

House Bill 3032

Sponsored by Representative SCHAUFLER (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**.

Subjects state agency that imposes moratorium on development to requirements imposed on local governments that impose moratorium.

A BILL FOR AN ACT

1
2 Relating to adoption of moratorium by state agency; amending ORS 197.505, 197.510, 197.520, 197.524,
3 197.530 and 197.768.

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

5 **SECTION 1.** ORS 197.505 is amended to read:

6 197.505. As used in ORS 197.505 to 197.540:

7 (1) "Public facilities" means those public facilities for which a public facilities plan is required
8 under ORS 197.712.

9 (2) "Special district" refers to only those entities as defined in ORS 197.015 (19) that provide
10 services for which public facilities plans are required.

11 **(3) "State agency" has the meaning given that term in ORS 171.133.**

12 **SECTION 2.** ORS 197.510 is amended to read:

13 197.510. The Legislative Assembly finds and declares that:

14 (1) The declaration of moratoria on construction and land development by cities, counties,
15 [and] special districts **or state agencies** may have a negative effect not only on property owners,
16 but also on the housing and economic development policies and goals of other local governments
17 within the state, and therefore, is a matter of statewide concern.

18 (2) Such moratoria, particularly when limited in duration and scope, and adopted pursuant to
19 growth management systems that further the statewide planning goals and local comprehensive
20 plans, may be both necessary and desirable.

21 (3) Clear state standards should be established to ensure that:

22 (a) The need for moratoria is considered and documented;

23 (b) The impact on property owners, housing and economic development is minimized; and

24 (c) Necessary and properly enacted moratoria are not subjected to undue litigation.

25 **SECTION 3.** ORS 197.520 is amended to read:

26 197.520. (1) [No] **A** city, county, [or] special district **or state agency** may **not** adopt a morato-
27 rium on construction or land development unless it first:

28 (a) Provides written notice to the Department of Land Conservation and Development at least
29 45 days prior to the final public hearing to be held to consider the adoption of the moratorium;

30 (b) Makes written findings justifying the need for the moratorium in the manner provided for in
31 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 (c) Holds a public hearing on the adoption of the moratorium and the findings which support the
 2 moratorium.

3 (2) For urban or urbanizable land, a moratorium may be justified by demonstration of a need to
 4 prevent a shortage of public facilities which would otherwise occur during the effective period of
 5 the moratorium. Such a demonstration shall be based upon reasonably available information, and
 6 shall include, but need not be limited to, findings:

7 (a) Showing the extent of need beyond the estimated capacity of existing public facilities ex-
 8 pected to result from new land development, including identification of any public facilities currently
 9 operating beyond capacity, and the portion of such capacity already committed to development;

10 (b) That the moratorium is reasonably limited to those areas of the city, county, [or] special
 11 district **or state** where a shortage of key public facilities would otherwise occur; and

12 (c) That the housing and economic development needs of the area affected have been accommo-
 13 dated as much as possible in any program for allocating any remaining public facility capacity.

14 (3) A moratorium not based on a shortage of public facilities under subsection (2) of this section
 15 may be justified only by a demonstration of compelling need. Such a demonstration shall be based
 16 upon reasonably available information and shall include, but need not be limited to, findings:

17 (a) For urban or urbanizable land:

18 (A) That application of existing development ordinances or regulations and other applicable law
 19 is inadequate to prevent irrevocable public harm from development in affected geographical areas;

20 (B) That the moratorium is sufficiently limited to ensure that a needed supply of affected hous-
 21 ing types and the supply of commercial and industrial facilities within or in proximity to the city,
 22 county, [or] special district **or affected portion of the state** are not unreasonably restricted by the
 23 adoption of the moratorium;

24 (C) Stating the reasons alternative methods of achieving the objectives of the moratorium are
 25 unsatisfactory;

26 (D) That the city, county, [or] special district **or state agency** has determined that the public
 27 harm which would be caused by failure to impose a moratorium outweighs the adverse effects on
 28 other affected local governments, including shifts in demand for housing or economic development,
 29 public facilities and services and buildable lands, and the overall impact of the moratorium on pop-
 30 ulation distribution; and

31 (E) That the city, county, [or] special district **or state agency** proposing the moratorium has
 32 determined that sufficient resources are available to complete the development of needed interim
 33 or permanent changes in plans, regulations or procedures within the period of effectiveness of the
 34 moratorium.

35 (b) For rural land:

36 (A) That application of existing development ordinances or regulations and other applicable law
 37 is inadequate to prevent irrevocable public harm from development in affected geographical areas;

38 (B) Stating the reasons alternative methods of achieving the objectives of the moratorium are
 39 unsatisfactory;

40 (C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected
 41 geographical areas are not unreasonably restricted by the adoption of the moratorium; and

42 (D) That the city, county, [or] special district **or state agency** proposing the moratorium has
 43 developed a work plan and time schedule for achieving the objectives of the moratorium.

44 (4) [No] A moratorium adopted under subsection (3)(a) of this section [shall] **may not** be effec-
 45 tive for a period longer than 120 days, but such a moratorium may be extended [provided] **if** the city,

1 county, [or] special district **or state agency** adopting the moratorium holds a public hearing on the
 2 proposed extension and adopts written findings that:

3 (a) Verify the problem giving rise to the need for a moratorium still exists;

4 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to
 5 the moratorium; and

6 (c) Set a specific duration for the renewal of the moratorium. [No] **An** extension may **not** be for
 7 a period longer than six months.

8 (5) [Any] **A** city, county, [or] special district **or state agency** considering an extension of a
 9 moratorium shall give the department at least 14 days' notice of the time and date of the public
 10 hearing on the extension.

11 **SECTION 4.** ORS 197.524 is amended to read:

12 197.524. (1) When a local government **or a state agency** engages in a pattern or practice of
 13 delaying or stopping the issuance of permits, authorizations or approvals necessary for the subdivi-
 14 sion or partitioning of, or construction on, any land, including delaying or stopping issuance based
 15 on a shortage of public facilities[,]:

16 (a) The local government shall:

17 [(a)] **(A)** Adopt a public facilities strategy under ORS 197.768; or

18 [(b)] **(B)** Adopt a moratorium on construction or land development under ORS 197.505 to 197.540.

19 **(b) The state agency shall:**

20 **(A) Adopt a public facilities strategy under ORS 197.768; or**

21 **(B) Subject to subsection (3) of this section, adopt a moratorium on construction or land**
 22 **development under ORS 197.505 to 197.540.**

23 (2) The provisions of subsection (1) of this section do not apply to the delay or stopping of the
 24 issuance of permits, authorizations or approvals **by a local government** because they are incon-
 25 sistent with the local government's comprehensive plan or land use regulations.

26 **(3) ORS 197.505 to 197.540 do not authorize adoption of a moratorium by a state agency**
 27 **that does not otherwise have that authority.**

28 **SECTION 5.** ORS 197.530 is amended to read:

29 197.530. (1) A city, county, [or] special district **or state agency** that adopts a moratorium on
 30 construction or land development in conformity with ORS 197.520 (1) and (2) shall within 60 days
 31 after the effective date of the moratorium adopt a program to correct the problem creating the
 32 moratorium. The program shall be presented at a public hearing. The city, county, [or] special dis-
 33 trict **or state agency** shall give at least 14 days' advance notice to the Department of Land Con-
 34 servation and Development of the time and date of the public hearing.

35 (2) [No] **A** moratorium adopted under ORS 197.520 (2) [shall] **may not** be effective for a period
 36 longer than six months from the date on which the corrective program is adopted, but such a mor-
 37 atorium may be extended provided the city, county, [or] special district **or state agency** adopting
 38 the moratorium holds a public hearing on the proposed extension and adopts written findings that:

39 (a) Verify that the problem giving rise to the moratorium still exists;

40 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to
 41 the moratorium; and

42 (c) Set a specific duration for the renewal of the moratorium.

43 (3) [No] **A** single extension under subsection (2) of this section may **not** be for a period longer
 44 than six months, and [no] a moratorium [shall] **may not** be extended more than three times.

45 (4) [Any] **A** city, county, [or] special district **or state agency** considering an extension of a

1 moratorium shall give the department at least 14 days' notice of the time and date of the public
 2 hearing on the extension.

3 **SECTION 6.** ORS 197.768 is amended to read:

4 197.768. (1) As used in this section[,]:

5 (a) "Special district" has the meaning given that term in ORS 197.505.

6 (b) **"State agency" has the meaning given that term in ORS 171.133.**

7 (2)(a) A local government or special district may adopt a public facilities strategy if the public
 8 facilities strategy:

9 (A)(i) Is acknowledged under ORS 197.251; or

10 (ii) Is approved by the Land Conservation and Development Commission under ORS 197.628 to
 11 197.650; and

12 (B) Meets the requirements of this section.

13 (b) If a special district seeks to implement a public facilities strategy, that special district is
 14 considered a local government for the purposes of ORS 197.251 and 197.628 to 197.650.

15 (3) A local government, [or] special district **or state agency** may adopt a public facilities
 16 strategy only if the local government, [or] special district **or state agency**:

17 (a) Makes written findings justifying the need for the public facilities strategy;

18 (b) Holds a public hearing on the adoption of a public facilities strategy and the findings that
 19 support the adoption of the public facilities strategy; and

20 (c) Provides written notice to the Department of Land Conservation and Development at least
 21 45 days prior to the final public hearing that is held to consider the adoption of the public facilities
 22 strategy.

23 (4) At a minimum, the findings under subsection (3) of this section must demonstrate that:

24 (a) There is a rapid increase in the rate or intensity of land development in a specific geographic
 25 area that was unanticipated at the time the original planning for that area was adopted or there
 26 has been a natural disaster or other catastrophic event in a specific geographic area;

27 (b) The total land development expected within the specific geographic area will exceed the
 28 planned or existing capacity of public facilities; and

29 (c) The public facilities strategy is structured to ensure that the necessary supply of housing
 30 and commercial and industrial facilities that will be impacted within the relevant geographic area
 31 is not unreasonably restricted by the adoption of the public facilities strategy.

32 **(5) A state agency shall:**

33 (a) **Adopt a public facilities strategy if required to do so under ORS 197.505 to 197.540.**

34 (b) **Submit the public facilities strategy to the Land Conservation and Development**
 35 **Commission, in the manner described in ORS 197.180, to ensure that the strategy complies**
 36 **with the agency's certified state agency coordination program.**

37 [(5)] (6) A public facilities strategy shall include a clear, objective and detailed description of
 38 actions and practices a local government, [or] special district **or state agency** may engage in to
 39 control the time and sequence of development approvals in response to the identified deficiencies in
 40 public facilities.

41 [(6)] (7) A public facilities strategy shall be effective for no more than 24 months after the date
 42 on which it is adopted, but may be extended, subject to subsection [(7)] (8) of this section, provided
 43 the local government, [or] special district **or state agency** adopting the public facilities strategy
 44 holds a public hearing on the proposed extension and adopts written findings that:

45 (a) Verify that the problem giving rise to the need for a public facilities strategy still exists;

1 (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to
2 the need for a public facilities strategy; and

3 (c) Set a specific duration for the extension of the public facilities strategy.

4 [(7)(a)] **(8)(a)** A local government, [or] special district **or state agency** considering an extension
5 of a public facilities strategy shall give the department notice at least 14 days prior to the date of
6 the public hearing on the extension.

7 (b) A single extension may not exceed one year, and a public facilities strategy may not be ex-
8 tended more than three times.

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