

A-Engrossed
House Bill 3310

Ordered by the House May 3
Including House Amendments dated May 3

Sponsored by Representative GARRARD

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.

[Tolls use of] **Modifies provisions relating to** periodic review as method for ensuring that local government land use planning complies with statewide land use planning goals and statutory land use planning requirements. *[Directs interim legislative committee to review issues relating to annexation and consider recommending statutory changes. Sunsets June 30, 2007.]*

Modifies jurisdiction of Land Use Board of Appeals to require that issues arising from periodic review are considered by **Department of** Land Conservation and Development *[Commission]*.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to land use; creating new provisions; amending ORS 197.015, 197.060, 197.628, 197.629,
3 197.631, 197.633, 197.636, 197.639, 197.646, 197.820, 197.825 and 469.504; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 197.628 is amended to read:

7 197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehen-
8 sive plans and land use regulations in order to respond to changes in local, regional and state con-
9 ditions to ensure that the plans and regulations remain in compliance with the statewide planning
10 goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate
11 provision for **economic development**, needed housing, *[employment,]* transportation, *[and]* public
12 facilities and services **and urbanization**.

13 (2) The Land Conservation and Development Commission shall concentrate periodic review as-
14 sistance to local governments on achieving compliance with those statewide land use planning laws
15 and goals that address **economic development**, needed housing, *[employment,]* transportation,
16 *[and]* public facilities and services **and urbanization**.

17 (3) The following conditions indicate the need for periodic review of comprehensive plans and
18 land use regulations:

19 (a) There has been a substantial change in circumstances including but not limited to the con-
20 ditions, findings or assumptions upon which the comprehensive plan or land use regulations were
21 based, so that the comprehensive plan or land use regulations do not comply with the statewide
22 planning goals **relating to economic development, needed housing, transportation, public fa-**
23 **cilities and services and urbanization;**

24 (b) Decisions implementing acknowledged comprehensive plan and land use regulations are in-
25 consistent with the goals **relating to economic development, needed housing, transportation,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **public facilities and services and urbanization;**

2 (c) There are issues of regional or statewide significance, intergovernmental coordination or
3 state agency plans or programs affecting land use which must be addressed in order to bring com-
4 prehensive plans and land use regulations into compliance with the goals **relating to economic**
5 **development, needed housing, transportation, public facilities and services and urbanization;**
6 or

7 (d) The local government, commission or Department of Land Conservation and Development
8 determines that the existing comprehensive plan and land use regulations are not achieving the
9 statewide planning goals **relating to economic development, needed housing, transportation,**
10 **public facilities and services and urbanization.**

11 **(4) A local government is not required to submit its acknowledged comprehensive plan,**
12 **regional framework plan and land use regulations implementing either plan for periodic re-**
13 **view except as provided in this section.**

14 **(5) Periodic review is not the implementation process for new statutory, land use plan-**
15 **ning goal or rule requirements.**

16 **SECTION 2.** ORS 197.629 is amended to read:

17 197.629. (1) The Land Conservation and Development Commission shall establish and maintain
18 a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary
19 to coordinate approved periodic review work programs and to account for special circumstances
20 that from time to time arise, the schedule shall reflect the following timelines:

21 *[(a) A city with a population of less than 2,500 within its urban growth boundary shall not be re-*
22 *quired to conduct periodic review unless the city lies close enough to another city that has a population*
23 *of 25,000 or more within its urban growth boundary that the smaller city is significantly affected by*
24 *needed housing, employment, transportation or public facility and services decisions made by the larger*
25 *city;]*

26 *[(b) Except as provided in subsection (2) of this section, a county with a population of less than*
27 *15,000 shall not be required to conduct periodic review;]*

28 *[(c) A county with a population of 15,000 or more but less than 50,000, or a city with a population*
29 *of 2,500 or more but less than 25,000 inside its urban growth boundary, shall conduct periodic review*
30 *every 5 to 15 years after completion of the previous periodic review; and]*

31 *[(d) A county with a population of 50,000 or more, or a metropolitan service district or a city with*
32 *a population of 25,000 or more inside its urban growth boundary, shall conduct periodic review every*
33 *5 to 10 years after completion of the previous periodic review.]*

34 **(a) A city with a population of more than 2,500 within a metropolitan planning organiza-**
35 **tion or a metropolitan service district shall conduct periodic review every seven years after**
36 **completion of the previous periodic review; and**

37 **(b) A city with a population of 10,000 or more inside its urban growth boundary that is**
38 **not within a metropolitan planning organization shall conduct periodic review every 10 years**
39 **after completion of the previous periodic review.**

40 (2) A county with a portion of its population within the urban growth boundary of a city subject
41 to periodic review under this section shall conduct periodic review for that portion of the county
42 according to the schedule and work program set for the city.

43 *[(3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific as*
44 *to that portion of the county within the urban growth boundary of a city subject to periodic review*
45 *under this section, the county shall conduct periodic review for that portion of the county according to*

1 *the schedule and work program set for the county.]*

2 **(3) The Land Conservation and Development Commission shall require a local govern-**
3 **ment that is not subject to subsection (1) of this section to complete periodic review when**
4 **the local government has not completed periodic review within the previous five years if:**

5 **(a) A city has been growing faster than the annual population growth rate of the state**
6 **for five consecutive years;**

7 **(b) In the judgment of the Economic Revitalization Team established under ORS 284.555**
8 **with the agreement of an affected city or county, a major transportation project on the**
9 **Statewide Transportation Improvement Program that is approved for funding by the Oregon**
10 **Transportation Commission is likely to:**

11 **(A) Have a significant impact on a city or an urban unincorporated community; or**

12 **(B) Be significantly affected by growth and development in a city or an urban**
13 **unincorporated community;**

14 **(c) In the judgment of the Economic Revitalization Team with the agreement of an af-**
15 **ected city or county, a major facility, including a prison, is sited or funded by a state**
16 **agency;**

17 **(d) In the judgment of the Economic Revitalization Team with the agreement of an af-**
18 **ected city or county, approval by the city or county of a facility for a major employer will**
19 **increase employment opportunities and significantly affect the capacity of housing and public**
20 **facilities in the city or urban unincorporated community; or**

21 **(e) A county, in cooperation with a city if appropriate, includes territory that is under**
22 **consideration for addition to a city or urban unincorporated community.**

23 **(4) The Land Conservation and Development Commission may schedule periodic review for a**
24 **local government earlier than provided in subsection (1) of this section if necessary to ensure that**
25 **all local governments in a region whose land use decisions would significantly affect other local**
26 **governments in the region are conducting periodic review concurrently, but not sooner than five**
27 **years after completion of the previous periodic review.**

28 **(5) A city or county that is [exempt from] not required to complete periodic review under**
29 **subsection (1)[(a) or (b)] of this section may request periodic review by the commission.**

30 **(6) As used in this section, “metropolitan planning organization” means an organization**
31 **located wholly within the State of Oregon and designated by the Governor to coordinate**
32 **transportation planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c).**

33 **SECTION 3.** ORS 197.631 is amended to read:

34 197.631. [(1)] In order to use state and local periodic review resources most efficiently and ef-
35 fectively and to concentrate periodic review on adequate provision of **economic development,**
36 needed housing, [employment,] transportation, [and] public facilities and services **and urbanization,**
37 the Land Conservation and Development Commission shall adopt, amend or repeal the statewide
38 land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic re-
39 view and to provide for compliance by local governments with those goals not described in ORS
40 197.628 (2) through the post-acknowledgment procedures of ORS 197.610 to 197.625.

41 [(2) In the biennial report required under ORS 197.060, the commission shall report to the Legis-
42 lative Assembly and the Joint Legislative Committee on Land Use on its activities implementing sub-
43 section (1) of this section.]

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

45 197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation

1 of the existing comprehensive plan, land use regulations and citizen involvement program and, if
 2 necessary, the development of a work program to make needed changes to the comprehensive plan
 3 or land use regulations. Phase two is the completion of work tasks outlined in the work program.

4 (2) The Land Conservation and Development Commission shall adopt rules for conducting peri-
 5 odic review. The rules shall provide a process for:

6 (a) Initiating periodic review;

7 (b) Citizen participation;

8 (c) The participation of state agencies;

9 (d) The preparation, review and approval of an evaluation of a comprehensive plan and land use
 10 regulations;

11 (e) Review of a work program; and

12 (f) Review of completed work tasks.

13 (3)~~(a) A decision by the Director of the Department of Land Conservation and Development to~~
 14 ~~approve a work program or a work task, that no work program is necessary or that no further work~~
 15 ~~is necessary, may be appealed to the commission or referred to the commission by the director.] **A de-**~~
 16 **cision by the Director of the Department of Land Conservation and Development to approve**
 17 **a work program, that no work program is necessary or that no further work is necessary**
 18 **is final and not subject to appeal.**

19 (4) **The director:**

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

28 (b) **May approve or remand a work task or refer the work task to the commission for a**
 29 **decision. A decision by the director to approve or remand a work task may be appealed to**
 30 **the commission.**

31 (5) Except as provided in [*paragraph (b) of*] this subsection, the commission shall take action
 32 on the appeal or referral within 90 days of the appeal or referral. Action by the commission in re-
 33 sponse to an appeal from a decision of the director is a final order subject to judicial review in the
 34 manner provided in ORS 197.650.

35 [(b)] The commission may extend the time [*in paragraph (a) of this subsection*] for taking action
 36 on the appeal or referral if the commission finds that:

37 [(A)] (a) The appeal or referral is appropriate for mediation; [*or*]

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

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

43 [(4)] (6) The commission and a local government shall attempt to complete periodic review
 44 within three years after approval of a work program. In order to promote the timely completion of
 45 periodic review, the commission shall establish a system of incentives to encourage local govern-

1 ment compliance with timelines in periodic review work programs.

2 **SECTION 5.** ORS 197.636 is amended to read:

3 197.636. (1) Upon good cause shown by a local government, the Director of the Department of
4 Land Conservation and Development may allow the local government an extension of time for sub-
5 mitting a work program or completing a work task. A decision by the director to grant or deny an
6 extension may be *[appealed to the Land Conservation and Development Commission or may be]* re-
7 ferred to the **Land Conservation and Development** Commission by the director. The Department
8 of Land Conservation and Development or the commission shall not extend the deadline for sub-
9 mitting a work program more than once nor for more than 90 days, and shall not extend the deadline
10 for a work task more than once nor for more than one year.

11 (2) If a local government fails to submit a work program or to complete a work task by the
12 deadline set by the director or the commission, including any extension that has been granted, the
13 director shall schedule a hearing before the commission. The commission shall issue an order im-
14 posing one or more of the following sanctions until the work program or the work task receives final
15 approval by the director or the commission:

16 (a) Require the local government to apply those portions of the goals and rules to land use de-
17 cisions as specified in the order. Sanctions may be imposed under this paragraph only when neces-
18 sary to resolve a specific deficiency identified in the order.

19 (b) Forfeiture of all or a portion of the grant money received to conduct the review, develop the
20 work program or complete the work task.

21 (c) Completion of the work program or work task by the department. The commission may re-
22 quire the local government to pay the cost for completion of work performed by the department,
23 following the withholding process set forth in ORS 197.335 (4).

24 (d) Application of such interim measures as the commission deems necessary to ensure compli-
25 ance with the statewide planning goals.

26 (3) If the department receives a work program or work task completed in response to a com-
27 mission order issued under subsection (2) of this section, the director shall evaluate and issue a
28 decision on the work program or work task within 90 days.

29 (4) Commission action pursuant to subsection (1) or (2) of this section is a final order subject
30 to judicial review in the manner provided in ORS 197.650.

31 **SECTION 6.** ORS 197.639 is amended to read:

32 197.639. (1) In addition to coordination between state agencies and local government established
33 in certified state agency coordination programs, the Department of Land Conservation and Devel-
34 opment may establish one or more state assistance teams made up of representatives of various
35 agencies and local governments, **utilize the Economic Revitalization Team established under**
36 **ORS 284.555** or **institute** an alternative process for coordinating agency participation in the peri-
37 odic review of comprehensive plans.

38 (2) **The Economic Revitalization Team may work with a city to create a voluntary com-**
39 **prehensive plan review that focuses on the unique vision of the city, instead of conducting**
40 **a standard periodic review, if the team identifies a city that the team determines can benefit**
41 **from a customized voluntary comprehensive plan review.**

42 [(2)] (3) The department may develop model ordinance provisions to assist local governments in
43 the periodic review plan update process **and in complying with new statutory requirements or**
44 **new land use planning goal or rule requirements adopted by the Land Conservation and De-**
45 **velopment Commission outside the periodic review process.**

1 [(3)] (4) A local government may arrange with the department for the provision of periodic re-
2 view planning services and those services may be paid with grant program funds.

3 [(4)] (5) The [*Land Conservation and Development*] commission shall establish an advisory com-
4 mittee composed, at a minimum, of representatives from the League of Oregon Cities, the Associ-
5 ation of Oregon Counties, metropolitan service districts, the Special Districts Association of Oregon,
6 land use planning public interest groups and developer interest groups. The advisory committee shall
7 advise the commission and the department on the allocation of grants and technical assistance
8 funding from General Fund sources and other issues assigned by the commission.

9 **SECTION 7.** ORS 197.646 is amended to read:

10 197.646. [(1) *A local government shall amend the comprehensive plan and land use regulations to*
11 *implement new or amended statewide planning goals, Land Conservation and Development Commission*
12 *administrative rules and land use statutes when such goals, rules or statutes become applicable to the*
13 *jurisdiction. Any amendment to incorporate a goal, rule or statute change shall be submitted to the*
14 *Department of Land Conservation and Development as set forth in ORS 197.610 to 197.625.]*

15 [(2) *The department shall notify cities and counties of newly adopted commission goals and com-*
16 *mission rules, including the effective date, as they are adopted. The department shall notify cities and*
17 *counties of newly adopted land use statutes following the legislative session when such statutes are*
18 *adopted.*]

19 (1) **A local government shall amend its acknowledged comprehensive plan, regional**
20 **framework plan and land use regulations implementing either plan by a self-initiated post-**
21 **acknowledgment process under ORS 197.610 to 197.625 to comply with:**

22 (a) **A new statutory requirement; or**

23 (b) **A new land use planning goal or rule requirement adopted by the Land Conservation**
24 **and Development Commission.**

25 (2) **Periodic review is not the implementation process for new statutory, land use plan-**
26 **ning goal or rule requirements.**

27 (3)(a) **The Department of Land Conservation and Development shall notify local govern-**
28 **ments when a new statutory requirement or a new land use planning goal or rule require-**
29 **ment adopted by the commission requires changes to an acknowledged comprehensive plan,**
30 **regional framework plan and land use regulations implementing either plan.**

31 (b) **The commission shall establish, by rule, the time period within which an acknowl-**
32 **edged comprehensive plan, regional framework plan and land use regulations implementing**
33 **either plan must be in compliance with:**

34 (A) **A new statutory requirement, if the legislation does not specify a time period for**
35 **compliance; and**

36 (B) **A new land use planning goal or rule requirement adopted by the commission.**

37 [(3)] (4) When a local government does not adopt **amendments to a comprehensive plan, re-**
38 **gional framework plan and** [*or*] **land use** [*regulation amendments*] **regulations implementing ei-**
39 **ther plan** as required by subsection (1) of this section, the new [*or amended goal, rule or statute*
40 *shall be directly applicable*] **statutory, land use planning goal or rule requirements apply di-**
41 **rectly** to the local government's land use decisions. The failure to adopt **amendments to a com-**
42 **prehensive plan, regional framework plan and land use** [*regulation amendments*] **regulations**
43 **implementing either plan** required by subsection (1) of this section [*may be the*] **is a basis for ini-**
44 **tiation of enforcement action pursuant to ORS 197.319 to 197.335.**

45 **SECTION 8.** ORS 197.015 is amended to read:

1 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

2 (1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and
3 land use regulations, land use regulation or plan or regulation amendment complies with the goals
4 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,
5 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-
6 work plan comply with the statewide planning goals.

7 (2) "Board" means the Land Use Board of Appeals.

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

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

10 (5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement
11 of the governing body of a local government that interrelates all functional and natural systems and
12 activities relating to the use of lands, including but not limited to sewer and water systems, trans-
13 portation systems, educational facilities, recreational facilities, and natural resources and air and
14 water quality management programs. "Comprehensive" means all-inclusive, both in terms of the
15 geographic area covered and functional and natural activities and systems occurring in the area
16 covered by the plan. "General nature" means a summary of policies and proposals in broad catego-
17 ries and does not necessarily indicate specific locations of any area, activity or use. A plan is "co-
18 ordinated" when the needs of all levels of governments, semipublic and private agencies and the
19 citizens of Oregon have been considered and accommodated as much as possible. "Land" includes
20 water, both surface and subsurface, and the air.

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

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

23 (8) "Goals" means the mandatory statewide planning standards adopted by the commission pur-
24 suant to ORS chapters 195, 196 and 197.

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

30 (10) "Land use decision":

31 (a) Includes:

32 (A) A final decision or determination made by a local government or special district that con-
33 cerns the adoption, amendment or application of:

34 (i) The goals;

35 (ii) A comprehensive plan provision;

36 (iii) A land use regulation; or

37 (iv) A new land use regulation;

38 (B) A final decision or determination of a state agency other than the commission with respect
39 to which the agency is required to apply the goals; or

40 (C) A decision of a county planning commission made under ORS 433.763;

41 (b) Does not include a decision of a local government:

42 (A) Which is made under land use standards which do not require interpretation or the exercise
43 of policy or legal judgment;

44 (B) Which approves or denies a building permit issued under clear and objective land use stan-
45 dards;

- 1 (C) Which is a limited land use decision;
- 2 (D) Which determines final engineering design, construction, operation, maintenance, repair or
3 preservation of a transportation facility which is otherwise authorized by and consistent with the
4 comprehensive plan and land use regulations; or
- 5 (E) Which is an expedited land division as described in ORS 197.360;
- 6 (c) Does not include a decision by a school district to close a school;
- 7 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or
8 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120
9 hours in any three-month period; and
- 10 (e) Does not include:
- 11 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
12 or
- 13 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after
14 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.
- 15 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-
16 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for
17 implementing a comprehensive plan.
- 18 (12) "Limited land use decision" is a final decision or determination made by a local government
19 pertaining to a site within an urban growth boundary which concerns:
- 20 (a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.
- 21 (b) The approval or denial of an application based on discretionary standards designed to regu-
22 late the physical characteristics of a use permitted outright, including but not limited to site review
23 and design review.
- 24 (13) "Local government" means any city, county or metropolitan service district formed under
25 ORS chapter 268 or an association of local governments performing land use planning functions
26 under ORS 195.025.
- 27 (14) "Metro" means a metropolitan service district organized under ORS chapter 268.
- 28 (15) "Metro planning goals and objectives" means the land use goals and objectives that a met-
29 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-
30 stitute a comprehensive plan.
- 31 (16) "Metro regional framework plan" means the regional framework plan required by the 1992
32 Metro Charter or its separate components. Neither the regional framework plan nor its individual
33 components constitute a comprehensive plan.
- 34 (17) "New land use regulation" means a land use regulation other than an amendment to an
35 acknowledged land use regulation adopted by a local government that already has a comprehensive
36 plan and land regulations acknowledged under ORS 197.251.
- 37 (18) "Person" means any individual, partnership, corporation, association, governmental subdi-
38 vision or agency or public or private organization of any kind. The Land Conservation and Devel-
39 opment Commission or its designee is considered a person for purposes of appeal under ORS
40 chapters 195 and 197.
- 41 (19) "Special district" means any unit of local government, other than a city, county, metropol-
42 itan service district formed under ORS chapter 268 or an association of local governments per-
43 forming land use planning functions under ORS 195.025 authorized and regulated by statute and
44 includes but is not limited to: Water control districts, domestic water associations and water coop-
45 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,

1 school districts, hospital districts, mass transit districts and sanitary districts.

2 **(20) “Urban unincorporated community” means an area designated in a county’s ac-**
3 **knowledge comprehensive plan as an urban unincorporated community after December 5,**
4 **1994.**

5 [(20)] **(21) “Voluntary association of local governments” means a regional planning agency in**
6 **this state officially designated by the Governor pursuant to the federal Office of Management and**
7 **Budget Circular A-95 as a regional clearinghouse.**

8 [(21)] **(22) “Wetlands” means those areas that are inundated or saturated by surface or ground**
9 **water at a frequency and duration that are sufficient to support, and that under normal circum-**
10 **stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.**

11 **SECTION 9.** ORS 197.060 is amended to read:

12 197.060. (1) Prior to the end of each even-numbered year, the Department of Land Conservation
13 and Development shall prepare a written report for submission to the Legislative Assembly of the
14 State of Oregon describing activities and accomplishments of the department, Land Conservation
15 and Development Commission, state agencies, local governments and special districts in carrying out
16 ORS chapters 195, 196 and 197.

17 (2) A draft of the report required by subsection (1) of this section shall be submitted to the Joint
18 Legislative Committee on Land Use for its review and comment at least 60 days prior to submission
19 of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the
20 final report.

21 (3) Goals and guidelines adopted by the commission shall be included in the report to the Leg-
22 islative Assembly submitted under subsection (1) of this section.

23 **(4) The department shall include in its biennial report:**

24 **(a) A description of its activities implementing ORS 197.631; and**

25 **(b) An accounting of new statutory, land use planning goal and rule requirements and**
26 **local government compliance with the new requirements pursuant to ORS 197.646.**

27 **SECTION 10.** ORS 197.825 is amended to read:

28 197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the
29 Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or
30 limited land use decision of a local government, special district or a state agency in the manner
31 provided in ORS 197.830 to 197.845.

32 (2) The jurisdiction of the board:

33 (a) Is limited to those cases in which the petitioner has exhausted all remedies available by right
34 before petitioning the board for review;

35 (b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Ap-
36 peals;

37 (c) Does not include *[those matters over which the Department of Land Conservation and Devel-*
38 *opment or the Land Conservation and Development Commission has review authority under ORS*
39 *197.251, 197.430, 197.445, 197.450, 197.455 and 197.628 to 197.650]* **a local government decision that**
40 **is:**

41 **(A) Submitted to the Department of Land Conservation and Development for acknowl-**
42 **edgment or approval under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out**
43 **of a local government decision submitted to the department for acknowledgment or approval,**
44 **unless the Director of the Department of Land Conservation and Development, in the direc-**
45 **tor’s sole discretion, transfers the matter to the board; or**

1 **(B) Subject to the review authority of the department under ORS 197.430, 197.445, 197.450**
2 **or 197.455 or a matter related to a local government decision subject to the review authority**
3 **of the department under ORS 197.430, 197.445, 197.450 or 197.455;**

4 (d) Does not include those land use decisions of a state agency over which the Court of Appeals
5 has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

6 (e) Does not include any rules, programs, decisions, determinations or activities carried out un-
7 der ORS 527.610 to 527.770, 527.990 (1) and 527.992;

8 (f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the
9 Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River
10 Gorge National Scenic Area Act, P.L. 99-663; and

11 (g) Does not include review of expedited land divisions under ORS 197.360.

12 (3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain juris-
13 diction:

14 (a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions
15 described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted
16 comprehensive plan or land use regulations; and

17 (b) To enforce orders of the board in appropriate proceedings brought by the board or a party
18 to the board proceeding resulting in the order.

19 **SECTION 11.** ORS 197.820 is amended to read:

20 197.820. (1) The Land Use Board of Appeals shall conduct review proceedings upon petitions
21 filed in the manner prescribed in ORS 197.830.

22 (2) In conducting review proceedings the members of the board may sit together or separately
23 as the board chairperson shall decide.

24 (3) The board chairperson shall apportion the business of the board among the members of the
25 board. Each member shall have the power to hear and issue orders on petitions filed with the board
26 and on all issues arising under those petitions.

27 (4) The board shall adopt rules governing:

28 **(a)** The conduct of review proceedings brought before it under ORS 197.830 to 197.845.

29 **(b) The transfer of a matter to the board by the Director of the Department of Land**
30 **Conservation and Development under ORS 197.825 (2)(c).**

31 **SECTION 12.** ORS 469.504 is amended to read:

32 469.504. (1) A proposed facility shall be found in compliance with the statewide planning goals
33 under ORS 469.503 (4) if:

34 (a) The facility has received local land use approval under the acknowledged comprehensive
35 plan and land use regulations of the affected local government; or

36 (b) The Energy Facility Siting Council determines that:

37 (A) The facility complies with applicable substantive criteria from the affected local govern-
38 ment's acknowledged comprehensive plan and land use regulations that are required by the state-
39 wide planning goals and in effect on the date the application is submitted, and with any Land
40 Conservation and Development Commission administrative rules and goals and any land use statutes
41 [*directly applicable*] **that apply directly** to the facility under ORS 197.646 [(3)];

42 (B) For an energy facility or a related or supporting facility that must be evaluated against the
43 applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility
44 does not comply with one or more of the applicable substantive criteria but does otherwise comply
45 with the applicable statewide planning goals, or that an exception to any applicable statewide

1 planning goal is justified under subsection (2) of this section; or

2 (C) For a facility that the council elects to evaluate against the statewide planning goals pur-
3 suant to subsection (5) of this section, that the proposed facility complies with the applicable state-
4 wide planning goals or that an exception to any applicable statewide planning goal is justified under
5 subsection (2) of this section.

6 (2) The council may find goal compliance for a facility that does not otherwise comply with one
7 or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding
8 the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process
9 or any rules of the Land Conservation and Development Commission pertaining to an exception
10 process goal, the council may take an exception to a goal if the council finds:

11 (a) The land subject to the exception is physically developed to the extent that the land is no
12 longer available for uses allowed by the applicable goal;

13 (b) The land subject to the exception is irrevocably committed as described by the rules of the
14 Land Conservation and Development Commission to uses not allowed by the applicable goal because
15 existing adjacent uses and other relevant factors make uses allowed by the applicable goal imprac-
16 ticable; or

17 (c) The following standards are met:

18 (A) Reasons justify why the state policy embodied in the applicable goal should not apply;

19 (B) The significant environmental, economic, social and energy consequences anticipated as a
20 result of the proposed facility have been identified and adverse impacts will be mitigated in ac-
21 cordance with rules of the council applicable to the siting of the proposed facility; and

22 (C) The proposed facility is compatible with other adjacent uses or will be made compatible
23 through measures designed to reduce adverse impacts.

24 (3) If compliance with applicable substantive local criteria and applicable statutes and state
25 administrative rules would result in conflicting conditions in the site certificate or amended site
26 certificate, the council shall resolve the conflict consistent with the public interest. A resolution
27 may not result in a waiver of any applicable state statute.

28 (4) An applicant for a site certificate shall elect whether to demonstrate compliance with the
29 statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the
30 election on or before the date specified by the council by rule.

31 (5) Upon request by the State Department of Energy, the special advisory group established
32 under ORS 469.480 shall recommend to the council, within the time stated in the request, the ap-
33 plicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group
34 does not recommend applicable substantive criteria within the time established in the department's
35 request, the council may either determine and apply the applicable substantive criteria under sub-
36 section (1)(b) of this section or determine compliance with the statewide planning goals under sub-
37 section (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable
38 substantive criteria for an energy facility described in ORS 469.300 or a related or supporting fa-
39 cility that does not pass through more than one local government jurisdiction or more than three
40 zones in any one jurisdiction, the council shall apply the criteria recommended by the special advi-
41 sory group. If the special advisory group recommends applicable substantive criteria for an energy
42 facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes
43 through more than one jurisdiction or more than three zones in any one jurisdiction, the council
44 shall review the recommended criteria and determine whether to evaluate the proposed facility
45 against the applicable substantive criteria recommended by the special advisory group, against the

1 statewide planning goals or against a combination of the applicable substantive criteria and state-
2 wide planning goals. In making its determination, the council shall consult with the special advisory
3 group and shall consider:

4 (a) The number of jurisdictions and zones in question;

5 (b) The degree to which the applicable substantive criteria reflect local government consider-
6 ation of energy facilities in the planning process; and

7 (c) The level of consistency of the applicable substantive criteria from the various zones and
8 jurisdictions.

9 (6) The council is not subject to ORS 197.180 and a state agency may not require an applicant
10 for a site certificate to comply with any rules or programs adopted under ORS 197.180.

11 (7) On or before its next periodic review, each affected local government shall amend its com-
12 prehensive plan and land use regulations as necessary to reflect the decision of the council per-
13 taining to a site certificate or amended site certificate.

14 (8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local
15 government's land use approval of a proposed facility under subsection (1)(a) of this section and the
16 special advisory group's recommendation of applicable substantive criteria under subsection (5) of
17 this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant
18 elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply
19 only to proposed projects for which the land use approval of the local government occurs after the
20 date a notice of intent or an application for expedited processing is submitted to the State Depart-
21 ment of Energy.

22 (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to
23 the extent possible, technical assistance and information about the siting process to local govern-
24 ments that request such assistance or that anticipate having a facility proposed in their jurisdiction.

25 **SECTION 13. (1) The amendments to ORS 197.060, 197.628, 197.631, 197.633, 197.636, 197.646**
26 **and 469.504 by sections 1, 3, 4, 5, 7, 9 and 12 of this 2005 Act become operative January 1,**
27 **2006.**

28 **(2) The amendments to ORS 197.015, 197.629 and 197.639 by sections 2, 6 and 8 of this 2005**
29 **Act become operative July 1, 2007.**

30 **SECTION 14. The amendments to ORS 197.820 and 197.825 by sections 10 and 11 of this**
31 **2005 Act apply to a local government decision that is submitted to the Department of Land**
32 **Conservation and Development or the Land Conservation and Development Commission on**
33 **or after the effective date of this 2005 Act.**

34 **SECTION 15. This 2005 Act being necessary for the immediate preservation of the public**
35 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
36 **on its passage.**

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