

Senate Bill 45

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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**.

Authorizes system development charges to fund capital improvements for schools that are made available for public recreation uses. Limits amount of system development charges that local government may collect for parks and recreation and schools.

A BILL FOR AN ACT

1
2 Relating to system development charges; amending ORS 223.299, 223.304, 223.307 and 223.309.

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

4 **SECTION 1.** ORS 223.299 is amended to read:

5 223.299. As used in ORS 223.297 to 223.314:

6 (1)(a) "Capital improvement" means facilities or assets used for the following:

7 (A) Water supply, treatment and distribution;

8 (B) Waste water collection, transmission, treatment and disposal;

9 (C) Drainage and flood control;

10 (D) Transportation; or

11 (E) Parks and recreation **and schools**.

12 (b) "Capital improvement" does not include costs of the operation or routine maintenance of
13 capital improvements.

14 (2) "Improvement fee" means a fee for costs associated with capital improvements to be con-
15 structed.

16 (3) "Reimbursement fee" means a fee for costs associated with capital improvements already
17 constructed, or under construction when the fee is established, for which the local government de-
18 termines that capacity exists.

19 (4)(a) "System development charge" means a reimbursement fee, an improvement fee or a com-
20 bination thereof assessed or collected at the time of increased usage of a capital improvement or
21 issuance of a development permit, building permit or connection to the capital improvement. "System
22 development charge" includes that portion of a sewer or water system connection charge that is
23 greater than the amount necessary to reimburse the local government for its average cost of in-
24 specting and installing connections with water and sewer facilities.

25 (b) "System development charge" does not include any fees assessed or collected as part of a
26 local improvement district or a charge in lieu of a local improvement district assessment, or the cost
27 of complying with requirements or conditions imposed upon a land use decision, expedited land di-
28 vision or limited land use decision.

29 **SECTION 2.** ORS 223.304 is amended to read:

30 223.304. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution

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 setting forth a methodology that is, when applicable, based on:

2 (A) Ratemaking principles employed to finance publicly owned capital improvements;

3 (B) Prior contributions by existing users;

4 (C) Gifts or grants from federal or state government or private persons;

5 (D) The value of unused capacity available to future system users or the cost of the existing
6 facilities; and

7 (E) Other relevant factors identified by the local government imposing the fee.

8 (b) The methodology for establishing or modifying a reimbursement fee must:

9 (A) Promote the objective of future system users contributing no more than an equitable share
10 to the cost of existing facilities.

11 (B) Be available for public inspection.

12 (2) Improvement fees must:

13 (a) Be established or modified by ordinance or resolution setting forth a methodology that is
14 available for public inspection and demonstrates consideration of:

15 (A) The projected cost of the capital improvements identified in the plan and list adopted pur-
16 suant to ORS 223.309 that are needed to increase the capacity of the systems to which the fee is
17 related; and

18 (B) The need for increased capacity in the system to which the fee is related that will be re-
19 quired to serve the demands placed on the system by future users.

20 (b) Be calculated to obtain the cost of capital improvements for the projected need for available
21 system capacity for future users.

22 (3) A local government may establish and impose a system development charge that is a combi-
23 nation of a reimbursement fee and an improvement fee, if the methodology demonstrates that the
24 charge is not based on providing the same system capacity.

25 (4) The ordinance or resolution that establishes or modifies an improvement fee shall also pro-
26 vide for a credit against such fee for the construction of a qualified public improvement. A “qualified
27 public improvement” means a capital improvement that is required as a condition of development
28 approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

29 (a) Not located on or contiguous to property that is the subject of development approval; or

30 (b) Located in whole or in part on or contiguous to property that is the subject of development
31 approval and required to be built larger or with greater capacity than is necessary for the particular
32 development project to which the improvement fee is related.

33 (5)(a) The credit provided for in subsection (4) of this section is only for the improvement fee
34 charged for the type of improvement being constructed, and credit for qualified public improvements
35 under subsection (4)(b) of this section may be granted only for the cost of that portion of such im-
36 provement that exceeds the local government’s minimum standard facility size or capacity needed
37 to serve the particular development project or property. The applicant shall have the burden of
38 demonstrating that a particular improvement qualifies for credit under subsection (4)(b) of this sec-
39 tion.

40 (b) A local government may deny the credit provided for in subsection (4) of this section if the
41 local government demonstrates:

42 (A) That the application does not meet the requirements of subsection (4) of this section; or

43 (B) By reference to the list adopted pursuant to ORS 223.309, that the improvement for which
44 credit is sought was not included in the plan and list adopted pursuant to ORS 223.309.

45 (c) When the construction of a qualified public improvement gives rise to a credit amount

1 greater than the improvement fee that would otherwise be levied against the project receiving de-
 2 velopment approval, the excess credit may be applied against improvement fees that accrue in sub-
 3 sequent phases of the original development project. This subsection does not prohibit a local
 4 government from providing a greater credit, or from establishing a system providing for the
 5 transferability of credits, or from providing a credit for a capital improvement not identified in the
 6 plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such im-
 7 provement by other means, if a local government so chooses.

8 (d) Credits must be used in the time specified in the ordinance but not later than 10 years from
 9 the date the credit is given.

10 **(6) If a local government establishes system development charges for capital improve-**
 11 **ments for parks and recreation and schools:**

12 **(a) A reimbursement fee may not exceed _____, but the methodology may provide for**
 13 **annual adjustments as described in subsection (9)(b) of this section; and**

14 **(b) An improvement fee may not exceed _____, but the methodology may provide for**
 15 **annual adjustments as described in subsection (9)(b) of this section.**

16 [(6)] (7) Any local government that proposes to establish or modify a system development charge
 17 shall maintain a list of persons who have made a written request for notification prior to adoption
 18 or amendment of a methodology for any system development charge.

19 [(7)(a)] (8)(a) Written notice must be mailed to persons on the list at least 90 days prior to the
 20 first hearing to establish or modify a system development charge, and the methodology supporting
 21 the system development charge must be available at least 60 days prior to the first hearing. The
 22 failure of a person on the list to receive a notice that was mailed does not invalidate the action of
 23 the local government. The local government may periodically delete names from the list, but at least
 24 30 days prior to removing a name from the list shall notify the person whose name is to be deleted
 25 that a new written request for notification is required if the person wishes to remain on the notifi-
 26 cation list.

27 (b) Legal action intended to contest the methodology used for calculating a system development
 28 charge may not be filed after 60 days following adoption or modification of the system development
 29 charge ordinance or resolution by the local government. A person shall request judicial review of
 30 the methodology used for calculating a system development charge only as provided in ORS 34.010
 31 to 34.100.

32 [(8)] (9) A change in the amount of a reimbursement fee or an improvement fee is not a modifi-
 33 cation of the system development charge methodology if the change in amount is based on:

34 (a) A change in the cost of materials, labor or real property applied to projects or project ca-
 35 pacity as set forth on the list adopted pursuant to ORS 223.309; or

36 (b) The periodic application of one or more specific cost indexes or other periodic data sources.
 37 A specific cost index or periodic data source must be:

38 (A) A relevant measurement of the average change in prices or costs over an identified time
 39 period for materials, labor, real property or a combination of the three;

40 (B) Published by a recognized organization or agency that produces the index or data source for
 41 reasons that are independent of the system development charge methodology; and

42 (C) Incorporated as part of the established methodology or identified and adopted in a separate
 43 ordinance, resolution or order.

44 **SECTION 3.** ORS 223.307 is amended to read:

45 223.307. (1) Reimbursement fees may be spent only on capital improvements associated with the

1 systems for which the fees are assessed including expenditures relating to repayment of indebt-
2 edness.

3 (2) Improvement fees may be spent only on capacity increasing capital improvements, including
4 expenditures relating to repayment of debt for such improvements. An increase in system capacity
5 may be established if a capital improvement increases the level of performance or service provided
6 by existing facilities or provides new facilities. The portion of the improvements funded by im-
7 provement fees must be related to the need for increased capacity to provide service for future us-
8 ers.

9 (3) System development charges may not be expended for costs associated with the construction
10 of administrative office facilities that are more than an incidental part of other capital improvements
11 or for the expenses of the operation or maintenance of the facilities constructed with system devel-
12 opment charge revenues.

13 (4) Any capital improvement being funded wholly or in part with system development charge
14 revenues must be included in the plan and list adopted by a local government pursuant to ORS
15 223.309.

16 **(5) When a local government establishes system development charges for parks and re-
17 creation and schools that are based on a need for school facilities and assets, the school fa-
18 cilities and assets must be:**

19 **(a) Adjacent to parks and recreation facilities or assets; and**

20 **(b) Made available for public recreation uses.**

21 [(5)] (6) Notwithstanding subsections (1) and (2) of this section, system development charge re-
22 venues may be expended on the costs of complying with the provisions of ORS 223.297 to 223.314,
23 including the costs of developing system development charge methodologies and providing an annual
24 accounting of system development charge expenditures.

25 **SECTION 4.** ORS 223.309 is amended to read:

26 223.309. (1) Prior to the establishment of a system development charge by ordinance or resol-
27 ution, a local government shall prepare a capital improvement plan, public facilities plan, master
28 plan or comparable plan that includes a list of the capital improvements that the local government
29 intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost,
30 timing and percentage of costs eligible to be funded with revenues from the improvement fee for
31 each improvement.

32 (2) A local government that has prepared a plan and the list described in subsection (1) of this
33 section may modify the plan and list at any time. If a system development charge will be increased
34 by a proposed modification of the list to include a capacity increasing capital improvement, as de-
35 scribed in ORS 223.307 (2):

36 (a) The local government shall provide, at least 30 days prior to the adoption of the modification,
37 notice of the proposed modification to the persons who have requested written notice under ORS
38 223.304 [(6)] (7).

39 (b) The local government shall hold a public hearing if the local government receives a written
40 request for a hearing on the proposed modification within seven days of the date the proposed
41 modification is scheduled for adoption.

42 (c) Notwithstanding ORS 294.160, a public hearing is not required if the local government does
43 not receive a written request for a hearing.

44 (d) The decision of a local government to increase the system development charge by modifying
45 the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.

