

Senate Bill 773

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND ECONOMIC DEVELOPMENT

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**.

Limits scope of periodic review of local land use plans to specific deficiencies in plan due to changes in state land use laws and statewide land use planning goals and to quantitative analysis and review of issues related to land supply.

A BILL FOR AN ACT

1
2 Relating to periodic review of land use plans; creating new provisions; and amending ORS 195.141,
3 195.145, 197.628, 197.629, 197.631 and 197.633.

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

5 **SECTION 1.** ORS 197.628 is amended to read:

6 197.628. (1) It is the policy of the State of Oregon to require the periodic review of comprehen-
7 sive plans and land use regulations in order to respond to changes in local, regional and state con-
8 ditions to ensure that the plans and regulations remain in compliance with the statewide planning
9 goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate
10 provision for economic development, needed housing, transportation, public facilities and services
11 and urbanization.

12 **(2) The Land Conservation and Development Commission shall:**

13 **(a) Limit the scope of periodic review to:**

14 **(A) Specific deficiencies in acknowledged comprehensive plans or land use regulations due**
15 **to changes in state land use laws and statewide land use planning goals for which post-**
16 **acknowledgement changes have not been acknowledged under ORS 197.610 to 197.625; and**

17 **(B) Quantitative analysis and review of issues related to land supplies, including**
18 **projections and assumptions underlying plan provisions related to population growth, house-**
19 **hold size, density and land use patterns.**

20 **(b) Give deference to plan interpretations and assumptions made by local governments,**
21 **respecting the right of local governments to control local decision-making based on a com-**
22 **prehensive plan acknowledged to be consistent with the statewide land use planning goals.**

23 [(2)] **(3)** The [*Land Conservation and Development*] commission shall concentrate periodic review
24 assistance to local governments on achieving compliance with those statewide land use planning
25 laws and goals that address economic development, needed housing, transportation, public facilities
26 and services and urbanization.

27 [(3)] **(4)** The following conditions indicate the need for periodic review of comprehensive plans
28 and land use regulations:

29 (a) There has been a substantial change in circumstances including but not limited to the con-
30 ditions, findings or assumptions upon which the comprehensive plan or land use regulations were
31 based, so that the comprehensive plan or land use regulations do not comply with the statewide

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 planning goals relating to economic development, needed housing, transportation, public facilities
2 and services and urbanization;

3 (b) Decisions implementing acknowledged comprehensive plan and land use regulations are in-
4 consistent with the goals relating to economic development, needed housing, transportation, public
5 facilities and services and urbanization;

6 (c) There are issues of regional or statewide significance, intergovernmental coordination or
7 state agency plans or programs affecting land use which must be addressed in order to bring com-
8 prehensive plans and land use regulations into compliance with the goals relating to economic de-
9 velopment, needed housing, transportation, public facilities and services and urbanization; or

10 (d) The local government, commission or Department of Land Conservation and Development
11 determines that the existing comprehensive plan and land use regulations are not achieving the
12 statewide planning goals relating to economic development, needed housing, transportation, public
13 facilities and services and urbanization.

14 **SECTION 2.** ORS 197.629 is amended to read:

15 197.629. (1) The Land Conservation and Development Commission shall establish and maintain
16 a schedule for periodic review of comprehensive plans and land use regulations. Except as necessary
17 to coordinate approved periodic review work programs and to account for special circumstances
18 that from time to time arise, the schedule shall reflect the following timelines:

19 (a) A city with a population of more than 2,500 within a metropolitan planning organization or
20 a metropolitan service district shall conduct periodic review every seven years after completion of
21 the previous periodic review; and

22 (b) A city with a population of 10,000 or more inside its urban growth boundary that is not
23 within a metropolitan planning organization shall conduct periodic review every 10 years after
24 completion of the previous periodic review.

25 (2) A county with a portion of its population within the urban growth boundary of a city subject
26 to periodic review under this section shall conduct periodic review for that portion of the county
27 according to the schedule and work program set for the city.

28 (3) Notwithstanding subsection (2) of this section, if the schedule set for the county is specific
29 as to that portion of the county within the urban growth boundary of a city subject to periodic re-
30 view under this section, the county shall conduct periodic review for that portion of the county
31 according to the schedule and work program set for the county.

32 *[(4) If the Land Conservation and Development Commission pays the costs of a local government
33 that is not subject to subsection (1) of this section to perform new work programs and work tasks, the
34 commission may require the local government to complete periodic review when the local government
35 has not completed periodic review within the previous five years if:]*

36 **(4) When a local government that is not subject to subsection (1) of this section has not
37 completed periodic review within the previous five years, the commission may require the
38 local government to complete periodic review if the commission pays the costs of the local
39 government to perform new work programs and work tasks and if:**

40 (a) A city has been growing faster than the annual population growth rate of the state for five
41 consecutive years;

42 (b) A major transportation project on the Statewide Transportation Improvement Program that
43 is approved for funding by the Oregon Transportation Commission is likely to:

44 (A) Have a significant impact on a city or an urban unincorporated community; or

45 (B) Be significantly affected by growth and development in a city or an urban unincorporated

1 community;

2 (c) A major facility, including a prison, is sited or funded by a state agency; or

3 (d) Approval by the city or county of a facility for a major employer will increase employment
4 opportunities and significantly affect the capacity of housing and public facilities in the city or ur-
5 ban unincorporated community.

6 (5) The [*Land Conservation and Development*] commission may schedule periodic review for a
7 local government earlier than provided in subsection (1) of this section if necessary to ensure that
8 all local governments in a region whose land use decisions would significantly affect other local
9 governments in the region are conducting periodic review concurrently, but not sooner than five
10 years after completion of the previous periodic review.

11 (6) A city or county that is not required to complete periodic review under subsection (1) of this
12 section may request periodic review by the commission.

13 (7) As used in this section, “metropolitan planning organization” means an organization located
14 wholly within the State of Oregon and designated by the Governor to coordinate transportation
15 planning in an urbanized area of the state pursuant to 49 U.S.C. 5303(c).

16 **SECTION 3.** ORS 197.631 is amended to read:

17 197.631. In order to use state and local periodic review resources most efficiently and effectively
18 and to concentrate periodic review on adequate provision of economic development, needed housing,
19 transportation, public facilities and services and urbanization, the Land Conservation and Develop-
20 ment Commission shall adopt, amend or repeal the statewide land use planning goals, guidelines and
21 corresponding rules as necessary to facilitate periodic review and to provide for compliance by local
22 governments with those goals not described in ORS 197.628 [(2)] **(3)** through the post-
23 acknowledgment procedures of ORS 197.610 to 197.625.

24 **SECTION 4.** ORS 197.633 is amended to read:

25 197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation
26 of the existing comprehensive plan[,] **and** land use regulations [*and citizen involvement program and,*
27 *if necessary, the development of*] **to identify specific deficiencies and issues related to land supply**
28 **that require quantitative analysis and review for inclusion in** a work program to make needed
29 changes to the comprehensive plan or land use regulations. Phase two is the completion of work
30 tasks outlined in the work program.

31 (2) The Land Conservation and Development Commission shall adopt rules for conducting peri-
32 odic review. The rules shall provide a process for:

33 (a) Initiating periodic review;

34 (b) Citizen participation;

35 (c) The participation of state agencies;

36 (d) The preparation, review and approval of an evaluation of **the specific deficiencies of a**
37 **comprehensive plan and land use regulations and the necessary quantitative analysis and review**
38 **of issues related to land supply;**

39 (e) Review of a work program; and

40 (f) Review of completed work tasks.

41 (3) A decision by the Director of the Department of Land Conservation and Development to
42 approve a work program, that no work program is necessary or that no further work is necessary
43 is final and not subject to appeal.

44 (4) The director:

45 (a) Shall take action on a work task not later than 120 days after the local government submits

1 the work task for review unless the local government waives the 120-day deadline or the commission
 2 grants the director an extension. If the director does not take action within the time period required
 3 by this subsection, the work task is deemed approved. The department shall provide a letter to the
 4 local government certifying that the work task is approved unless an interested party has filed a
 5 timely objection to the work task consistent with administrative rules for conducting periodic re-
 6 view. If a timely objection is filed, the director shall refer the work task to the commission.

7 (b) May approve or remand a work task or refer the work task to the commission for a decision.
 8 A decision by the director to approve or remand a work task may be appealed to the commission.

9 (5) Except as provided in this subsection, the commission shall take action on the appeal or re-
 10 ferral within 90 days of the appeal or referral. Action by the commission in response to an appeal
 11 from a decision of the director is a final order subject to judicial review in the manner provided in
 12 ORS 197.650. The commission may extend the time for taking action on the appeal or referral if the
 13 commission finds that:

14 (a) The appeal or referral is appropriate for mediation;

15 (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable
 16 for the commission to give adequate consideration to the issues within the 90-day limit; or

17 (c) The parties to the appeal and the commission agree to an extension, not to exceed an addi-
 18 tional 90 days.

19 (6) The commission and a local government shall attempt to complete periodic review within
 20 three years after approval of a work program. In order to promote the timely completion of periodic
 21 review, the commission shall establish a system of incentives to encourage local government com-
 22 pliance with timelines in periodic review work programs.

23 **SECTION 5.** ORS 195.145 is amended to read:

24 195.145. (1) To ensure that the supply of land available for urbanization is maintained:

25 (a) Local governments may cooperatively designate lands outside urban growth boundaries as
 26 urban reserves subject to ORS 197.610 to 197.625.

27 (b) Alternatively, a metropolitan service district established under ORS chapter 268 and a
 28 county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652
 29 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph
 30 are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

31 [(2)(a) *The Land Conservation and Development Commission may require a local government to*
 32 *designate an urban reserve pursuant to subsection (1)(a) of this section during its periodic review in*
 33 *accordance with the conditions for periodic review under ORS 197.628.]*

34 [(b) *Notwithstanding paragraph (a) of this subsection, the commission may require a local govern-*
 35 *ment to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic*
 36 *review if:]*

37 [(A) *The local government is located inside a Primary Metropolitan Statistical Area or a Metro-*
 38 *politan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and]*

39 [(B) *The local government has been required to designate an urban reserve by rule prior to No-*
 40 *vember 4, 1993.]*

41 [(3)] (2) In carrying out [subsections (1) and (2)] **subsection (1)** of this section:

42 (a) Within an urban reserve, neither the **Land Conservation and Development** Commission nor
 43 any local government shall prohibit the siting on a legal parcel of a single family dwelling that
 44 would otherwise have been allowed under law existing prior to designation as an urban reserve.

45 (b) The commission shall provide to local governments a list of options, rather than prescribing

1 a single planning technique, to ensure the efficient transition from rural to urban use in urban re-
 2 serves.

3 [(4)] (3) Urban reserves designated by a metropolitan service district and a county pursuant to
 4 subsection (1)(b) of this section must be planned to accommodate population and employment growth
 5 for at least 20 years, and not more than 30 years, after the 20-year period for which the district has
 6 demonstrated a buildable land supply in the most recent inventory, determination and analysis per-
 7 formed under ORS 197.296.

8 [(5)] (4) A district and a county shall base the designation of urban reserves under subsection
 9 (1)(b) of this section upon consideration of factors including, but not limited to, whether land pro-
 10 posed for designation as urban reserves, alone or in conjunction with land inside the urban growth
 11 boundary:

12 (a) Can be developed at urban densities in a way that makes efficient use of existing and future
 13 public infrastructure investments;

14 (b) Includes sufficient development capacity to support a healthy urban economy;

15 (c) Can be served by public schools and other urban-level public facilities and services efficiently
 16 and cost-effectively by appropriate and financially capable service providers;

17 (d) Can be designed to be walkable and served by a well-connected system of streets by appro-
 18 priate service providers;

19 (e) Can be designed to preserve and enhance natural ecological systems; and

20 (f) Includes sufficient land suitable for a range of housing types.

21 [(6)] (5) The commission shall adopt by goal or by rule a process and criteria for designating
 22 urban reserves pursuant to subsection (1)(b) of this section.

23 **SECTION 6.** ORS 195.141 is amended to read:

24 195.141. (1) A county and a metropolitan service district established under ORS chapter 268 may
 25 enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652
 26 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS
 27 195.145 (1)(b).

28 (2) Land designated as a rural reserve:

29 (a) Must be outside an urban growth boundary.

30 (b) May not be designated as an urban reserve during the urban reserve planning period de-
 31 scribed in ORS 195.145 [(4)] (3).

32 (c) May not be included within an urban growth boundary during the period of time described
 33 in paragraph (b) of this subsection.

34 (3) When designating a rural reserve under this section to provide long-term protection to the
 35 agricultural industry, a county and a metropolitan service district shall base the designation on
 36 consideration of factors including, but not limited to, whether land proposed for designation as a
 37 rural reserve:

38 (a) Is situated in an area that is otherwise potentially subject to urbanization during the period
 39 described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary
 40 and to properties with fair market values that significantly exceed agricultural values;

41 (b) Is capable of sustaining long-term agricultural operations;

42 (c) Has suitable soils and available water where needed to sustain long-term agricultural oper-
 43 ations; and

44 (d) Is suitable to sustain long-term agricultural operations, taking into account:

45 (A) The existence of a large block of agricultural or other resource land with a concentration

1 or cluster of farms;

2 (B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses
3 and the existence of buffers between agricultural operations and nonfarm uses;

4 (C) The agricultural land use pattern, including parcelization, tenure and ownership patterns;
5 and

6 (D) The sufficiency of agricultural infrastructure in the area.

7 (4) The Land Conservation and Development Commission shall, after consultation with the State
8 Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural
9 reserves pursuant to this section.

10 **SECTION 7. The amendments to ORS 195.141, 195.145, 197.628, 197.629, 197.631 and 197.633**
11 **by sections 1 to 6 of this 2011 Act apply to a periodic review initiated on or after January 2,**
12 **2010.**

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