

House Bill 2865

Sponsored by Representative SCHAUFLEER (at the request of Oregon Home Builders Association)

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**.

Allows collection of system development charges by local government only at time of issuance of building permit or certificate of occupancy. Limits parks and recreation system development charge based upon increase in level of service beyond current levels. Prohibits increase in system development charges based upon presence of fire suppression sprinklers in structure. Allows resolution of disputes through binding arbitration.

A BILL FOR AN ACT

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

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 is-*
21 *suance of a development permit,*] **issuance of a building permit** or [*connection to the capital*
22 *improvement*] **certificate of occupancy**. "System development charge" includes that portion of a
23 sewer or water system connection charge that is greater than the amount necessary to reimburse
24 the local government for its average cost of inspecting and installing connections with water and
25 sewer facilities.

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

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

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.

1 223.304. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution
 2 setting forth a methodology that is, when applicable, based on:

- 3 (A) Ratemaking principles employed to finance publicly owned capital improvements;
- 4 (B) Prior contributions by existing users;
- 5 (C) Gifts or grants from federal or state government or private persons;
- 6 (D) The value of unused capacity available to future system users or the cost of the existing
 7 facilities; and
- 8 (E) Other relevant factors identified by the local government imposing the fee.

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

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

12 (B) Be available for public inspection.

13 (2) Improvement fees must:

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

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

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

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

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

26 **(4) A local government may not require payment of a system development charge earlier
 27 than the issuance of a building permit or occupancy permit, whichever occurs later.**

28 **(5) A system development charge for water supply or combined water supply and waste
 29 water collection may not be set at a higher rate than would otherwise be assessed solely
 30 because of the presence of fire suppression sprinklers in a structure.**

31 **(6) A local government may not establish a system development charge for parks and
 32 recreation based upon an increase in the level of service beyond per capita current levels
 33 within the local government's jurisdiction unless the local government also adopts a parks
 34 and recreation master plan that proposes and includes measures for funding and imple-
 35 menting a similar level of service throughout the jurisdiction without consideration of any
 36 new development.**

37 [(4)] (7) The ordinance or resolution that establishes or modifies an improvement fee shall also
 38 provide for a credit against such fee for the construction of a qualified public improvement. A
 39 "qualified public improvement" means a capital improvement that is required as a condition of de-
 40 velopment approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

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

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

45 [(5)(a)] (8)(a) The credit provided for in subsection [(4)] (7) of this section is only for the im-

1 improvement fee charged for the type of improvement being constructed, and credit for qualified public
 2 improvements under subsection [(4)(b)] (7)(b) of this section may be granted only for the cost of that
 3 portion of such improvement that exceeds the local government’s minimum standard facility size or
 4 capacity needed to serve the particular development project or property. The applicant shall have
 5 the burden of demonstrating that a particular improvement qualifies for credit under subsection
 6 [(4)(b)] (7)(b) of this section.

7 (b) A local government may deny the credit provided for in subsection [(4)] (7) of this section
 8 if the local government demonstrates:

9 (A) That the application does not meet the requirements of subsection [(4)] (7) of this section;
 10 or

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

13 (c) When the construction of a qualified public improvement gives rise to a credit amount
 14 greater than the improvement fee that would otherwise be levied against the project receiving de-
 15 velopment approval, the excess credit may be applied against improvement fees that accrue in sub-
 16 sequent phases of the original development project. This subsection does not prohibit a local
 17 government from providing a greater credit, or from establishing a system providing for the
 18 transferability of credits, or from providing a credit for a capital improvement not identified in the
 19 plan and list adopted pursuant to ORS 223.309, or from providing a share of the cost of such im-
 20 provement by other means, if a local government so chooses.

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

23 [(6)] (9) Any local government that proposes to establish or modify a system development charge
 24 shall maintain a list of persons who have made a written request for notification prior to adoption
 25 or amendment of a methodology for any system development charge.

26 [(7)(a)] (10)(a) Written notice must be mailed to persons on the list at least 90 days prior to the
 27 first hearing to establish or modify a system development charge, and the methodology supporting
 28 the system development charge must be available at least 60 days prior to the first hearing. The
 29 failure of a person on the list to receive a notice that was mailed does not invalidate the action of
 30 the local government. The local government may periodically delete names from the list, but at least
 31 30 days prior to removing a name from the list shall notify the person whose name is to be deleted
 32 that a new written request for notification is required if the person wishes to remain on the notifi-
 33 cation list.

34 (b) Legal action intended to contest the methodology used for calculating a system development
 35 charge may not be filed after 60 days following adoption or modification of the system development
 36 charge ordinance or resolution by the local government.

37 (c) A person shall request judicial review of the methodology used for calculating a system de-
 38 velopment charge only as provided in ORS 34.010 to 34.100.

39 **(d) If the local government and the person requesting judicial review agree to mediation,**
 40 **the decision of the local government is subject to binding arbitration in the manner provided**
 41 **under ORS 36.400 to 36.425.**

42 [(8)] (11) A change in the amount of a reimbursement fee or an improvement fee is not a mod-
 43 ification of the system development charge methodology if the change in amount is based on:

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

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

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

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

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

9 **SECTION 3.** ORS 223.309 is amended to read:

10 223.309. (1) Prior to the establishment of a system development charge by ordinance or resol-
11 ution, a local government shall prepare a capital improvement plan, public facilities plan, master
12 plan or comparable plan that includes a list of the capital improvements that the local government
13 intends to fund, in whole or in part, with revenues from an improvement fee and the estimated cost,
14 timing and percentage of costs eligible to be funded with revenues from the improvement fee for
15 each improvement.

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

20 (a) The local government shall provide, at least 30 days prior to the adoption of the modification,
21 notice of the proposed modification to the persons who have requested written notice under ORS
22 223.304 [(6)] (9).

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

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

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

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