

Enrolled Senate Bill 722

Sponsored by Senator STARR, Representatives D EDWARDS, RILEY

CHAPTER

AN ACT

Relating to land use planning within metropolitan service district; creating new provisions; and amending ORS 197.319, 197.320 and 268.390.

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

SECTION 1. ORS 268.390 is amended to read:

268.390. (1) A district may define and apply a planning procedure *[which]* **that** identifies and designates areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, impact on:

- (a) Air quality;
- (b) Water quality; and
- (c) Transportation.

(2) A district may prepare and adopt functional plans for those areas designated under subsection (1) of this section to control metropolitan area impact on air and water quality, transportation and other aspects of metropolitan area development the district may identify.

(3) A district shall adopt an urban growth boundary for the district in compliance with applicable goals adopted under ORS chapters 195, 196 and 197.

(4) A district may review the comprehensive plans *[in effect on January 1, 1979, or subsequently]* adopted by the cities and counties within the district *[which]* **that** affect areas designated by the district under subsection (1) of this section or the urban growth boundary adopted under subsection (3) of this section and recommend or require cities and counties, as it considers necessary, to make changes in any plan to *[assure]* **ensure** that the plan and any actions taken under *[it conform to]* **the plan substantially comply with** the district's functional plans adopted under subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this section.

(5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:

(a) Require local comprehensive plans and implementing regulations to **substantially** comply with the regional framework plan within two years after compliance acknowledgment.

(b) Require adjudication and determination by the district of the consistency of local comprehensive plans with the regional framework plan.

(c) Require each city and county within the jurisdiction of the district and making land use decisions concerning lands within the land use jurisdiction of the district to make those decisions consistent with the regional framework plan. The obligation to apply the regional framework plan to land use decisions shall not begin until one year after the regional framework plan is acknowledged as complying with the statewide planning goals adopted under ORS chapters 195, 196 and 197.

(d) Require changes in local land use standards and procedures if the district determines that changes are necessary to remedy a pattern or practice of decision-making inconsistent with the regional framework plan.

(6) A process established by the district to enforce the requirements of this section must provide:

(a) Notice of noncompliance to the city or county.

(b) Opportunity for the city or county to be heard.

(c) Entry of an order by the district explaining its findings, conclusions and enforcement remedies, if any.

(7) Enforcement remedies ordered under subsection (6) of this section may include, but are not limited to:

(a) Direct application of specified requirements of functional plans to land use decisions by the city or county;

(b) Withholding by the district of discretionary funds from the city or county; and

(c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding moneys pursuant to an enforcement order resulting from the enforcement action.

(8) An order issued under subsection (6) of this section:

(a) Must provide for relief from enforcement remedies upon action by the city or county that brings the comprehensive plan and implementing regulations into substantial compliance with the requirement.

(b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.

[~~(6)~~] **(9)** The regional framework plan, ordinances that implement the regional framework plan and any determination by the district of consistency with the regional framework plan are subject to review under ORS 197.274.

SECTION 2. ORS 197.319 is amended to read:

197.319. (1) Before a person may request adoption of an enforcement order under ORS 197.320, the person shall:

(a) Present the reasons, in writing, for such an order to the affected local government; and

(b) Request:

(A) Revisions to the local comprehensive plan, land use regulations, special district cooperative or urban service agreement or decision-making process which is the basis for the order; or

(B) That an action be taken regarding the local comprehensive plan, land use regulations, special district agreement or decision-making process that is the basis for the order.

(2)(a) The local government or special district shall issue a written response to the request within 60 days of the date the request is mailed to the local government or special district.

(b) The requestor and the local government or special district may enter into mediation to resolve issues in the request. The Department of Land Conservation and Development shall provide mediation services when jointly requested by the local government or special district and the requestor.

(c) If the local government or special district does not act in a manner which the requestor believes is adequate to address the issues raised in the request within the time period provided in paragraph (a) of this subsection, a petition may be presented to the Land Conservation and Development Commission under ORS 197.324.

(3) A metropolitan service district may request an enforcement order under ORS 197.320 (12) without first complying with subsections (1) and (2) of this section.

SECTION 3. ORS 197.320 is amended to read:

197.320. The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:

(1) A comprehensive plan or land use regulation adopted by a local government not on a compliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(2) A plan, program, rule or regulation affecting land use adopted by a state agency or special district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(3) A local government is not making satisfactory progress toward performance of its compliance schedule;

(4) A state agency is not making satisfactory progress in carrying out its coordination agreement or the requirements of ORS 197.180;

(5) A local government has no comprehensive plan or land use regulation and is not on a compliance schedule directed to developing the plan or regulation;

(6) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation. In making its determination under this subsection, the commission shall determine whether there is evidence in the record to support the decisions made. The commission shall not judge the issue solely upon adequacy of the findings in support of the decisions;

(7) A local government has failed to comply with a commission order entered under ORS 197.644;

(8) A special district has engaged in a pattern or practice of decision-making that violates an acknowledged comprehensive plan or cooperative agreement adopted pursuant to ORS 197.020;

(9) A special district is not making satisfactory progress toward performance of its obligations under ORS chapters 195 and 197;

(10) A local government is applying approval standards, special conditions on approval of specific development proposals or procedures for approval that do not comply with ORS 197.307 (6); or

(11) A local government is not making satisfactory progress toward meeting its obligations under ORS 195.065.

(12) A local government within the jurisdiction of a metropolitan service district has failed to make changes to the comprehensive plan or land use regulations to comply with the regional framework plan of the district or has engaged in a pattern or practice of decision-making that violates a requirement of the regional framework plan.

SECTION 4. The amendments to ORS 197.319, 197.320 and 268.390 by sections 1 to 3 of this 2007 Act apply to a regional framework plan and functional plans of a metropolitan service district that are in effect on the effective date of this 2007 Act and to changes in the regional framework plan or functional plans that take effect on or after the effective date of this 2007 Act.

Passed by Senate April 24, 2007

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Secretary of Senate

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President of Senate

Passed by House May 14, 2007

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Speaker of House

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State