

Senate Bill 491

Sponsored by Senator PROZANSKI (at the request of John Brown)

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 local governments to grant transferable credits for development or building projects that reduce impact to public facilities.

A BILL FOR AN ACT

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

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

4 **SECTION 1.** ORS 223.304 is amended to read:

5 223.304. (1)(a) Reimbursement fees must be established or modified by ordinance or resolution
6 setting forth a methodology that is, when applicable, based on:

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

8 (B) Prior contributions by existing users;

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

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

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

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

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

16 (B) Be available for public inspection.

17 (2) Improvement fees must:

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

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

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

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

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

30 (4) The ordinance or resolution that establishes or modifies an improvement fee shall also pro-
31 vide for a credit against such fee for the construction of a qualified public improvement. A "qualified

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 public improvement” means a capital improvement that is required as a condition of development
2 approval, identified in the plan and list adopted pursuant to ORS 223.309 and either:

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

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

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

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

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

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

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

27 **(d) If a development permit or building permit will result in a usage reduction of a capital**
28 **improvement when compared to the previous use or building on the same site, a local gov-**
29 **ernment may grant transferable credits to the developer or builder. The exercise of this**
30 **power is within the discretion of the local government.**

31 [(d)] (e) Credits must be used in the time specified in the ordinance but not later than 10 years
32 from the date the credit is given.

33 (6) Any local government that proposes to establish or modify a system development charge
34 shall maintain a list of persons who have made a written request for notification prior to adoption
35 or amendment of a methodology for any system development charge.

36 (7)(a) Written notice must be mailed to persons on the list at least 90 days prior to the first
37 hearing to establish or modify a system development charge, and the methodology supporting the
38 system development charge must be available at least 60 days prior to the first hearing. The failure
39 of a person on the list to receive a notice that was mailed does not invalidate the action of the local
40 government. The local government may periodically delete names from the list, but at least 30 days
41 prior to removing a name from the list shall notify the person whose name is to be deleted that a
42 new written request for notification is required if the person wishes to remain on the notification
43 list.

44 (b) Legal action intended to contest the methodology used for calculating a system development
45 charge may not be filed after 60 days following adoption or modification of the system development

1 charge ordinance or resolution by the local government. A person shall request judicial review of
2 the methodology used for calculating a system development charge only as provided in ORS 34.010
3 to 34.100.

4 (8) A change in the amount of a reimbursement fee or an improvement fee is not a modification
5 of the system development charge methodology if the change in amount is based on:

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

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

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

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

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

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