

House Bill 3462

Sponsored by Representative CLEM; Representatives DALLUM, FLORES, KOMP, ROBLAN, WITT (at the request of Oregon Farm Bureau)

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**.

Makes planning for 20-year buildable lands supply permissive way to demonstrate compliance with statewide land use planning goal relating to buildable lands for residential use. Modifies requirements for local government planning for 20-year buildable lands supply. Modifies priorities for inclusion of land within urban growth boundary.

A BILL FOR AN ACT

1
2 Relating to buildable lands supply; creating new provisions; and amending ORS 197.296, 197.298,
3 197.299, 197.302 and 197.637.

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

5 **SECTION 1.** ORS 197.296 is amended to read:

6 197.296. (1)(a) The provisions of this section apply to metropolitan service district regional
7 framework plans and local government comprehensive plans for lands within the urban growth
8 boundary of a city that is located outside of a metropolitan service district and has a population of
9 25,000 or more.

10 (b) The Land Conservation and Development Commission may establish a set of factors under
11 which additional cities are subject to the provisions of this section. In establishing the set of factors
12 required under this paragraph, the commission shall consider the size of the city, the rate of popu-
13 lation growth of the city or the proximity of the city to another city with a population of 25,000 or
14 more or to a metropolitan service district.

15 (2) At periodic review pursuant to ORS 197.628 to 197.650 or at any other legislative review of
16 the comprehensive plan or regional plan that concerns the urban growth boundary and requires the
17 application of a statewide **land use** planning goal relating to buildable lands for residential use, a
18 local government [*shall*] **may** demonstrate that its comprehensive plan or regional plan provides
19 sufficient buildable lands within the urban growth boundary established pursuant to statewide **land**
20 **use** planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall
21 commence on the date initially scheduled for completion of the periodic or legislative review.

22 (3) [*In performing the duties*] **If a local government demonstrates compliance with a state-**
23 **wide land use planning goal relating to buildable lands for residential use** under subsection (2)
24 of this section, a local government shall:

25 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the
26 housing capacity of the buildable lands; and

27 (b) Conduct an analysis of housing need by type and density range, in accordance with ORS
28 197.303 and statewide **land use** planning goals and rules relating to housing, to determine the
29 number of units and amount of land needed for each needed housing type for the next 20 years.

30 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable

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 lands” includes:

- 2 (A) Vacant lands planned or zoned for residential use;
- 3 (B) Partially vacant lands planned or zoned for residential use;
- 4 (C) Lands that may be used for a mix of residential and employment uses under the existing
- 5 planning or zoning; and
- 6 (D) Lands that may be used for residential infill or redevelopment.

7 (b) For the purpose of the inventory and determination of housing capacity described in sub-
 8 section (3)(a) of this section, the local government must demonstrate consideration of:

- 9 (A) The extent that residential development is prohibited or restricted by local regulation and
- 10 ordinance, state law and rule or federal statute and regulation;
- 11 (B) A written long term contract or easement for radio, telecommunications or electrical facili-
- 12 ties, if the written contract or easement is provided to the local government; and
- 13 (C) The presence of a single family dwelling or other structure on a lot or parcel.

14 (c) Except for land that may be used for residential infill or redevelopment, a local government
 15 shall create a map or document that may be used to verify and identify specific lots or parcels that
 16 have been determined to be buildable lands.

17 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of
 18 housing capacity and need pursuant to subsection (3) of this section must be based on data relating
 19 to land within the urban growth boundary that has been collected since the last periodic review or
 20 five years, whichever is greater. The data shall include:

- 21 (A) The number, density and average mix of housing types of urban residential development that
- 22 have actually occurred;
- 23 (B) Trends in density and average mix of housing types of urban residential development;
- 24 (C) Demographic and population trends;
- 25 (D) Economic trends and cycles; and
- 26 (E) The number, density and average mix of housing types that have occurred on the buildable
- 27 lands described in subsection (4)(a) of this section.

28 (b) A local government shall make the determination described in paragraph (a) of this sub-
 29 section using a shorter time period than the time period described in paragraph (a) of this subsection
 30 if the local government finds that the shorter time period will provide more accurate and reliable
 31 data related to housing capacity and need. The shorter time period may not be less than three years.

32 (c) A local government shall use data from a wider geographic area or use a time period for
 33 economic cycles and trends longer than the time period described in paragraph (a) of this subsection
 34 if the analysis of a wider geographic area or the use of a longer time period will provide more ac-
 35 curate, complete and reliable data relating to trends affecting housing need than an analysis per-
 36 formed pursuant to paragraph (a) of this subsection. The local government must clearly describe the
 37 geographic area, time frame and source of data used in a determination performed under this para-
 38 graph.

39 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than
 40 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government
 41 shall take one or more of the following actions to accommodate the additional housing need:

- 42 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate
- 43 housing needs for the next 20 years[. *As part of this process, the local government shall consider the*
- 44 *effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include*
- 45 *sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need*

1 *and inclusion of lands for new public school facilities shall be a coordinated process between the af-*
 2 *ected public school districts and the local government that has the authority to approve the urban*
 3 *growth boundary]; or*

4 (b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to in-
 5 clude new measures that demonstrably increase the likelihood that residential development will oc-
 6 cur at densities sufficient to accommodate housing needs for the next 20 years without expansion
 7 of the urban growth boundary. [*A local government or metropolitan service district that takes this*
 8 *action shall monitor and record the level of development activity and development density by housing*
 9 *type following the date of the adoption of the new measures; or]*

10 [*(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.*]

11 **(7) In taking action under subsection (6)(a) of this section, the local government shall:**

12 **(a) Consider the effects of measures taken under subsection (6)(b) of this section.**

13 **(b) Include sufficient buildable lands reasonably necessary to accommodate the siting of**
 14 **new public school facilities. The affected public school districts and the local government**
 15 **having authority to approve the urban growth boundary shall cooperate in the process for**
 16 **determining the need for and inclusion of buildable lands for new public school facilities.**

17 **(c) Include sufficient buildable lands reasonably necessary to accommodate:**

18 **(A) Siting of utility facilities necessary for public service, including wetland waste treat-**
 19 **ment systems;**

20 **(B) Siting of facilities for the land application of reclaimed water, agricultural or indus-**
 21 **trial process water or biosolids for agricultural, horticultural or silvicultural production,**
 22 **subject to the issuance of a license, permit or other approval by the Department of Envi-**
 23 **ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055 or in compliance**
 24 **with rules adopted under ORS 468B.095;**

25 **(C) Creation of wetlands and wetland mitigation; and**

26 **(D) Siting of public parks and playgrounds.**

27 **(8) A local government or metropolitan service district that takes action under sub-**
 28 **section (6)(b) of this section shall monitor and record the level of development activity and**
 29 **development density by housing type following the date of the adoption of the new measures.**

30 [(7)] **(9)** Using the analysis conducted under subsection (3)(b) of this section, the local govern-
 31 ment shall determine the overall average density and overall mix of housing types at which resi-
 32 dential development of needed housing types must occur in order to meet housing needs over the
 33 next 20 years. If that density is greater than the actual density of development determined under
 34 subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types
 35 determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic
 36 review, shall adopt measures that demonstrably increase the likelihood that residential development
 37 will occur at the housing types and density and at the mix of housing types required to meet housing
 38 needs over the next 20 years.

39 [(8)(a)] **(10)(a)** A local government outside a metropolitan service district that takes any actions
 40 under subsection (6) or [(7)] **(9)** of this section shall demonstrate that the comprehensive plan and
 41 land use regulations comply with goals and rules adopted by the commission and implement ORS
 42 197.295 to 197.314.

43 (b) The local government shall determine the density and mix of housing types anticipated as a
 44 result of actions taken under subsections (6) and [(7)] **(9)** of this section and monitor and record the
 45 actual density and mix of housing types achieved. The local government shall compare actual and

1 anticipated density and mix. The local government shall submit its comparison to the commission
 2 at the next periodic review or at the next legislative review of its urban growth boundary, which-
 3 ever comes first.

4 [(9)] (11) In establishing that actions and measures adopted under subsections (6) or [(7)] (9) of
 5 this section demonstrably increase the likelihood of higher density residential development, the local
 6 government shall at a minimum ensure that land zoned for needed housing is in locations appropri-
 7 ate for the housing types identified under subsection (3) of this section and is zoned at density
 8 ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of
 9 this section. Actions or measures, or both, may include but are not limited to:

- 10 (a) Increases in the permitted density on existing residential land;
- 11 (b) Financial incentives for higher density housing;
- 12 (c) Provisions permitting additional density beyond that generally allowed in the zoning district
 13 in exchange for amenities and features provided by the developer;
- 14 (d) Removal or easing of approval standards or procedures;
- 15 (e) Minimum density ranges;
- 16 (f) Redevelopment and infill strategies;
- 17 (g) Authorization of housing types not previously allowed by the plan or regulations;
- 18 (h) Adoption of an average residential density standard; and
- 19 (i) Rezoning or redesignation of nonresidential land.

20 **SECTION 2.** ORS 197.298 is amended to read:

21 197.298. (1) In addition to any requirements established by rule addressing urbanization, land
 22 may not be included within an urban growth boundary except under the following priorities:

23 (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or met-
 24 ropolitan service district action plan.

25 (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of
 26 land needed, second priority is land adjacent to an urban growth boundary that is identified in an
 27 acknowledged comprehensive plan as an exception area or nonresource land. Second priority may
 28 include:

29 (A) Resource land that is completely surrounded by exception areas unless such resource land
 30 is high-value farmland as described in ORS 215.710; or

31 (B) **A lot or parcel that is smaller than the minimum lot size with 75 percent or more**
 32 **of the boundary of the lot or parcel adjacent to an urban growth boundary, an exception area**
 33 **or resource land that is not high-value farmland as described in ORS 215.710.**

34 (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the
 35 amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247
 36 (1991 Edition).

37 (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the
 38 amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan
 39 for agriculture or forestry, or both.

40 (2) Higher priority shall be given to land of lower capability as measured by the capability
 41 classification system or by cubic foot site class, whichever is appropriate for the current use.

42 (3) Land of lower priority under subsection (1) of this section may be included in an urban
 43 growth boundary if land of higher priority is found to be inadequate to accommodate the amount
 44 of land [estimated] **identified for inclusion** in subsection (1) of this section for one or more of the
 45 following reasons:

1 (a) **Not taking into account financial considerations when comparing locations**, specific
 2 types of identified land needs cannot be reasonably accommodated on higher priority lands;

3 (b) **Not taking into account financial considerations when comparing locations**, future ur-
 4 ban services could not reasonably be provided to the higher priority lands due to topographical or
 5 other physical constraints; or

6 (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion
 7 of lower priority lands in order to include or to provide services to higher priority lands.

8 **(4) This section does not require or support a conclusion that higher priority lands are**
 9 **inadequate because the amount of land identified as needed cannot be met by inclusion of a**
 10 **single lot or parcel.**

11 **SECTION 3.** ORS 197.299 is amended to read:

12 197.299. (1) A metropolitan service district organized under ORS chapter 268 [*shall*] **may** com-
 13 plete the inventory, determination and analysis [*required*] under ORS 197.296 (3) [*not later than*] five
 14 years after completion of the previous inventory, determination and analysis.

15 (2)(a) *The* **If a metropolitan service district completes the inventory, determination and**
 16 **analysis under ORS 197.296 (3), the district** shall take:

17 (a) [*such*] Action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year
 18 buildable [*land*] **lands** supply determined under ORS 197.296 (3) within one year of completing the
 19 analysis.

20 (b) [*The metropolitan service district shall take all*] Final action under ORS 197.296 (6)(a) neces-
 21 sary to accommodate a 20-year buildable [*land*] **lands** supply determined under ORS 197.296 (3)
 22 within two years of completing the analysis.

23 (c) [*The metropolitan service district shall take*] Action under ORS 197.296 (6)(b), within one year
 24 after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable
 25 [*land*] **lands** within the urban growth boundary to accommodate the estimated housing needs for 20
 26 years from the time the actions are completed. The metropolitan service district shall consider and
 27 adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

28 (3) The Land Conservation and Development Commission may grant an extension to the time
 29 limits of subsection (2) of this section if the Director of the Department of Land Conservation and
 30 Development determines that the metropolitan service district has provided good cause for failing
 31 to meet the time limits.

32 (4)(a) The metropolitan service district shall establish a process to expand the urban growth
 33 boundary to accommodate a need for land for a public school that cannot reasonably be accommo-
 34 dated within the existing urban growth boundary. The metropolitan service district shall design the
 35 process to:

36 (A) Accommodate a need that must be accommodated between periodic analyses of urban growth
 37 boundary capacity required by subsection (1) of this section; and

38 (B) Provide for a final decision on a proposal to expand the urban growth boundary within four
 39 months after submission of a complete application by a high growth school district, as defined in
 40 ORS 195.110.

41 (b) At the request of a high growth school district, the metropolitan service district shall assist
 42 the high growth school district to identify school sites required by the school facility planning pro-
 43 cess described in ORS 195.110. A need for a public school is a specific type of identified land need
 44 under ORS 197.298 (3).

45 **SECTION 4.** ORS 197.302 is amended to read:

1 197.302. (1) After gathering and compiling information on the performance measures as described
 2 in ORS 197.301 but prior to submitting the information to the Department of Land Conservation and
 3 Development, a metropolitan service district shall determine if actions taken under ORS 197.296 (6)
 4 have established the buildable [*land*] **lands** supply and housing densities necessary to accommodate
 5 estimated housing needs determined under ORS 197.296 (3) **or other actions taken demonstrate**
 6 **compliance with a statewide land use planning goal relating to buildable lands for residential**
 7 **purposes**. If the metropolitan service district determines that the actions undertaken will not ac-
 8 commodate estimated need, the district shall develop a corrective action plan, including a schedule
 9 for implementation. The district shall submit the plan to the department along with the report on
 10 performance measures required under ORS 197.301. Corrective action under this section may include
 11 amendment of the urban growth boundary, comprehensive plan, regional framework plan, functional
 12 plan or land use regulations as described in ORS 197.296.

13 (2) Within two years of submitting a corrective action plan to the department, the metropolitan
 14 service district shall demonstrate by reference to the performance measures described in ORS
 15 197.301 that implementation of the plan has resulted in the buildable [*land*] **lands** supply and housing
 16 density within the urban growth boundary necessary to accommodate the estimated housing needs
 17 for each housing type as determined under ORS 197.296 (3).

18 (3) The failure of the metropolitan service district to demonstrate the buildable [*land*] **lands**
 19 supply and housing density necessary to accommodate housing needs as required under this section
 20 and ORS 197.296 **or a statewide land use planning goal relating to buildable lands for resi-**
 21 **dential housing** may be the basis for initiation of enforcement action pursuant to ORS 197.319 to
 22 197.335.

23 **SECTION 5.** ORS 197.637 is amended to read:

24 197.637. (1) Upon request of the Department of Land Conservation and Development, the Hous-
 25 ing and Community Services Department shall review the inventory and analysis of housing, and
 26 measures taken to address the housing need, required of certain local governments under ORS
 27 197.296. The review shall address the likely effect of measures developed by a local government
 28 under ORS 197.296 (6) or [(7)] (9) on the adequacy of the supply of buildable [*land*] **lands** and op-
 29 portunities to satisfy needs identified under ORS 197.296 (3) **or of other actions taken to comply**
 30 **with a statewide land use planning goal relating to residential use**.

31 (2) The Land Conservation and Development Commission and the Director of the Department
 32 of Land Conservation and Development shall consider the review and any recommendations of the
 33 Housing and Community Services Department when determining whether a local government has
 34 complied with the statewide land use planning goals and the requirements of ORS 197.296.

35 **SECTION 6. The amendments to ORS 197.296, 197.298, 197.299, 197.302 and 197.637 by**
 36 **sections 1 to 5 of this 2007 Act apply to the final decision of a local government to include**
 37 **buildable lands in an urban growth boundary made on or after the effective date of this 2007**
 38 **Act.**