

**Enrolled**  
**Senate Bill 431**

Sponsored by COMMITTEE ON ENVIRONMENT AND LAND USE

CHAPTER .....

AN ACT

Relating to jurisdiction of Land Use Board of Appeals; creating new provisions; and amending ORS 197.820 and 197.825.

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

**SECTION 1.** ORS 197.825 is amended to read:

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

(2) The jurisdiction of the board:

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

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

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

**(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board; or**

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

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

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

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

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

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

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

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

**SECTION 2.** ORS 197.820 is amended to read:

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

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

(3) The board chairperson 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.

(4) The board shall adopt rules governing:

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

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

**SECTION 3. The amendments to ORS 197.820 and 197.825 by sections 1 and 2 of this 2005 Act apply to a local government decision that is submitted to the Department of Land Conservation and Development or the Land Conservation and Development Commission on or after the effective date of this 2005 Act.**

Passed by Senate April 5, 2005

Received by Governor:

Repassed by Senate June 2, 2005

.....M.,....., 2005

Approved:

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Secretary of Senate

.....M.,....., 2005

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President of Senate

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Governor

Passed by House May 23, 2005

Filed in Office of Secretary of State:

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Speaker of House

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Secretary of State