



MEASURE: HB 4090
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SUBMITTED BY: Robert Blackmore

February 8, 2012

Representative Sal Esquivel
Co-Chair, House Committee on
Agriculture and Natural Resources
900 Court St NE, H-483
Salem OR 97301

Representative Brian Clem
Co-Chair, House Committee on
Agriculture and Natural Resources
900 Court St NE, H-284
Salem OR 97301

Re: **HB 4090-3**
Our Clients: City of Keizer
Keizer Rural Fire Protection District
Our File No. 51082-39221

Dear Representative Esquivel and Representative Clem:

ROBERT F. BLACKMORE

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We represent the city of Keizer ("City") and the Keizer Rural Fire Protection District ("Keizer Fire"). We are writing to inform you that the City and Keizer Fire oppose proposed amendments to HB 4090-3 that would restrict the statutory and home rule authority of a city to determine the provider of services to its citizens, and to make decisions in the best interests of the city. The proposed amendments are scheduled for hearing and work session on February 9th, and the City and Keizer Fire will offer testimony in opposition to the amendments at that time. We detail those concerns for your information, below. A copy of the amendment is attached.

For context, please keep in mind these amendments relate to service choices, and while framed as annexations, they are not the annexations of territory outside a city into a city. These questions address services once property is within a city. It is also noted that the litigation discussed below is not a district to district dispute, but a decision by a city on how best to serve its citizens.

Currently, under ORS 222.520, a city may determine how services are provided to its citizens by the city withdrawing the territory and providing the service itself; by not withdrawing the territory upon incorporation or annexation; by withdrawal and through intergovernmental agreements; by withdrawal and joint operation agreements under ORS 222.575; or by withdrawal and requesting that a service provider annex city territory. The proposed amendment seems to limit a city's options by eliminating all but the first two options of a city directly providing the service or choosing not to withdraw the territory. The provision for joint operation is within the statutory section on withdrawal and annexation of public service districts, but is not addressed in this legislation, and the legislation is silent on

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intergovernmental agreements under ORS Chapter 190, coordination agreements under ORS Chapter 195, and service requests under ORS 198.866, which affects all special districts. The proposed amendment is problematic for cities and special districts in other ways, which will be discussed further below.

However, before discussing some of the unintended ramifications of the amendment, it is noted that the timing of the legislation is directed solely to prevent elections within the City and Keizer Fire, which are scheduled for March 13. Both the City and Keizer Fire have placed measures on the ballot for their respective voters, which is to effect the transfer of services in a neighborhood known as Clear Lake from Marion Fire to Keizer Fire. Clear Lake has been served by Keizer Fire since it was built without any tax revenue, as the tax revenue was exported to Marion Fire for use elsewhere in that district.

It appears that the intended effect of the legislation is to prevent the votes from having effect; to provide additional defenses to current law suits filed by Marion Fire; to prevent the City from exercising its authority to determine what is in its citizens' best interests; and from allowing the citizens of the City and Keizer Fire a vote. A material flaw in the proposed amendment is that it does not consider the impacts on special districts and cities beyond the current election and pending lawsuits.

The above should be reasons enough to approach the issue carefully, but the proposed amendment has other material flaws that should result in rejection. For example, the proposed amendment is not clear about how a "city will provide" the service following an annexation of territory. If the intent is to leave a city with all of the options noted above, then the language adds nothing to the current law. If the intent is to prevent one or more of the above options, which options are eliminated and which remain? Can a city enter into IGAs or joint operating agreements for provision of services, and then request withdrawal and services from other governments or private providers for other portions of the city? How are new areas being added to the city to be considered? The amendment does not define the scope of its application, and limits a city's ability to withdraw territory and provide services to its citizens, perhaps beyond the scope intended by the proposed amendment.

While the current litigation involves the City, Keizer Fire, and Marion County Rural Fire Protection District, the proposed amendment would affect

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many special districts, such as park and recreation districts, water districts, road districts, sewer districts, sewage disposal districts, highway lighting districts, special road districts, road assessment districts, county service districts, and any other special district within the state under the provisions of ORS 198.866. It may also affect a city's authority to request private sector providers.

The proposed amendment also has the effect of superseding a city's judgment as to what is in the best interest of the city for local issues, without any flexibility or creativity between the parties, and prevents the public from voting on such issues.

While probably unintended, the proposed amendment would also be a significant obstacle for cities to work with special districts to provide services cooperatively. For example, Tualatin Valley Fire & Rescue provides services within a number of cities, and a process in that evolution has been the functional consolidation of fire services. Under functional consolidations, cities do not retain an active fire department prior to the request for annexation under ORS 198.866, but operate under intergovernmental agreements. If a city annexes property during the time of a functional consolidation, it would not be able to include the new territory in its service arrangement. This is not good public policy, as it would result in fragmented services for a city, and effectively block further cooperative agreements with special districts. The amendment would also force cities to maintain their own departments, when cities might be better served through special districts and cooperative agreements. This limitation would prohibit cities from lowering taxes for its citizens through cooperative service agreements and annexations into other service districts that might better serve its citizens at a lower cost.

The proposed amendment would also be subject to the emergency clause, for the sole purpose of the pending litigation, and would go forward without careful consideration of the numerous special districts within the state. In a short session, and without the opportunity for thoughtful consideration by all parties, the likelihood of significant unintended consequences is high.

The issues raised with the proposed amendment are complex, involve many parties, affect many people, and should be approached carefully, with a full vetting of issues and opportunity for a full consideration of the issues. Providing clarity on intent and scope would be helpful, but would not solve the much more basic problems with intervening in and preventing good

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public policy considerations. This is a short session, and such a controversial proposal, designed for a limited purpose but with significant public policy consequences, deserves a thorough consideration of the issues and consequences.

HB 4090-3 also proposes amendments to ORS 198.866 (7) to allow neighborhoods within a city to veto decisions that are made on a city-wide basis in the best interests of a city. This is disingenuously presented as a double majority provision. It is not. Once property is within a city, a city has the responsibility to determine how services are delivered, and to do so on a city-wide basis. This provision gives neighborhoods the ability to veto a city decision. The proposed amendment to ORS 198.866 (1) is clarifying existing law.

HB 4090-3 also proposes amendments to ORS 264.540 (1) to limit a city's authority to work with domestic water supply districts to designate the location of fire hydrants unless the entire district is included within the city. The amendment requires that all of the city has to be annexed into a water supply district before a city has any rights on the location of fire hydrants. This is true whether the district provides fire protection itself, or through agreement. In effect, the city loses control of the location of fire hydrants unless it allows the entire city to be controlled by a water supply district. Coupled with the new neighborhood election requirements proposed for ORS 198.866, a single neighborhood can veto a city's actions.

Surprisingly, HB 4090-3 also proposes amendments to ORS 523.670 to limit a city's authority with regard to Geothermal Heating Districts. In addition to the other concerns noted above, this limitation highlights the expansive issues and complexity addressed by modification to ORS 198.866, and how it effects every special district in the state. The changes would allow a single neighborhood to opt-out of these provisions as well and control the provision of services throughout the city.

For the above reasons, the City of Keizer and Keizer Rural Fire Protection District oppose the proposed amendments to HB 4090.

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We thank you and the Committee for your attention to this matter and consideration of the comments and concerns. If you have any questions, please do not hesitate to call.

Sincerely,

JORDAN RAMIS PC



Robert F. Blackmore

Enclosure

cc: Co-vice Chair Representative Jean Cowan
Co-vice Chair Representative Mark Johnson
Representative Deborah Boone
Representative Bob Jenson
Representative Mike Schaufler
Representative Sherrie Sprenger
Keizer Rural Fire Protection District
City of Keizer