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SUBMITTED BY: Hasina Squires

SDAO Special Districts Association of Oregon

TO: Members of the House Agriculture and Natural Resources Committee

FROM: Hasina E. Squires, Legislative Director SDAO

DATE: February 9, 2012

RE: HB 4040

Members of the House Agriculture and Natural Resources Committee thank you for the opportunity to testify before you today. For the record my name is Hasina Squires and I appear before you today on behalf of the Special Districts Association of Oregon (SDAO) to provide testimony regarding HB 4090.

The Special Districts Association's membership consists of approximately 950 special service districts that provide a range of services to citizens who reside within city boundaries and residents of unincorporated communities.

SDAO would like to clarify some issues and statements affecting special districts.

Special districts provide services both within and outside of cities throughout Oregon. We follow locally adopted comprehensive plans where they apply to us and state land use laws.

Many of the areas where they are conflicts between property owners inside urban growth boundaries and cities are in areas where there are no urban service agreements between cities and districts. The agreements when adopted often resolve property owner service issues.

The legislature can and should help force the adoption of these agreements by asking the Department of Land Conservation and Development why these statutorily required agreements have not been completed in most areas of the state (the requirement was adopted in 1993). I have attached a detailed memorandum regarding Senate Bill 122 (1993) urban service agreements for your review.

With respect to the bill SDAO believes it clearly addresses the frustration of property owners who are inside urban growth boundaries but cannot get services in a timely manner.

Members of this committee may have heard that this bill will result in the creation of more special districts. Statutorily, in order to create a new special district there must be a financial plan, findings showing consistency with planning laws, approval and hearings by county commissioners, and a vote if property taxes are involved. It is extremely unlikely that a single property owner, as contemplated by this bill, could meet the statutory standards.

HB 4090 would allow an existing special district to serve someone who has been stranded by a city that refuses to annex a property within that city's urban growth boundary. The city would still be able to annex and withdraw the service from the district when they did annex—the bill does not prohibit future expansion of a city. The district, under the provisions of the bill, would be able to recoup its entire cost of providing the service, as would a city.

In conclusion the issue raised by the bill (stranded properties within a UGB) is important. This is particularly an issue where cities have voter approved annexations. We don't disagree with the right of voters to approve annexations but somehow properties that are planned for development within UGBs approved by local governments and the state must be able to get services. This is particularly troublesome where there is a regional UGB in the Metro area. A question this bill helps address is whether a local government should be able to prevent the utilization of a property within a regional UGB even though the services are available from another provider? SDAO believes that if economic development is an important priority in these economic times this bill takes a step to address the problem.

Thank you for the opportunity to testify before you today I would be pleased to answer any questions you have.

Memorandum

To: Members of the Legislative Assembly

From: Hasina E. Squires, SDAO Legislative Director

Date February 9, 2012

RE: **What ORS 195 Requires and Why it is Critical that it is Enforced**

As you are well aware, there are several bills before the Legislature dealing with service provision and annexation by cities and special districts. In addition, there are several disputes ongoing in Oregon between service providers over annexation. Left out of most discussions are impacts on property taxpayers and businesses that rely on these services.

All of this is essentially unnecessary. The Oregon Legislature passed, in 1993, a measure that addresses these issues. The bill, Senate Bill 122, was introduced by Governor Roberts and passed with the support of the League of Oregon Cities, Association of Oregon Counties and Special Districts Association of Oregon.

The purpose of this memo is to outline what SB 122, found in ORS 195 does, and to discuss what went "wrong" with its implementation, and some suggestions on how to finally implement the existing statute.

How was the statute developed?

After a study conducted by the Land Conservation and Development Commission (LCDC) in the 1991, there were several problems with the land use program identified. One of those problems was annexation disputes and implementing state land use goals with a large number of different government agencies providing necessary services for development. Governor Roberts, in response to the study, requested LCDC to appoint several committees, composed of local governments and citizens, to review the problems identified and make recommendations. The draft of what was to become SB 122 was based on the recommendations of the committee on infrastructure, which was chaired by the then Mayor of Beaverton.

What does ORS 195 require?

ORS 195 is very straightforward. As stated in ORS 195.060 "...units of local government and special districts that provide an urban service to an area within an urban growth boundary that has a population greater than 2,500 persons...shall enter into urban service agreements."

These agreements are to include who will provide the serve in the future, set forth the functional role of each service provider in the future, determine future service areas and assign planning and other responsibilities. In addition, the urban service agreements are to set the terms of transition between service providers, such as annexation. The services that are to be covered by the service agreements are:

a. Sanitary sewers
b. Water
c. Fire protection
d. Parks
e. Open space
f. Recreation
g. Streets roads and mass transit

How these services are provided, whether by single governments or multiple governments under the services agreement is up to the local governments.

Who convenes the meetings to develop the agreements?

Since the adoption of SB 100 in 1973, counties have had the responsibility to convene meetings of local governments within the county to complete land use agreements and to coordinate the adoption of comprehensive plans.

What must be in the agreements?

That statute sets forth very specific agreement factors that must be considered in the adopted urban service agreement. Those factors include:

a. Financial, managerial and operational capability
b. The effect of cost on the users of the service
c. The feasibility of creating a new entity to provide the service
d. The elimination of duplication of services
e. The allocation of costs between governments, users and new and existing development
f. Economies of scale

In other words, the agreement is to be based on the facts on the ground, and the needs of the users of the service. Very specifically, ORS 195 does not specify one type of local government over the other. The decision is to be based on the factors in the statute, not local turf wars or other considerations.

Does the statute address annexations?

ORS 195.075 addresses what happens when the urban service agreements result in withdrawals of territory from a special district. The statute requires that if an agreement calls for significant reductions in the territory of a special district, the agreement "...shall specify how the remaining portion of the district is to receive services in an affordable manner." The section also states that the agreement has to consider the financial integrity and operational ability of each service provider, city, county or district, when the agreement provides for the elimination, reduction or consolidation of a service provider.

The statute also allows a new type of annexation, the "Urban Service Provider Annexation." Under this provision, a city may submit to the vote of the entire affected area, an annexation plan that describes future annexations and withdrawals by the parties subject to the annexation agreement, adopted as part of a urban service agreement. Upon passage, a city may then annex according to the approved plan, without using individual property approvals. This

was added to give an incentive to cities to adopt urban service agreements with the county and districts affected.

What were the compliance deadlines?

The statute required that cities, counties and districts that provided the key services listed in the law shall comply "No later than the first periodic review that begins after November 4, 1993..." LCDC was thus directed to include urban service agreements as part of the approved work program for each city and county going through periodic review after 1993. This was done to reduce the financial burden on local governments. Cities and counties can do the agreements as part of periodic review and be eligible for grants and financial assistance from the agency.

Who enforces the agreements?

Under the statute, it is the responsibility of LCDC to require the agreements. The statute also provides that if jurisdiction fail to develop the agreements, LCDC can impose sanctions ranging from a moratorium on building permits to withholding state shared revenues such as liquor and cigarette taxes.

What went right?

Where the agreements were developed, such as in Washington County, there has been little conflict between jurisdictions over annexation and service provision. Where ORS 195 has been implemented, taxpayers have been well served, and employment and growth of business has been encouraged. More importantly, the specter of warring local governments has been avoided. This builds taxpayer and business confidence.

What went wrong?

Examples are numerous. Counties that did not adopt urban service agreements include Clackamas, Marion and Lane. We believe the majority of the bills dealing with annexation or service provision that have come before the legislature in the last decade have come from these counties.

What needs to be done?

First, LCDC needs to prioritize urban service agreements, and stop approving periodic review requests from cities and counties that do not include complete urban service agreements from all the parties listed in the statute. This can be done by budget note, or even legislation that requires the agreements by a date certain. It should be pointed out that cities, counties and districts have had almost 20 years to complete the agreements.

Second, the Legislature could require that cities must have adopted urban service agreements with districts before services can be withdrawn upon annexation. This would inspire action.

Third, LCDC should be given clear authority (some would argue they have it now) to make the decision on service territory if local governments cannot come to agreement. This "atom bomb" authority would also inspire cities, counties and districts to come to agreement.

What is at stake?

Oregon needs jobs, both from existing employers and new companies. To do this, the primary need is for adequate services that can be accessed by companies without delay. All the comprehensive plans in the world will not result in economic development or good land use planning without available services and clarity on who provides them. This was a priority in 1993 for the Oregon Legislature, and becomes an even greater priority during the current recession.

Also, our ability to finance infrastructure is limited. We only make things worse when a fire department cannot plan and save ahead for a future fire station or needed equipment because they have no idea of their future service area. Water and sewer systems are planned 50 years out according to national industry standards. How can this be accomplished when you cannot predict service population? Bonds are issued based on revenue. Again, without service agreements bond ratings and costs are at risk.

Finally, there is citizen anger when they cannot get services due to disputes, or get a straight answer on when services will reach their property.