the merits and necessarily affecting the decision or determination sought to be reviewed.”.

38 On page 7, line 30, delete “under” and insert “in the manner provided in sections 4 to 6 of this 1979 Act.”.

39 Delete line 31.

40 On page 8, line 1, after “under” delete the rest of the line and line 2 and insert “sections 4 to 6 of this 1979
41 Act.”.

- 1 Delete lines 15 through 20.
 - 2 In line 21, delete "16" and insert "14".
 - 3 In line 25, delete "17" and insert "15".
 - 4 On page 9, line 7, delete "18" and insert "16".
 - 5 In line 27, delete "contested cases" and insert "agency orders".
 - 6 Delete lines 35 through 38.
 - 7 On page 10, delete lines 1 through 7.
 - 8 In line 8, delete "20" and insert "17".
 - 9 In line 9, delete "21" and insert "18".
 - 10 In line 38, delete "22" and insert "19".
 - 11 On page 12, line 6, delete "23" and insert "20".
 - 12 In line 38, delete "24" and insert "21".
 - 13 On page 13, delete lines 17 through 23.
 - 14 In line 24, delete "26" and insert "22".
 - 15 On page 14, line 14, delete "27" and insert "23".
 - 16 In line 18, delete "28" and insert "24".
 - 17 In line 28, delete "29" and insert "25".
 - 18 On page 15, delete lines 13 through 39 and page 16 and insert:
 - 19 "SECTION 26. ORS 34.055, 197.300, 197.305, 197.310 and 197.315 are repealed.
 - 20 "SECTION 27. This Act takes effect on January 1, 1980."
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