

A-Engrossed
House Bill 4090

Ordered by the House February 15
Including House Amendments dated February 15

Sponsored by Representatives SHEEHAN, WAND (Pre-session filed.)

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.

Authorizes owner of real property that is located within urban growth boundary of **metropolitan service district** and, due to certain impediments, not provided with sanitary sewer or water services to cause public or private provider of sanitary sewer and water services to connect service facilities and serve property if owner pays all costs to connect and deliver service. **Authorizes city or district that provides such services to annex, without petition, such property.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to urban services; creating new provisions; amending ORS 195.060, 195.065, 195.205, 195.225,
3 198.866, 221.034, 222.520, 264.540, 264.550 and 523.670; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2012 Act and ORS 195.060 are added to and made a part of**
6 **ORS 195.065 to 195.085.**

7 **SECTION 2. (1) For a lawfully established unit of land located entirely within the urban**
8 **growth boundary of a metropolitan service district, if the service provider cannot provide**
9 **sanitary sewer or water services to the established unit of land, though the established unit**
10 **of land is located in the service area of the provider as identified in the applicable urban**
11 **services agreement, the owner may cause another service provider to connect the estab-**
12 **lished unit of land to the facilities of the other provider. For purposes of this section, a**
13 **service provider cannot provide service to the lawfully established unit of land if the service**
14 **provider:**

15 (a) **Is unwilling to provide sanitary sewer or water services to the lawfully established**
16 **unit of land; or**

17 (b) **Is willing to provide the services but cannot provide the services due to a legal or**
18 **topographic impediment or due to a lack of planned capacity or infrastructure.**

19 (2) **If the lawfully established unit of land located entirely within the urban growth**
20 **boundary of a metropolitan service district is not within a service area identified in the ap-**
21 **licable urban services agreement, the owner may select and cause a service provider to**
22 **provide the services if the provider has adequate capacity to provide the services and main-**
23 **tain adequate service levels in the provider's service area.**

24 (3) **A service provider may charge to the owner all costs incurred to connect the lawfully**
25 **established unit of land to the service facilities and to deliver the sanitary sewer or water**
26 **services pursuant to this section.**

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 (4) If the owner is unable to make arrangements with a service provider through direct
2 negotiations, the owner may petition the county and the county shall initiate:

3 (a) The process described in ORS 195.065 for review and modification of the urban ser-
4 vices agreement solely for the purpose of addressing the service needs of the owner's law-
5 fully established unit of land; or

6 (b) A substantially similar, but abbreviated, process established by ordinance of the
7 county for that purpose.

8 (5) When an urban service is provided pursuant to this section:

9 (a) Notwithstanding contrary provisions of an annexation plan described in ORS 195.205,
10 a city or district that provides services pursuant to this section may require the owner to
11 waive remonstrance, agree to annexation or petition for annexation.

12 (b) The urban services agreement must be modified to reflect the adjusted service areas
13 under the agreement.

14 (c) Contrary provisions of an annexation plan prepared under ORS 195.205 must be mod-
15 ified to conform to the modified urban services agreement.

16 (6)(a) If a city provides sanitary sewer or water services pursuant to this section, the city
17 may exercise land use planning and zoning authority for the lawfully established unit of land
18 under ORS chapters 195, 196 and 197.

19 (b) A city that exercises land use planning and zoning authority pursuant to this sub-
20 section may impose and collect system development charges from the owner of the lawfully
21 established unit of land pursuant to ORS 223.297 to 223.314.

22 **SECTION 3.** ORS 195.060 is amended to read:

23 195.060. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires
24 otherwise:

25 (1) "District" has the meaning given that term in ORS 198.010. In addition, the term includes a
26 county service district organized under ORS chapter 451.

27 (2) "Lawfully established unit of land" has the meaning given that term in ORS 92.010.

28 (3) "Provider" or "service provider" means units of local government, as defined in ORS
29 190.003, and districts that provide an urban service to an area within an urban growth
30 boundary that has a population greater than 2,500 persons.

31 [(2)] (4) "Urban growth boundary" means an acknowledged urban growth boundary contained in
32 a city or county comprehensive plan or an acknowledged urban growth boundary that has been
33 adopted by a metropolitan service district council under ORS 268.390 (3).

34 [(3)] (5) "Urban service" [*has the meaning given that term in ORS 195.065.*] **means:**

35 (a) Sanitary sewers;

36 (b) Water;

37 (c) Fire protection;

38 (d) Parks;

39 (e) Open space;

40 (f) Recreation; and

41 (g) Streets, roads and mass transit.

42 **SECTION 4.** ORS 195.065 is amended to read:

43 195.065. (1) Under ORS 190.003 to 190.130, units of local government and special districts that
44 provide an urban service to an area within an urban growth boundary that has a population greater
45 than 2,500 persons, and that are identified as appropriate parties by a cooperative agreement under

1 ORS 195.020, shall enter into urban service agreements that:

2 (a) Specify whether the urban service will be provided in the future by a city, county, district,
3 authority or a combination of one or more cities, counties, districts or authorities.

4 (b) Set forth the functional role of each service provider in the future provision of the urban
5 service.

6 (c) Determine the future service area for each provider of the urban service.

7 (d) Assign responsibilities for:

8 (A) Planning and coordinating provision of the urban service with other urban services;

9 (B) Planning, constructing and maintaining service facilities; and

10 (C) Managing and administering provision of services to urban users.

11 (e) Define the terms of necessary transitions in provision of urban services, ownership of facili-
12 ties, annexation of service [*territory*] **area**, transfer of moneys or project responsibility for projects
13 proposed on a plan of the city or district prepared pursuant to ORS 223.309 and merger of service
14 providers or other measures for enhancing the cost efficiency of providing urban services.

15 (f) Establish a process for review and modification of the urban service agreement.

16 (2)(a) Each county shall have responsibility for convening representatives of all cities and spe-
17 cial districts that provide or declare an interest in providing an urban service inside an urban
18 growth boundary within the county, for the purpose of negotiating an urban service agreement. A
19 county may establish two or more subareas inside an urban growth boundary for the purpose of such
20 agreements. If an urban service is to be provided within the boundaries of a metropolitan service
21 district, a county shall notify the metropolitan service district in advance of the time for cities and
22 special districts to meet for the purpose of negotiating an urban service agreement, and the metro-
23 politan service district shall exercise its review, advisory and coordination functions under ORS
24 195.025.

25 (b) When negotiating for an urban service agreement, a county shall consult with recognized
26 community planning organizations within the area affected by the urban service agreement.

27 (3) Decisions on a local government structure to be used to deliver an urban service under ORS
28 195.070 are not land use decisions under ORS 197.015.

29 [(4) For purposes of ORS 195.020, 195.070, 195.075, 197.005 and this section, "urban services"
30 means:]

31 [(a) Sanitary sewers;]

32 [(b) Water;]

33 [(c) Fire protection;]

34 [(d) Parks;]

35 [(e) Open space;]

36 [(f) Recreation; and]

37 [(g) Streets, roads and mass transit.]

38 [(5)] (4) Whether the requirement of subsection (1) of this section is met by a single urban ser-
39 vice agreement among multiple providers of a service, by a series of agreements with individual
40 providers or by a combination of multiprovider and single-provider agreements shall be a matter of
41 local discretion.

42 **SECTION 4a.** ORS 195.205 is amended to read:

43 195.205. (1) A city or district that provides an urban service may annex territory under ORS
44 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304 that:

45 (a) Is situated within an urban growth boundary; and

1 (b) Is contained within an annexation plan adopted pursuant to ORS 195.020, 195.060 to 195.085,
2 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304.

3 (2) A city or district may submit an annexation plan to a vote under subsection (5) of this sec-
4 tion only if, prior to the submission of the annexation plan to a vote:

5 (a) The territory contained in the annexation plan is subject to urban service agreements among
6 all appropriate counties and cities and the providers of urban services within the territory, as re-
7 quired by ORS 195.065 and 195.070, and:

8 (A) Such urban service agreements were in effect on November 4, 1993; or

9 (B) They expressly state that they may be relied upon as a prerequisite of the annexation
10 method authorized by ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320,
11 197.335 and 223.304; and

12 (b) The territory contained in the annexation plan is subject to an agreement between the city
13 and county addressing fiscal impacts, if the annexation is by a city and will cause reductions in the
14 county property tax revenues by operation of section 11b, Article XI of the Oregon Constitution.

15 (3) Prior to adopting an annexation plan, the governing body of a city or district shall hold a
16 public hearing at which time interested persons may appear and be heard on the question of estab-
17 lishing the annexation plan.

18 (4) The governing body of the city or district shall cause notice of the hearing to be published,
19 once each week for two successive weeks prior to the day of the hearing, in a newspaper of general
20 circulation in the city or district.

21 (5) If after the public hearing required under subsection (3) of this section[,] the governing body
22 of the city or district decides to proceed with the annexation plan, [*it*] **except as provided in sub-**
23 **section (6) of this section, the governing body** shall cause the annexation plan to be submitted
24 to the electors of the city or district and to the electors of the territory proposed to be annexed
25 under the annexation plan. The proposed annexation plan may be voted upon at a general election
26 or at a special election to be held for that purpose.

27 **(6) For purposes of an annexation by a service provider providing sanitary sewer or water**
28 **services pursuant to section 2 of this 2012 Act, the governing body of a district may declare**
29 **the annexation approved by resolution or ordinance without submitting the annexation plan**
30 **to the electors of the district or to the electors of the territory proposed to be annexed.**

31 **SECTION 4b.** ORS 195.225 is amended to read:

32 195.225. (1) In areas subject to the jurisdiction of a local government boundary commission, the
33 boundary commission shall conduct an advisory review of an annexation plan for conformity with
34 annexation plan requirements set forth in ORS 195.220, 199.462 and the rules of procedure of the
35 Land Conservation and Development Commission.

36 (2) If a boundary commission finds that an annexation plan does not comply with ORS 195.220,
37 199.462 or the procedural rules of the commission, the boundary commission, by order, shall disap-
38 prove the annexation plan and return the plan to the governing body of the city or district. The
39 order of the boundary commission that disapproves an annexation plan shall describe with
40 particularity the provisions of the annexation plan that do not comply with ORS 195.220, 199.462 or
41 the procedural rules of the commission and shall specifically indicate the reasons for noncompliance.

42 (3) The governing body of the city or district, upon receiving an order of the boundary com-
43 mission that disapproves an annexation plan, may amend the plan and resubmit the amended plan
44 to the boundary commission.

45 (4) After a boundary commission reviews an annexation plan, **except as provided in subsection**

1 **(5) of this section**, the annexation plan shall be submitted to the electors of the city or district and
2 affected territory as provided in ORS 195.205.

3 **(5) For purposes of an annexation by a service provider providing sanitary sewer or water**
4 **services pursuant to section 2 of this 2012 Act, the governing body of a district may declare**
5 **the annexation approved by resolution or ordinance without submitting the annexation plan**
6 **to the electors of the district or to the electors of the territory proposed to be annexed.**

7 [(5)] **(6)** Notwithstanding ORS chapter 199, annexations provided for in an annexation plan ap-
8 proved [by the electors of a city or district and affected territory] **under subsection (4) or (5) of this**
9 **section** do not require the approval of a local government boundary commission.

10 [(6)] **(7)** A city or district shall submit an **approved** annexation plan [approved by the electors]
11 and a copy of the resolution, ordinance, order or proclamation proclaiming an annexation under an
12 approved annexation plan to the local government boundary commission filing with the Secretary
13 of State, Department of Revenue, assessor and county clerk of each county in which the affected
14 territory is located.

15 **SECTION 5.** ORS 221.034 is amended to read:

16 221.034. (1) As used in this section:

17 (a) "Neighboring city" means a city that has any part of its territory situated within three miles
18 of the area proposed to be incorporated.

19 (b) "Rural unincorporated community" means a settlement with a boundary identified in an ac-
20 knowledged comprehensive plan of a county and that:

21 (A) Is made up primarily of lands subject to an exception to statewide planning goals related to
22 agricultural lands or forestlands;

23 (B) Either was identified in the acknowledged comprehensive plan of a county as a "rural com-
24 munity," "service center," "rural center," "resort community" or similar term before October 28,
25 1994, or is listed in the Department of Land Conservation and Development's "Survey of Oregon
26 Unincorporated Communities" (January 30, 1997);

27 (C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

28 (D) Is not incorporated as a city.

29 (c) "Urban reserve" has the meaning given that term in ORS 195.137.

30 (d) "Urban services" has the meaning given that term in ORS [195.065] **195.060**.

31 (2) When any of the area proposed to be incorporated as a city lies within an urbanized area,
32 but outside the urban growth boundary of a city or a metropolitan service district:

33 (a) The area proposed to be incorporated must also be located entirely within a designated rural
34 unincorporated community and contiguous lands subject to an exception to statewide planning goals
35 related to agricultural lands or forestlands.

36 (b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief
37 petitioner, stating that:

38 (A) Ten percent of the electors registered within the area proposed for incorporation favor the
39 incorporation; and

40 (B) The chief petitioners have engaged the neighboring cities in discussions concerning the ef-
41 fects of the proposed incorporation, including discussions specifically relating to how those cities
42 and the proposed city will allow for expansion of urban growth boundaries and, where applicable,
43 for creation or expansion of urban reserves.

44 (c) The economic feasibility statement required by ORS 221.035 must:

45 (A) Indicate that the proposed city must plan for and provide urban services in a cost-effective

1 manner at the minimum level adequate to meet current needs and projected growth;

2 (B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban
3 services; and

4 (C) Indicate that the proposed city must plan for residential development at or above the same
5 urban density planned for an existing city, within the county, that has a similar geographic area
6 within the existing city's urban growth boundary or, for a proposed city within three miles of
7 Metro's boundary, a minimum urban residential density in accordance with a statewide planning
8 goal and rules pertaining to needed housing for cities within Metro's urban growth boundary.

9 (d) If the proposed city will be required to complete a public facility plan and a transportation
10 systems plan, the proposed city must demonstrate the ability to provide urban services to meet
11 current needs and projected growth. The proposed city may meet this requirement, in whole or in
12 part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060,
13 to provide the urban services.

14 (3) If the governing body of a neighboring city determines that the proposed incorporation ad-
15 versely affects that city, the governing body may ask the county court with which the petition for
16 incorporation was filed to reject the petition and terminate the incorporation proceedings. The ob-
17 jections by the city to the incorporation shall be heard and considered by the county court at a
18 public hearing held under ORS 221.040.

19 (4) If, at the hearing held under ORS 221.040, the county court finds that any of the require-
20 ments of subsection (2) of this section are not met or that the proposed incorporation will adversely
21 affect a neighboring city, the county court shall provide by order for the termination of the incor-
22 poration proceedings. The order shall contain the findings of the county court relating to the pro-
23 posed incorporation and the reasons for terminating the incorporation proceedings.

24 (5) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall re-
25 view, upon the petition of a party to the incorporation proceedings, the order of the county court
26 under subsection (4) of this section.

27 **SECTION 6.** ORS 222.520 is amended to read:

28 222.520. (1) Whenever a part less than the entire area of a district named in ORS 222.510 be-
29 comes incorporated as or annexed to a city in accordance with law **and the city will provide the**
30 **service to that part after incorporation or annexation that the district provided to the part**
31 **before incorporation or annexation**, the city may cause *[that]* **the** part to be withdrawn from the
32 district in the manner set forth in ORS 222.120 or at any time after *[such]* **the** incorporation or
33 annexation in the manner set forth in ORS 222.524. Until so withdrawn, the part of *[such a]* **the**
34 district incorporated or annexed into a city shall continue to be a part of the district.

35 (2) The part thus withdrawn shall not thereby be relieved from liabilities and indebtedness pre-
36 viously contracted by the district. For the purposes of paying *[such]* **the** liabilities and indebtedness
37 of the district, property in the part withdrawn shall continue to be subject to assessment and taxa-
38 tion uniformly with property in the area remaining in the district. The city of which it became a
39 part shall, however, assume *[such]* **the** obligations if the obligations assumed do not bring the total
40 of the city's obligations above any applicable limitations prescribed by statute. When the city as-
41 sumes *[such]* **the** obligations it shall be liable to the district for one of the following, at the option
42 of the city:

43 (a) The amount of taxes which otherwise would be extended each year therefor against the
44 property in the part withdrawn; or

45 (b) Payment annually, as the bonds of the district that were outstanding on the effective date

1 of the withdrawal mature, of the same proportion of *[such]* **the** outstanding bonds, and the interest
2 thereon, as the assessed valuation of the part withdrawn bears to the assessed valuation of the en-
3 tire district on the effective date of the withdrawal. After the city agrees to make *[such]* payments
4 under this subsection, neither the city nor the part withdrawn shall be charged by the district with
5 any future liabilities, obligations or functions of the district.

6 **SECTION 7.** ORS 198.866 is amended to read:

7 198.866. (1) The governing body of a city may adopt a resolution or motion to propose
8 annexation **of all or part of the city** to a district for the purpose of receiving service from the
9 district. Upon adoption of an annexation proposal, the governing body of the city shall certify to the
10 district board a copy of the proposal.

11 (2) The district board shall approve or disapprove the city's annexation proposal. If the district
12 board approves the proposal, the district board shall adopt an order or resolution to call an election
13 in the district unless otherwise provided in subsection (3) of this section.

14 (3) The district board is not required to call an election if:

15 (a) The population of the city is less than 20 percent of the population of the district; or

16 (b) The entire boundary of the city is encompassed within the boundary of the district.

17 (4) Notwithstanding subsection (3) of this section, if 10 percent of the electors or 100 electors
18 of the district, whichever is less, sign and present to the county board a petition requesting an
19 election, the board shall call an election in the district. The petition shall be in conformity, to the
20 greatest extent practicable, with ORS 198.750, 198.760, 198.765 and 198.770.

21 (5) The order or resolution of the district board shall include the applicable matters specified
22 in ORS 198.745. In addition the order or resolution may contain a plan for zoning or subdistricting
23 the district as enlarged by the annexation if the principal Act for the district provides for election
24 or representation by zone or subdistrict.

25 (6) The district board shall certify a copy of the resolution or order to the governing body of
26 the city.

27 (7) Upon receipt of the resolution or order of the district board, the governing body of the city
28 shall call an election in **the part of the city proposed for annexation** on the date specified in the
29 order or resolution of the district board.

30 (8) An election under this section shall be held on a date specified in ORS 255.345 that is not
31 sooner than the 90th day after the date of the district order or resolution calling the election.

32 **SECTION 8.** ORS 264.540 is amended to read:

33 264.540. (1) If **all of** a city has been annexed to a district under ORS 198.866 and 198.867 or has
34 been joined to a district under ORS 198.910, the city may designate the location and type of fire
35 hydrants to be installed within the territory of the city. The board of commissioners shall establish
36 the rates for the use of water therefrom as provided in ORS 264.330. The city and the district may
37 by contract determine the entire matter of installation of hydrants and use of water therefrom and
38 payment therefor.

39 (2) The ownership of the water supply system within the city boundaries shall revert to and be
40 vested in the district.

41 **SECTION 9.** ORS 264.550 is amended to read:

42 264.550. If **all or part of** a city has been annexed to a district under ORS 198.866 and 198.867
43 or has been joined to a district under ORS 198.910, the city and the district may:

44 (1) Enter into contracts and agreements to do any act or thing which either could have done if
45 the annexation **or joining** had not occurred.

1 (2) Contract and agree for the collection by the district of any water user tax or charge imposed
2 by the city upon water users within the territory of the city, and the district thereupon may provide
3 for [such] collection according to its rules [and regulations] for the collection of amounts due the
4 district by water users, including but not limited to shutting off the water supply for nonpayment.

5 **SECTION 10.** ORS 523.670 is amended to read:

6 523.670. If **all or part of** a city has been annexed to a district under ORS 198.866 and 198.867
7 or joined to a district under ORS 198.910, the city and the district may:

8 (1) Enter into contracts and agreements to do any act or thing which either could have done if
9 the annexation **or joining** had not occurred.

10 (2) Contract and agree for the collection by the district of any geothermal heat tax or charge
11 imposed by the city upon geothermal heat users within the territory of the city, and the district
12 thereupon may provide for [such] collection according to its rules [and regulations] for the collection
13 of amounts due the district by geothermal heat users, including but not limited to shutting off the
14 geothermal heat supply for nonpayment.

15 **SECTION 11. This 2012 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
17 **on its passage.**

18