



Oregon

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TO: The Honorable Arnie Roblan, Chair
Senate Rural Communities and Economic Development Committee

FROM: Jim Rue, Director
Department of Land Conservation and Development

RE: Senate Bill 250

The department has reviewed Senate Bill 250 and offers the following comments about the bill.

First, this past year, the Governor's office convened a collaborative team of experienced land use practitioners, stakeholders and public officials to try and reach consensus on potential reforms to the state's land use program. The recommendations from this process will include a simplified, faster planning process for cities to forecast employment land needs (industrial, commercial and a variety of related land needs). In addition, these recommendations include a method for groups of local governments to work together to plan for large-lot, land intensive, industrial needs, and establish a new, dynamic process to allow governments to react more quickly to unanticipated but highly significant new employment opportunities. These reform recommendations are the subject of two house bills put forth by the Governor's office and DLCD, HB 2254 and 2255. The department suggests that reforms that may be intended by SB 250 would be unnecessary and may work counter to the reforms proposed in the department bills, which are expected to have a broad consensus.

With respect to Senate Bill 250, current law at ORS 197.712 requires LCDC to adopt or amend land use goals and rules in order to ensure, among other things, that urban growth boundaries (UGBs) contain an adequate supply of land for industrial uses. SB 250 would provide new, but very general and somewhat vague standards for local governments to determine land supply in UGBs. Specifically, the bill would authorize local governments to include industrial land in a UGB based on "**economic development projections of the local government that take into account:**

- (A) **The economic base and the availability and suitability of land within its jurisdiction to support economic growth and activity;**
- (B) **The cost and availability of materials and energy resources;**
- (C) **The labor market;**
- (D) **The availability of educational and technical training programs and other resources that support economic growth and activity;**
- (E) **The location of the land relative to markets; and**
- (F) **Other local, regional, national and international factors affecting economic growth and activity."**

The bill further requires that “land included within an urban growth boundary [pursuant to this bill] must be planned and zoned for industrial uses and may not be rezoned to a nonindustrial zoning classification within 10 years after the land is included within the urban growth boundary.” As such, the bill apparently authorizes industrial land that is added to UGBs under the bill to be rezoned for other uses ten years after it is added.

The provisions above are indicated to take effect “**notwithstanding provisions of a statewide land use planning goal related to urbanization that requires demonstrated need to accommodate long-range urban population or demonstrated need for employment opportunities.**” In other words, the provisions above would operate outside of the land use framework for urban growth boundary planning, including provisions that require that UGBs contain a 20-year supply of land. Without the link to UGB requirements, the proposed new provisions would not provide enough information for local governments to determine the necessary amount of land, and to determine sufficiency of land supply. This question is core to UGB planning, and is settled by current LCDC goals and rules, which clearly indicate UGBs must have a 20-year supply. By severing the connection with Goal 14, this bill raises considerable questions about land supply, and these questions would without a doubt be left to the courts to try and interpret legislative intent.

The bill would also remove a key phrase currently in ORS 197.712 which requires that all the provisions in this statute, including public facilities and transportation planning requirements, be implemented by LCDC through “the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules...”. Removing this clause may have the effect of making all provisions of this statute, including both the new and the current, existing provisions, apply directly to local land use planning, rather than through provisions adopted by LCDC. This will create further confusion for citizens and local governments trying to interpret statewide requirements for land use planning.

The department notes that case law has indicated having such provisions in statute rather than goals and rules means that courts will not give deference to local interpretation of such statutes. On the other hand, if the requirements are contained in statewide goals and administrative rules, the Land Conservation and Development Commission (LCDC) can (and does) give considerable deference to local government decisions, and courts allow the commission to interpret its own rules. Placing the provisions in statute can make local planning more difficult and more vulnerable on appeal.

Thank you for this opportunity to provide you with information about SB 250. If committee members have questions about this testimony, please call Bob Rindy at 503-373-0050 Ext 229, or email bob.rindy@state.or.us.