House Bill 3478

Sponsored by SPECIAL SESSION COMMITTEE ON GOVERNMENT AFFAIRS

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.

Provides siting procedures for South North light rail project.

Provides procedures for review of land use decisions made pursuant to siting of South North Line.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to procedures for the siting of the South North light rail line; creating new provisions; repealing ORS 197.550, 197.553, 197.556, 197.559, 197.562, 197.565, 197.568, 197.571, 197.574, 197.577, 197.581, 197.584 and 197.590; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 13 of this Act, unless the context requires otherwise:

(1) "Administrator" means the State Court Administrator.

(2) "Affected local governments" means:

(a) For the project, the cities and counties within which the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project will be located.

(b) For the project extension, the cities and counties within which the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project extension will be located.

(3) "Board" means the Land Use Board of Appeals.

(4) "Commission" means the Land Conservation and Development Commission.

(5) "Council" means the elected legislative body of Metro.

(6) "Court" means the Oregon Supreme Court.

(7) "Criteria" means the land use criteria established by the commission, as provided in section 4 of this Act.

(8) "Development approval" means approval of a proposed development of land based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(9) "Draft Statement" means the Draft Environmental Impact Statement for the project or project extension prepared pursuant to regulations implementing the National Environmental Policy Act of 1969.

(10) "Final Statement" means the final Environmental Impact Statement for the project or project extension, as may be amended from time to time, or any supplementary assessments or statements, prepared pursuant to regulations implementing the National Environmental Policy Act of 1969.

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.

(11) "Full Funding Grant Agreement" means the contractual agreement entered into between the Federal Government and the local grant recipient establishing the maximum federal financing contribution for construction of the project or project extension and setting forth terms, conditions and limitations for federal financing of the project and project extension.

(12) "Highway improvements" means the highway improvements, if any, to be included in the project or project extension. The highway improvements shall be selected from among the highway improvements, if any, described in a Draft Statement or Final Statement for the project or project extension.

(13) "Land use final order" means a written order or orders of the council deciding:

(a) The light rail route for the project or project extension, including its location;

(b) Stations, lots and maintenance facilities for the project or project extension, including their locations; and

(c) The highway improvements for the project or project extension, including their locations.

(14) "Light rail route" means the light rail alignment to be included in the project or project extension. The light rail route shall be selected from among light rail route alternatives described in a Draft Statement or Final Statement for the project or project extension.

(15) "Locally Preferred Alternative Report" means a decision adopted in accordance with federal requirements determining whether or not to build the South North MAX Light Rail Project and, if to build, recommending the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, to be included in the South North MAX Light Rail Project.

(16) "Locations" means the boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located, as provided in section 6 of this Act.

(17) "Measures" includes any mitigation measures, design features, or other amenities or improvements associated with the project or project extension.

(18) "Project" means the portion of the South North MAX Light Rail Project within the Portland metropolitan area urban growth boundary, including each segment thereof as set forth in the Phase I South North Corridor Project Locally Preferred Alternative Report as may be amended from time to time or as may be modified in a Final Statement or the Full Funding Grant Agreement. The project includes the light rail route, stations, lots and maintenance facilities, and any highway improvements to be included in the project.

(19) "Project extension" means the portion of the South North MAX Light Rail Project within the Portland metropolitan area urban growth boundary as set forth in the Phase II South North Corridor Project Locally Preferred Alternative Report as may be amended from time to time or as may be modified in a Final Statement or the Full Funding Grant Agreement. The project extension includes the light rail route, stations, lots, and maintenance facilities, and any highway improvements to be included in the project extension.

(20) "Stations, lots and maintenance facilities" means the light rail stations, light rail park-and-ride lots and light rail vehicle maintenance facilities to be included in the project or project extension, to be selected from among alternatives described in a Draft Statement or Final Statement for the project or project extension.

(21) "Steering Committee" means a committee staffed by Metro through the time of

adoption of the initial land use final order for the project or project extension, and thereafter staffed by Tri-Met, comprised at least of representatives of the Department of Transportation, Tri-Met and elected officials of the affected local governments and Metro, whose specific membership and manner of function shall be determined by intergovernmental agreement between Metro, Tri-Met, the Department of Transportation and the affected local governments for the project or project extension.

(22) "Tri-Met" means the Tri-county Metropolitan Transportation District of Oregon.

SECTION 2. (1) The Legislative Assembly finds that a failure to obtain maximum federal funding for the South North MAX Light Rail Project in the upcoming federal transportation authorization act will seriously impair the viability of the transportation system planned for the Portland metropolitan area, the ability of the area to implement a significant portion of its air quality and energy efficiency strategies and the ability of affected local governments to implement significant parts of their comprehensive plans. The Legislative Assembly further finds that to maximize the state's and metropolitan area's ability to obtain the highest available level of federal funding for the South North MAX Light Rail Project and to assure the timely and cost-effective construction of the project, it is necessary:

(a) To establish the process to be used in making decisions in a land use final order on the light rail route, light rail stations, light rail park-and-ride lots, light rail maintenance facilities and any highway improvements to be included in the South North MAX Light Rail Project, including their locations;

(b) To expedite the process for appellate review of a land use final order; and

(c) To establish an exclusive process for appellate review.

(2) Sections 1 to 13 of this Act shall be liberally construed to accomplish the purposes enumerated in subsection (1) of this section.

(3) It is the intent of the Legislative Assembly that residents of neighborhoods within the Tri-County Metropolitan Transportation District of Oregon affected by land use decisions, limited land use decisions or land divisions resulting from the siting, construction or operation of any MAX Light Rail line, either as individuals or through their neighborhood associations, shall have the opportunity to participate in such decisions and divisions.

(4) The Legislative Assembly deems the procedures and requirements provided for in sections 1 to 13 of this Act, under the unique circumstances of the South North MAX Light Rail Project, to be equivalent in spirit and substance to the land use procedures that otherwise would be applicable.

SECTION 3. Notwithstanding any other provision of law, the procedures and requirements provided for in sections 1 to 13 of this Act shall be the only land use procedures and requirements to which the following land use decisions shall be subject:

(1) Decisions on the light rail route for the project and project extension, including its location;

(2) Decisions on the stations, lots and maintenance facilities for the project and project extension, including their locations; and

(3) Decisions on the highway improvements for the project and project extension, including their locations.

SECTION 4. The Land Conservation and Development Commission shall establish criteria to be used by the council in making decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project and

project extension, including their locations. The provisions in ORS chapters 183, 192, 195, 197, 215 and 227 and in any other law or regulation shall not apply to proceedings of the commission under sections 1 to 13 of this Act. The following procedures shall govern the proceedings of the commission in establishing criteria:

(1) The commission shall publish notice of a public hearing on criteria to be established by the commission in a newspaper of general circulation within the Portland metropolitan area at least 20 days prior to the public hearing. The notice shall:

(a) Identify the general subject matter of the hearing and the date, time and place of the hearing;

(b) State that any criteria to be proposed to the commission must be filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to commencement of the hearing and will be available for public inspection following filing;

(c) State that appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed;

(d) State that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person to the court on that issue;

(e) State that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(f) State that written notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(2) The commission also may provide such other notice as it deems appropriate to inform interested persons of the hearing. However, no other form of notice is required.

(3) A copy of the staff report, if any, shall be available for public inspection at least four days prior to the public hearing.

(4) The commission shall hold a public hearing on the criteria to be established by the commission. At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Identifies the general subject matter of the hearing;

(b) States that appeals from an order establishing criteria must be filed within seven days following the date written notice of the order is mailed;

(c) States that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the commission an opportunity to respond to the issue raised, shall preclude appeal by that person to the court on that issue;

(d) States that submittal of proposed criteria at the hearing will not be accepted unless the proposed criteria were filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to the commencement of the hearing;

(e) States that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing; and

(f) States that written notice of adoption of an order establishing criteria will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(5) The commission shall allow for the submission of oral and written testimony at the hearing, subject to such hearing procedures as the commission may deem necessary. The commission may exclude irrelevant, immaterial or unduly repetitious testimony. The commission shall not allow the submission of proposed criteria at the hearing unless the proposed criteria were filed at the Salem office of the Department of Land Conservation and Development at least 10 days prior to the commencement of the hearing. Minutes of the hearing shall be taken.

(6) The commission shall close the hearing and adopt an order establishing the criteria within 14 days following commencement of the hearing. In establishing the criteria, the commission shall consider those statewide planning goals and those plan policies that are relevant to decisions regarding the light rail route, stations, lots and maintenance facilities, and the highway improvements, and their locations. The commission's order shall include a brief statement explaining how the criteria established reasonably reflect those statewide land use planning goals and those plan policies that are relevant to decisions regarding the light rail route, stations, lots and maintenance facilities, and the highway improvements, and their locations.

(7) Following establishment of the criteria, the commission as soon as reasonably possible shall:

(a) Notify in writing the council, Tri-Met, the Department of Transportation, the affected local governments and any person who provided oral or written testimony at the hearing and who also provided, in writing, a request for written notice and a mailing address to which notice should be sent of its order and the criteria it has established; and

(b) Make copies of its order and the criteria available for public inspection at the Salem and Portland offices of the Department of Land Conservation and Development.

(8) The commission shall adopt the order described in subsection (6) of this section within 90 days following the effective date of this Act.

SECTION 5. (1) Notwithstanding ORS 183.400, 183.482, 183.484, 197.825 or any other law or regulation, exclusive jurisdiction to review a Land Conservation and Development Commission order establishing criteria under section 4 of this Act is conferred on the court.

(2) Proceedings for review of the commission's order shall be instituted when any person who is adversely affected files a notice of intent to appeal with the administrator that meets the following requirements:

(a) The notice shall be filed within seven days following written notice of the commission's order.

(b) The notice shall state the nature of the commission's order, in what manner the commission rejected the position raised by the petitioner before the commission and, with supporting affidavit, facts showing how the petitioner is adversely affected. The petitioner shall be considered adversely affected if:

(A) The petitioner provided oral or written testimony at the commission's hearing; and

(B) The petitioner proposed criteria, as provided in section 4 (5) of this Act, that the commission rejected in its order, or the petitioner, in the petitioner's testimony at the hearing, opposed the criteria which the commission selected in its order.

(c) The petitioner shall deliver a copy of the notice of intent to appeal by personal service to the commission at the Salem office of the Department of Land Conservation and Development, at the Salem office of the Department of Transportation, to the Attorney General,

to the council at the office of Metro's executive officer, to Tri-Met at the office of Tri-Met's general manager and to the affected local governments.

(3) Within seven days following filing of the notice of intent to appeal, the commission shall personally deliver to the court a certified copy of the record of its criteria proceedings. The record shall include only:

(a) The commission's order establishing the criteria;

(b) Any written report received by the commission from the Department of Land Conservation and Development at the hearing;

(c) Proposed criteria submitted to the commission as provided in section 4 (5) of this Act and written testimony submitted to the commission at the hearing;

(d) Minutes of the public hearing before the commission;

(e) The published notice of public hearing; and

(f) Proof of mailing to persons entitled to notice of the commission's order.

(4) Within 14 days following the filing of the notice of intent to appeal, the petitioner shall file the petitioner's brief. The petitioner shall personally deliver the brief to the administrator, to the Attorney General, to the council at the office of Metro's executive officer, to Tri-Met at the office of Tri-Met's general manager and to the affected local governments. The brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(5) Within 28 days following the filing of the notice of intent to appeal, the commission, Metro, Tri-Met, the Department of Transportation and any affected local government, unless Metro, Tri-Met, the Department of Transportation or an affected local government is the petitioner, may file an answering brief that shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(6) On review, the court may reverse or remand the commission's order only if it finds that the order:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the commission; or

(c) Was adopted by the commission without substantial compliance with the procedures in section 4 of this Act in a manner that prejudiced the substantial rights of the petitioner. Failure of the commission to notify a person entitled to written notice under section 4 (7)(a) of this Act shall not be a ground for reversal or remand if evidence of mailing to that person is provided. The court shall not substitute its judgment for that of the commission as to any issue of fact or as to any issue within the commission's discretion.

(7) The court shall not stay any action by the council under sections 1 to 13 of this Act pending the court's review under this section.

(8) The court may decide the matter on the briefs or it may hold oral arguments. The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 13 of this Act.

SECTION 6. (1) A land use final order shall establish the light rail route, stations, lots and maintenance facilities, and the highway improvements for the project or project extension, including their locations, as provided in this section and in accordance with the procedures identified in section 7 of this Act.

(a) Prior to publication of the public hearing notice described in section 7 (1) of this Act, and following receipt of recommendations from the Department of Transportation and the

Steering Committee, Tri-Met shall apply to the council for a land use final order approving the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations. The applied for locations shall be in the form of boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located. These boundaries shall be sufficient to accommodate adjustments to the specific placements of the light rail route, stations, lots and maintenance facilities, and the highway improvements for which need commonly arises upon the development of more detailed environmental or engineering data following approval of a Full Funding Grant Agreement.

(b) Following a public hearing as provided in section 7 (3) of this Act, the council shall either adopt a land use final order establishing the facilities and locations applied for by Tri-Met or continue the public hearing and refer the proposed facilities and locations back to Tri-Met for further review.

(c) Upon referral by the council, Tri-Met shall consider amendments to its proposed facilities and locations and then forward a further application to the council for hearing and adoption. The council shall either adopt a land use final order establishing the facilities and locations applied for by Tri-Met or again continue the hearing and refer the proposed facilities and locations back to Tri-Met for further review and application to the council.

(2) Any siting of the light rail route, a station, lot or maintenance facility, or a highway improvement outside the locations established in a land use final order, and any new station, lot, maintenance facility or highway improvement, shall require a land use final order amendment or a new land use final order which shall be adopted in accordance with the process provided for in subsection (1) of this section.

SECTION 7. The council shall apply the criteria established by the commission in making decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations. The provisions in ORS chapters 183, 192, 195, 197, 215, 227, 267 and 268 and in any other law or regulation shall not apply to proceedings of the council under sections 1 to 13 of this Act. The following procedures shall govern the council's proceedings in adopting a land use final order:

(1)(a) The council shall publish notice of a public hearing on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order of the council in a newspaper of general circulation within Metro's jurisdictional area at least 14 days prior to the hearing.

(b) The notice shall:

(A) Identify the general subject matter of the hearing and the street address where a staff report and the criteria may be found;

(B) Identify the date, time and place of the hearing;

(C) State that appeals from decisions in a land use final order must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures;

(D) State that failure by a person to raise an issue at the hearing in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(E) State that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at

the hearing; and

(F) State that written notice of adoption of the land use final order will be provided only to persons who provide oral or written testimony at the hearing and who also provide, in writing, a request for written notice and a mailing address to which notice should be sent.

(c) The council also shall provide such other notice as is, in its judgment, reasonably calculated to give notice to persons who may be substantially affected by its decision. No other form of notice is required.

(2) A copy of the staff report shall be available for public inspection at least seven days prior to the public hearing. The staff report shall set forth and address compliance with the criteria. The staff report also shall include a description of the proposed boundaries within which the light rail route, stations, lots and maintenance facilities, and the highway improvements shall be located, as recommended by Tri-Met under section 6 (1) of this Act. The staff report may be amended as the staff considers necessary or desirable prior to the public hearing without further notice.

(3) The council shall hold a public hearing on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order. At the commencement of the hearing, a statement shall be made to those in attendance that:

(a) Lists the criteria or directs those present to a place at the hearing location where any person may obtain a list of the criteria at no cost;

(b) Lists generally the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order;

(c) States that testimony shall be directed towards the application of the criteria to the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, as to which decisions will be made in the land use final order;

(d) States that appeals from decisions in a land use final order on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, must be filed within 14 days following the date the land use final order is reduced to writing and bears the necessary signatures;

(e) States that failure by a person to raise an issue at the hearing, in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude appeal by that person to the board based on that issue;

(f) States that written notice of adoption of the land use final order will be provided only to persons who have provided oral or written testimony at the hearing and who also have provided, in writing, a request for written notice and a mailing address to which notice should be sent; and

(g) States that persons whose names appear on petitions submitted into the public hearing record will not be considered by that action to have provided oral or written testimony at the hearing.

(4) The council shall allow for the submission of oral and written testimony at the hearing, subject to such hearing procedures as the council may deem necessary or appropriate for the adoption of land use final orders. The council may exclude irrelevant, immaterial or unduly repetitious testimony.

(5) The council may take official notice at the hearing of any matter identified in ORS

40.065 and 40.090 or as authorized by the resolution, if any, of the council establishing hearing procedures for the adoption of land use final orders.

(6) The council shall close the hearing and shall adopt by resolution a land use final order. The council may continue the matter as provided in section 6 (1) of this Act or as it otherwise considers necessary for the purpose of land use final order adoption.

(7) The land use final order shall be accompanied by written findings demonstrating how the decisions on the light rail route, stations, lots and maintenance facilities, and the highway improvements, including their locations, comply with the criteria.

(8) Following adoption of a land use final order, the council as soon as reasonably possible shall:

(a) Provide media notice of the adoption; and

(b) Provide written notice of the adoption to persons who:

(A) Provided oral or written testimony at the hearing; and

(B) Provided at the hearing, in writing, a request for written notice and a mailing address to which written notice should be sent. Persons whose names appear on petitions provided at the hearing shall not be considered to have provided oral or written testimony at the hearing. The written notice of adoption provided hereunder shall indicate the date of written adoption and signature of the land use final order, identify the place at and time during which a copy of the land use final order may be obtained and state that appeals from decisions in the land use final order must be filed within 14 days following written adoption and signature of the land use final order.

(9) The procedures established by this section establish the only opportunities that the council must provide for interested persons to participate in the proceedings of the council in adopting a land use final order. Subject to the other provisions established by this section, the council by resolution may establish additional procedures to govern its proceedings in adopting a land use final order.

SECTION 8. (1) The state, and all affected counties, cities, special districts and political subdivisions shall:

(a) Amend their comprehensive or functional plans, including public facility plans and transportation system plans and their land use regulations, to the extent necessary to make them consistent with a land use final order; and

(b) Issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with a land use final order. Development approvals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of a land use final order.

(2) Notwithstanding the provisions of subsection (1)(a) of this section or any other provision of state or local law, a land use final order shall be fully effective upon adoption.

(3) For purposes of subsection (1)(b) of this section, an approval condition shall be considered not reasonable or necessary, or shall be considered to prevent implementation of a land use final order, if:

(a) The measure has been deleted or deferred from the project or project extension in the Full Funding Grant Agreement; or

(b) The Steering Committee determines in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act that:

(A) There are not sufficient federal, state and local funds within the project or project extension budget to pay for the measure;

(B) The measure will significantly delay the completion or otherwise prevent the timely implementation of the project or project extension; or

(C) The measure will significantly negatively impact the operations of the project or project extension.

(4) Applications for development approvals under subsection (1)(b) of this section shall be treated as land use decisions and not as limited land use decisions.

(5) Plan and land use regulation amendments, to the extent required under subsection (1)(a) of this section shall not be reviewable by any court or agency.

(6) Development approvals and permit, license and certificate decisions under subsection (1)(b) of this section may be the subject of administrative and judicial review as provided by law. However, determinations of the Steering Committee made pursuant to subsection (3) of this section shall not be reviewable and shall control in the event of conflict.

(7) Each state agency, special district or affected local government that issues a development approval, permit, license or certificate for the project or project extension shall continue to exercise enforcement authority over the development approval, permit, license or certificate.

SECTION 9. (1) Notwithstanding ORS 183.482, 183.484, 197.825 or any other law or regulation, exclusive jurisdiction for review of a land use final order relating to the project or project extension is conferred on the Land Use Board of Appeals and the court as provided by sections 1 to 13 of this Act.

(2) Review of a land use final order relating to the project or project extension shall be initiated within 14 days following the date that the land use final order is reduced to writing and bears the necessary signatures by personal delivery to the board, to the administrator and to Metro at the office of Metro's executive officer of a notice of intent to appeal as required by this section.

(3) A person may petition for review of a land use final order relating to the project or project extension if the person:

(a) Personally delivered a notice of intent to appeal the land use final order as provided for in subsection (2) of this section; and

(b) Appeared before the council orally or in writing at the land use final order hearing on the project or project extension.

(4) A person's failure to raise an issue at the land use final order hearing, in person or in writing, or failure to provide sufficient specificity to afford the council an opportunity to respond to the issue raised, shall preclude that person from petitioning for review based on that issue.

(5) A notice of intent to appeal shall:

(a) Contain an affidavit stating the facts that support the petitioner's standing as provided in subsection (3) of this section;

(b) State with particularity the grounds on which the petitioner assigns error; and

(c) State the residence or business address of the petitioner to which documents may be delivered, and the telephone and facsimile number or numbers where the petitioner may be reached during normal business hours.

(6) Metro shall personally deliver to the board and to the administrator a certified copy

of the record of the council's land use final order proceedings within seven days following the filing and delivery of a notice of intent to appeal as provided in subsection (2) of this section. Metro shall make copies of the record available to the public for the actual costs of copying. The record shall consist of the land use final order, the written findings accompanying the land use final order, the notice of the land use final order hearing, any audio cassette recordings of the hearing, a statement of matters that were officially noticed at the hearing, the staff report and any amendments thereto and documents accepted into the record at the hearing. Metro shall make a copy of the record available for inspection by petitioners and shall provide a copy of the record to any petitioner upon request for the actual costs of copying.

(7) Any objection to the record shall be personally delivered or transmitted by facsimile to the board, to the administrator and to Metro at the office of Metro's executive officer within four days following delivery of the record to the board. Within four days thereafter, responses of Metro to objections to the record shall be personally delivered or faxed to the board, to the administrator and to the residences or business addresses of the persons objecting. Thereafter, the board shall rule expeditiously on objections. The board's ruling on objections shall not affect the briefing schedule or decision timelines set forth in sections 1 to 13 of this Act.

(8) No stays or continuances of proceedings shall be permitted. No person may intervene in and thereby be made a party to the review proceedings, except that Tri-Met, the Department of Transportation and the affected local governments shall have standing to and may intervene on their own behalf.

(9) Within 14 days following the filing of the notice of intent to appeal, a petitioner shall personally deliver a petition for review and brief to the board, to the administrator, to Metro at the office of Metro's executive officer and to Tri-Met, the Department of Transportation or an affected local government if it has filed a motion to intervene in the review proceeding. The petition for review and brief shall set out in detail each assignment of error and shall identify those portions of the record in which the petitioner raised in the land use final order hearing the issues as to which error is assigned. The petition for review and brief shall comply with the specifications for opening briefs set forth in the rules of appellate procedure.

(10) Within 28 days following the filing of the notice of intent to appeal, Metro and any intervening party shall personally deliver to the board, to the administrator and to any petitioner at the petitioner's residence or business address their briefs in response to a petition for review and brief. Responding briefs shall comply with the specifications for answering briefs set forth in the rules of appellate procedure.

(11) Within 35 days following the filing of the notice of intent to appeal, the board shall hear oral argument in the manner provided for in its administrative rules. The board shall issue a final opinion within 28 days following oral argument. The board's final opinion shall affirm or remand the council's land use final order, stating the reasons for the decision.

(12)(a) The board shall remand the land use final order only if it finds that the council:

(A) Improperly construed the criteria;

(B) Exceeded its statutory or constitutional authority; or

(C) Made a decision in the land use final order on the light rail route, on stations, lots or maintenance facilities, or the highway improvements, including their locations, that was not supported by substantial evidence in the whole record. The existence in the whole record

of substantial evidence supporting a different decision on the light rail route, stations, lots or maintenance facilities, or the highway improvements, including their locations, shall not be a ground for remand if there also was substantial evidence in the whole record supporting the land use final order.

(b) Failure to comply with statutory procedures, including notice requirements, shall not be grounds for invalidating a land use final order.

(c) The board shall affirm all portions of the land use final order that it does not remand.

(13) Upon issuance of its final opinion, the board shall file the opinion with the administrator and transmit copies to the parties. The board also shall inform the parties of the filing of the final opinion by telephone or facsimile. Within seven days following issuance of its final order, the board shall file with the administrator a copy of the record of the board.

(14) Neither the board nor the court shall substitute its judgment for that of the council as to any issue of fact or any issue within the discretion of the council.

SECTION 10. (1) Any party appearing before the Land Use Board of Appeals under section 9 of this Act and objecting to the board's final opinion may petition the court for review of the final opinion as provided for in this section. The petition shall be filed with the administrator and served on the board and all parties within 14 days following the board's issuance of its final opinion in the manner provided for filing and service in the rules of appellate procedure. The petition shall be in the form of a brief and shall state, with particularity and with supporting authority, each reason asserted for reversal or modification of the board's decision. Insofar as practicable, the petition shall comply with the specifications for petitions for review in the rules of appellate procedure.

(2) If a petition for review has been filed, then within 14 days thereafter, any other party appearing before the board may, but need not, file a response to the petition for review. In the absence of a response, the party's brief before the board shall be considered as the response. A party seeking to respond to the petition for review shall file its response with the administrator and serve it on the board and all parties in the manner provided for filing and service in the rules of appellate procedure. The response shall be in the form of a brief and shall comply with the specifications for responses to petitions for review in the rules of appellate procedure.

(3) The court may decide the matter on the briefs, or it may hold oral argument. The court may adopt the board's final opinion as its own, affirm without opinion or issue a separate opinion. The court shall decide the matter at its earliest practicable convenience, consistent with sections 1 to 13 of this Act.

(4) The court shall affirm or remand the land use final order, in whole or in part. The court shall affirm all parts of the final order that it does not remand. The court shall base its decision on the standards for review set out in section 9 (12) of this Act. If the court remands, the council shall respond as to those matters remanded by adopting by resolution a land use final order on remand. The provisions of section 7 of this Act shall govern the proceedings of the council in adopting a land use final order on remand. Upon adoption of a land use final order on remand, Metro shall immediately file with the administrator the land use final order on remand and the record of the council. Metro shall personally deliver copies of its land use final order on remand to the parties before the court and shall inform the parties of the filing of the final order on remand by telephone or facsimile.

(5) If the court remands, the court shall retain jurisdiction over the matters remanded.

Within 14 days following adoption of a land use final order on remand, the parties before the court may submit memoranda to the court with respect thereto and shall personally deliver copies of the memoranda to other parties before the court. The court may limit the length of such memoranda. The court's decision on the land use final order on remand shall be based on the standards set forth in section 9 (12) of this Act.

SECTION 11. (1) If, as a condition of executing a Full Funding Grant Agreement, the Federal Government requires the deletion or deferral of portions of the approved project or project extension, or the deletion or deferral of measures expressly provided for in a Final Statement, a determination of which improvements or measures to delete or defer shall be made in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act.

(2) If, subsequent to execution of a Full Funding Grant Agreement, additional deletions or deferrals are required due to insufficient funds in the budgets for the project or project extension, a determination of which improvements or measures to delete or defer shall be made in accordance with the provisions of the intergovernmental agreement described in section 1 (21) of this Act.

SECTION 12. (1) Upon execution of a Full Funding Grant Agreement, the council shall amend the land use final order to be consistent with the terms and conditions of the Full Funding Grant Agreement.

(2) The following amendments to a land use final order shall be considered technical and environmental and shall not be subject to judicial or administrative review:

(a) Amendments resulting from adoption of a Final Statement;

(b) Amendments required to ensure consistency with an executed Full Funding Grant Agreement; and

(c) Amendments to defer or delete a portion of the project or project extension as provided for in section 11 (2) of this Act.

SECTION 13. No action taken by the commission, the council, the board or the court under sections 1 to 13 of this Act shall be invalid due to a failure to meet a timeline established by sections 1 to 13 of this Act.

SECTION 14. ORS 197.550, 197.553, 197.556, 197.559, 197.562, 197.565, 197.568, 197.571, 197.574, 197.577, 197.581, 197.584 and 197.590 are repealed.

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