

B-Engrossed Senate Bill 1011

Ordered by the House June 1
Including Senate Amendments dated May 7 and House Amendments dated
June 1

Sponsored by COMMITTEE ON JUDICIARY

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.

Authorizes counties and metropolitan service districts to designate rural reserves not included in urban growth boundaries or rural communities. Provides alternative process for designating urban reserves. **Provides appeal and review processes.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to land reserves; creating new provisions; amending ORS 195.145, 197.626 and 221.034; and
3 declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 4 of this 2007 Act:**

6 (1) **"Rural reserve" means land reserved to provide long-term protection for agriculture,**
7 **forestry or important natural landscape features that limit urban development or help define**
8 **appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat,**
9 **steep slopes and floodplains.**

10 (2) **"Urban reserve" means lands outside an urban growth boundary that will provide for:**

11 (a) **Future expansion over a long-term period; and**

12 (b) **The cost-effective provision of public facilities and services within the area when the**
13 **lands are included within the urban growth boundary.**

14 **SECTION 2. The Legislative Assembly finds that:**

15 (1) **Long-range planning for population and employment growth by local governments can**
16 **offer greater certainty for:**

17 (a) **The agricultural and forest industries, by offering long-term protection of large blocks**
18 **of land with the characteristics necessary to maintain their viability; and**

19 (b) **Commerce, other industries, other private landowners and providers of public ser-**
20 **vices, by determining the more and less likely locations of future expansion of urban growth**
21 **boundaries and urban development.**

22 (2) **State planning laws must support and facilitate long-range planning to provide this**
23 **greater certainty.**

24 **SECTION 3. (1) A county and a metropolitan service district established under ORS**
25 **chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to**
26 **190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and**

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 urban reserves pursuant to ORS 195.145 (1)(b).

2 (2) Land designated as a rural reserve:

3 (a) Must be outside an urban growth boundary.

4 (b) May not be designated as an urban reserve during the urban reserve planning period
5 described in ORS 195.145 (4).

6 (c) May not be included within an urban growth boundary during the period of time de-
7 scribed in paragraph (b) of this subsection.

8 (3) When designating a rural reserve under this section to provide long-term protection
9 to the agricultural industry, a county and a metropolitan service district shall base the des-
10 ignation on consideration of factors including, but not limited to, whether land proposed for
11 designation as a rural reserve:

12 (a) Is situated in an area that is otherwise potentially subject to urbanization during the
13 period described in subsection (2)(b) of this section, as indicated by proximity to the urban
14 growth boundary and to properties with fair market values that significantly exceed agri-
15 cultural values;

16 (b) Is capable of sustaining long-term agricultural operations;

17 (c) Has suitable soils and available water where needed to sustain long-term agricultural
18 operations; and

19 (d) Is suitable to sustain long-term agricultural operations, taking into account:

20 (A) The existence of a large block of agricultural or other resource land with a concen-
21 tration or cluster of farms;

22 (B) The adjacent land use pattern, including its location in relation to adjacent nonfarm
23 uses and the existence of buffers between agricultural operations and nonfarm uses;

24 (C) The agricultural land use pattern, including parcelization, tenure and ownership pat-
25 terns; and

26 (D) The sufficiency of agricultural infrastructure in the area.

27 (4) The Land Conservation and Development Commission shall, after consultation with
28 the State Department of Agriculture, adopt by goal or by rule a process and criteria for
29 designating rural reserves pursuant to this section.

30 **SECTION 4.** (1) A county and a metropolitan service district must consider simultane-
31 ously the designation and establishment of:

32 (a) Rural reserves pursuant to section 3 of this 2007 Act; and

33 (b) Urban reserves pursuant to ORS 195.145 (1)(b).

34 (2) An agreement between a county and a metropolitan service district to establish rural
35 reserves pursuant to section 3 of this 2007 Act and urban reserves pursuant to ORS 195.145
36 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of
37 comprehensive plan provisions and by the district of regional framework plan provisions to
38 implement the agreement. A district may not designate urban reserves pursuant to ORS
39 195.145 (1)(b) in a county until the county and the district have entered into an agreement
40 pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the
41 district's regional framework plan as urban reserves. A county may not designate rural re-
42 serves pursuant to section 3 of this 2007 Act until the county and the district have entered
43 into an agreement pursuant to section 3 of this 2007 Act that identifies the land to be des-
44 ignated as rural reserves by the county in the county's comprehensive plan.

45 (3) A county and a metropolitan service district may not enter into an intergovernmental

1 **agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless**
2 **the county and the district also agree to designate rural reserves in the county.**

3 **(4) Designation and protection of rural reserves pursuant to section 3 of this 2007 Act**
4 **or urban reserves pursuant to ORS 195.145 (1)(b):**

5 **(a) Is not a basis for a claim for compensation under ORS 197.352 unless the designation**
6 **and protection of rural reserves or urban reserves imposes a new restriction on the use of**
7 **private real property.**

8 **(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.**

9 **SECTION 5. (1) Sections 1 to 4 of this 2007 Act are added to and made a part of ORS**
10 **chapter 195.**

11 **(2) ORS 195.145 is added to and made a part of sections 1 to 4 of this 2007 Act.**

12 **SECTION 6. ORS 195.145 is amended to read:**

13 195.145. (1) To ensure that the supply of land available for urbanization is maintained[,]:

14 **(a) Local governments may cooperatively designate lands outside urban growth boundaries as**
15 **[urban reserve areas, subject to ORS 197.610 to 197.625.] urban reserves subject to ORS 197.610**
16 **to 197.625.**

17 **(b) Alternatively, a metropolitan service district established under ORS chapter 268 and**
18 **a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or**
19 **197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to**
20 **this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a)**
21 **of this subsection.**

22 (2)(a) The Land Conservation and Development Commission may require a local government to
23 designate an urban reserve [area] **pursuant to subsection (1)(a) of this section** during its periodic
24 review in accordance with the conditions for periodic review under ORS 197.628.

25 (b) Notwithstanding paragraph (a) of this subsection, the commission may require a local gov-
26 ernment to designate an urban reserve [area] **pursuant to subsection (1)(a) of this section** outside
27 of its periodic review if:

28 (A) The local government is located inside a Primary Metropolitan Statistical Area or a Met-
29 ropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

30 (B) The local government has been required to designate an urban reserve [area] by rule prior
31 to November 4, 1993.

32 (3) In carrying out subsections (1) and (2) of this section:

33 (a) Within an urban reserve [area], neither the commission nor any local government shall pro-
34 hibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed
35 under law existing prior to designation as an urban reserve [area].

36 (b) The commission shall provide to local governments a list of options, rather than prescribing
37 a single planning technique, to ensure the efficient transition from rural to urban use in urban re-
38 serve [areas].

39 [(4) For purposes of this section, "urban reserve area" means lands outside an urban growth
40 boundary that will provide for:]

41 [(a) Future expansion over a long-term period; and]

42 [(b) The cost-effective provision of public facilities and service within the area when the lands are
43 included within the urban growth boundary].

44 **(4) Urban reserves designated by a metropolitan service district and a county pursuant**
45 **to subsection (1)(b) of this section must be planned to accommodate population and employ-**

1 **ment growth for at least 20 years, and not more than 30 years, after the 20-year period for**
2 **which the district has demonstrated a buildable land supply in the most recent inventory,**
3 **determination and analysis performed under ORS 197.296.**

4 **(5) A district and a county shall base the designation of urban reserves under subsection**
5 **(1)(b) of this section upon consideration of factors including, but not limited to, whether land**
6 **proposed for designation as urban reserves, alone or in conjunction with land inside the ur-**
7 **ban growth boundary:**

8 **(a) Can be developed at urban densities in a way that makes efficient use of existing and**
9 **future public infrastructure investments;**

10 **(b) Includes sufficient development capacity to support a healthy urban economy;**

11 **(c) Can be served by public schools and other urban-level public facilities and services**
12 **efficiently and cost-effectively by appropriate and financially capable service providers;**

13 **(d) Can be designed to be walkable and served by a well-connected system of streets by**
14 **appropriate service providers;**

15 **(e) Can be designed to preserve and enhance natural ecological systems; and**

16 **(f) Includes sufficient land suitable for a range of housing types.**

17 **(6) The commission shall adopt by goal or by rule a process and criteria for designating**
18 **urban reserves pursuant to subsection (1)(b) of this section.**

19 **SECTION 7.** ORS 197.626 is amended to read:

20 197.626. A metropolitan service district that amends its urban growth boundary to include more
21 than 100 acres, or **that amends the district's regional framework plan or land use regulations**
22 **implementing the plan to establish urban reserves designated under ORS 197.145 (1)(b),** a city
23 with a population of 2,500 or more within its urban growth boundary that amends the urban growth
24 boundary to include more than 50 acres or that designates urban reserve [*areas*] under ORS 195.145,
25 **or a county that amends the county's comprehensive plan or land use regulations imple-**
26 **menting the plan to establish rural reserves designated under section 3 of this 2007 Act,** shall
27 submit the amendment or designation to the Land Conservation and Development Commission in the
28 manner provided for periodic review under ORS 197.628 to 197.650.

29 **SECTION 8.** ORS 221.034 is amended to read:

30 221.034. (1) As used in this section:

31 (a) "Neighboring city" means a city that has any part of its territory situated within three miles
32 of the area proposed to be incorporated.

33 (b) "Rural unincorporated community" means a settlement with a boundary identified in an ac-
34 knowledged comprehensive plan of a county and that:

35 (A) Is made up primarily of lands subject to an exception to statewide planning goals related to
36 agricultural lands or forestlands;

37 (B) Either was identified in the acknowledged comprehensive plan of a county as a "rural com-
38 munity," "service center," "rural center," "resort community" or similar term before October 28,
39 1994, or is listed in the Department of Land Conservation and Development's "Survey of Oregon
40 Unincorporated Communities" (January 30, 1997);

41 (C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

42 (D) Is not incorporated as a city.

43 (c) "Urban reserve [*area*]" has the meaning given that term in [ORS 195.145] **section 1 of this**
44 **2007 Act.**

45 (d) "Urban services" has the meaning given that term in ORS 195.065.

1 (2) When any of the area proposed to be incorporated as a city lies within an urbanized area,
2 but outside the urban growth boundary of a city or a metropolitan service district:

3 (a) The area proposed to be incorporated must also be located entirely within a designated rural
4 unincorporated community and contiguous lands subject to an exception to statewide planning goals
5 related to agricultural lands or forestlands.

6 (b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief
7 petitioner, stating that:

8 (A) Ten percent of the electors registered within the area proposed for incorporation favor the
9 incorporation; and

10 (B) The chief petitioners have engaged the neighboring cities in discussions concerning the ef-
11 fects of the proposed incorporation, including discussions specifically relating to how those cities
12 and the proposed city will allow for expansion of urban growth boundaries and, where applicable,
13 for creation or expansion of urban [*reserve areas*] **reserves**.

14 (c) The economic feasibility statement required by ORS 221.035 must:

15 (A) Indicate that the proposed city must plan for and provide urban services in a cost-effective
16 manner at the minimum level adequate to meet current needs and projected growth;

17 (B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban
18 services; and

19 (C) Indicate that the proposed city must plan for residential development at or above the same
20 urban density planned for an existing city, within the county, that has a similar geographic area
21 within the existing city's urban growth boundary or, for a proposed city within three miles of Met-
22 ro's boundary, a minimum urban residential density in accordance with a statewide planning goal
23 and rules pertaining to needed housing for cities within Metro's urban growth boundary.

24 (d) If the proposed city will be required to complete a public facility plan and a transportation
25 systems plan, the proposed city must demonstrate the ability to provide urban services to meet
26 current needs and projected growth. The proposed city may meet this requirement, in whole or in
27 part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060,
28 to provide the urban services.

29 (3) If the governing body of a neighboring city determines that the proposed incorporation ad-
30 versely affects that city, the governing body may ask the county court with which the petition for
31 incorporation was filed to reject the petition and terminate the incorporation proceedings. The ob-
32 jections by the city to the incorporation shall be heard and considered by the county court at a
33 public hearing held under ORS 221.040.

34 (4) If, at the hearing held under ORS 221.040, the county court finds that any of the require-
35 ments of subsection (2) of this section are not met or that the proposed incorporation will adversely
36 affect a neighboring city, the county court shall provide by order for the termination of the incor-
37 poration proceedings. The order shall contain the findings of the county court relating to the pro-
38 posed incorporation and the reasons for terminating the incorporation proceedings.

39 (5) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall re-
40 view, upon the petition of a party to the incorporation proceedings, the order of the county court
41 under subsection (4) of this section.

42 **SECTION 9. (1) Notwithstanding ORS 197.650, a Land Conservation and Development**
43 **Commission order concerning the designation of urban reserves under ORS 195.145 (1)(b) or**
44 **rural reserves under section 3 of this 2007 Act may be appealed to the Court of Appeals by**
45 **the persons described in ORS 197.650.**

1 (2) **Judicial review of orders described in subsection (1) of this section is as provided in**
2 **this section.**

3 (3) **Jurisdiction for judicial review is conferred upon the Court of Appeals. A proceeding**
4 **for judicial review may be instituted by filing a petition in the Court of Appeals. The petition**
5 **must be filed within 21 days after the date the commission delivered or mailed the order upon**
6 **which the petition is based.**

7 (4) **The filing of the petition, as set forth in subsection (3) of this section, and service of**
8 **a petition on the persons who submitted oral or written testimony in the proceeding before**
9 **the commission are jurisdictional and may not be waived or extended.**

10 (5) **The petition must state the nature of the order the petitioner seeks to have reviewed.**
11 **Copies of the petition must be served by registered or certified mail upon the commission**
12 **and the persons who submitted oral or written testimony in the proceeding before the com-**
13 **mission.**

14 (6) **Within 21 days after service of the petition, the commission shall transmit to the**
15 **Court of Appeals the original or a certified copy of the entire record of the proceeding under**
16 **review. However, by stipulation of the parties to the review proceeding, the record may be**
17 **shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to**
18 **limit the record for the additional costs. The Court of Appeals may require or permit sub-**
19 **sequent corrections or additions to the record. Except as specifically provided in this sub-**
20 **section, the Court of Appeals may not tax the cost of the record to the petitioner or an**
21 **intervening party. However, the Court of Appeals may tax the costs to a party that files a**
22 **frivolous petition for judicial review.**

23 (7) **Petitions and briefs must be filed within time periods and in a manner established by**
24 **the Court of Appeals by rule.**

25 (8) **The Court of Appeals shall:**

26 (a) **Hear oral argument within 49 days of the date of transmittal of the record unless the**
27 **Court of Appeals determines that the ends of justice served by holding oral argument on a**
28 **later day outweigh the best interests of the public and the parties. However, the Court of**
29 **Appeals may not hold oral argument more than 49 days after the date of transmittal of the**
30 **record because of general congestion of the court calendar or lack of diligent preparation or**
31 **attention to the case by a member of the court or a party.**

32 (b) **Set forth in writing and provide to the parties a determination to hear oral argument**
33 **more than 49 days from the date the record is transmitted, together with the reasons for the**
34 **determination. The Court of Appeals shall schedule oral argument as soon as is practicable.**

35 (c) **Consider, in making a determination under paragraph (b) of this subsection:**

36 (A) **Whether the case is so unusual or complex, due to the number of parties or the ex-**
37 **istence of novel questions of law, that 49 days is an unreasonable amount of time for the**
38 **parties to brief the case and for the Court of Appeals to prepare for oral argument; and**

39 (B) **Whether the failure to hold oral argument at a later date likely would result in a**
40 **miscarriage of justice.**

41 (9) **The court:**

42 (a) **Shall limit judicial review of an order reviewed under this section to the record.**

43 (b) **May not substitute its judgment for that of the Land Conservation and Development**
44 **Commission as to an issue of fact.**

45 (10) **The Court of Appeals may affirm, reverse or remand an order reviewed under this**

1 section. The Court of Appeals shall reverse or remand the order only if the court finds the
2 order is:

3 (a) Unlawful in substance or procedure. However, error in procedure is not cause for
4 reversal or remand unless the Court of Appeals determines that substantial rights of the
5 petitioner were prejudiced.

6 (b) Unconstitutional.

7 (c) Not supported by substantial evidence in the whole record as to facts found by the
8 commission.

9 (11) The Court of Appeals shall issue a final order on the petition for judicial review with
10 the greatest possible expediency.

11 (12) If the order of the commission is remanded by the Court of Appeals or the Supreme
12 Court, the commission shall respond to the court's appellate judgment within 30 days.

13 SECTION 10. Notwithstanding ORS 195.145 (4), if urban reserves are designated by a
14 metropolitan service district and a county pursuant to ORS 195.145 (1)(b) on or before De-
15 cember 31, 2009, the urban reserves must be planned to accommodate population and em-
16 ployment growth for at least 20 years, and not more than 30 years, after the 20-year period
17 for which the district has demonstrated a buildable land supply in the next inventory, de-
18 termination and analysis required under ORS 197.299 on or after the effective date of this
19 2007 Act.

20 SECTION 11. The Land Conservation and Development Commission shall adopt the goals
21 or rules required by section 3 of this 2007 Act and by the amendments to ORS 195.145 by
22 section 6 of this 2007 Act not later than January 31, 2008.

23 SECTION 12. This 2007 Act being necessary for the immediate preservation of the public
24 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
25 on its passage.