

# House Bill 4090

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 **as introduced**.

Authorizes owner of real property that is located within urban growth boundary 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.

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 and 221.034; and  
3 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) If a service provider cannot provide sanitary sewer or water services to**  
8 **a lawfully established unit of land located entirely within an urban growth boundary and**  
9 **within the service area of the service provider, as identified in the applicable urban services**  
10 **agreement, the owner of the lawfully established unit of land may cause another service**  
11 **provider to connect the established unit of land to the facilities of the other provider. For**  
12 **purposes of this section, a service provider cannot provide service to the lawfully established**  
13 **unit of land if the service provider:**

14 (a) **Is unwilling or unable to provide sanitary sewer or water services to the lawfully es-**  
15 **tablished unit of land; or**

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

18 (2) **If the lawfully established unit of land is not within a service area identified in the**  
19 **applicable urban services agreement, the owner may select and cause a service provider to**  
20 **provide the services if the provider has adequate capacity to provide the services and main-**  
21 **tain adequate service levels in the provider's service area.**

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

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

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

30 (b) **A substantially similar, but abbreviated, process established by ordinance of the**

**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 **county for that purpose.**

2 **(5) Notwithstanding contrary provisions of an annexation plan described in ORS 195.205,**  
 3 **a city or district that provides services pursuant to this section may require the owner to**  
 4 **waive remonstrance or agree to annexation.**

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

6 195.060. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires  
 7 otherwise:

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

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

11 **(3) "Provider" or "service provider" means units of local government, as defined in ORS**  
 12 **190.003, and districts that provide an urban service to an area within an urban growth**  
 13 **boundary that has a population greater than 2,500 persons.**

14 [(2)] **(4) "Urban growth boundary" means an acknowledged urban growth boundary contained in**  
 15 **a city or county comprehensive plan or an acknowledged urban growth boundary that has been**  
 16 **adopted by a metropolitan service district council under ORS 268.390 (3).**

17 [(3)] **(5) "Urban service" [has the meaning given that term in ORS 195.065.] means:**

18 **(a) Sanitary sewers;**

19 **(b) Water;**

20 **(c) Fire protection;**

21 **(d) Parks;**

22 **(e) Open space;**

23 **(f) Recreation; or**

24 **(g) Streets, roads and mass transit.**

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

26 195.065. (1) Under ORS 190.003 to 190.130, units of local government and special districts that  
 27 provide an urban service to an area within an urban growth boundary that has a population greater  
 28 than 2,500 persons, and that are identified as appropriate parties by a cooperative agreement under  
 29 ORS 195.020, shall enter into urban service agreements that:

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

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

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

35 (d) Assign responsibilities for:

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

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

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

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

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

44 (2)(a) Each county shall have responsibility for convening representatives of all cities and spe-  
 45 cial districts that provide or declare an interest in providing an urban service inside an urban

1 growth boundary within the county, for the purpose of negotiating an urban service agreement. A  
 2 county may establish two or more subareas inside an urban growth boundary for the purpose of such  
 3 agreements. If an urban service is to be provided within the boundaries of a Metropolitan Service  
 4 District, a county shall notify the Metropolitan Service District in advance of the time for cities and  
 5 special districts to meet for the purpose of negotiating an urban service agreement, and the Metro-  
 6 politan Service District shall exercise its review, advisory and coordination functions under ORS  
 7 195.025.

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

10 (3) Decisions on a local government structure to be used to deliver an urban service under ORS  
 11 195.070 are not land use decisions under ORS 197.015.

12 [(4) For purposes of ORS 195.020, 195.070, 195.075, 197.005 and this section, “urban services”  
 13 means:]

14 [(a) Sanitary sewers;]

15 [(b) Water;]

16 [(c) Fire protection;]

17 [(d) Parks;]

18 [(e) Open space;]

19 [(f) Recreation; and]

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

21 [(5)] (4) Whether the requirement of subsection (1) of this section is met by a single urban ser-  
 22 vice agreement among multiple providers of a service, by a series of agreements with individual  
 23 providers or by a combination of multiprovider and single-provider agreements shall be a matter of  
 24 local discretion.

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

26 221.034. (1) As used in this section:

27 (a) “Neighboring city” means a city that has any part of its territory situated within three miles  
 28 of the area proposed to be incorporated.

29 (b) “Rural unincorporated community” means a settlement with a boundary identified in an ac-  
 30 knowledged comprehensive plan of a county and that:

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

33 (B) Either was identified in the acknowledged comprehensive plan of a county as a “rural com-  
 34 munity,” “service center,” “rural center,” “resort community” or similar term before October 28,  
 35 1994, or is listed in the Department of Land Conservation and Development’s “Survey of Oregon  
 36 Unincorporated Communities” (January 30, 1997);

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

38 (D) Is not incorporated as a city.

39 (c) “Urban reserve” has the meaning given that term in ORS 195.137.

40 (d) “Urban services” has the meaning given that term in ORS [195.065] **195.060**.

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

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

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

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

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

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

10 (A) Indicate that the proposed city must plan for and provide urban services in a cost-effective  
11 manner at the minimum level adequate to meet current needs and projected growth;

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

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

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

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

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

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

37 **SECTION 6. This 2012 Act being necessary for the immediate preservation of the public**  
38 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**  
39 **on its passage.**

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