

House Bill 2256

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Land Conservation and Development)

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**.

Requires local government that expands urban growth boundary to cause renegotiation, as necessary, of urban service agreements.

Requires urban service agreement to include preliminary estimate of capital cost of urban service infrastructure required for delivery of urban service anticipated by urban service agreement. Modifies criteria for electoral approval of annexation plan related to urban service agreements and expansion of urban growth boundaries.

Authorizes Oregon Infrastructure Finance Authority, in coordination with Department of Land Conservation and Development and Department of Transportation, to administer program to provide loans and grants for planning or construction of certain urban service infrastructure.

Allows local government that has developed and evaluated alternative land use and transportation scenarios to enact or amend provision taxing fuel for motor vehicles without submitting proposed tax to electors for approval.

A BILL FOR AN ACT

1
2 Relating to the provision of urban services; creating new provisions; and amending ORS 195.060,
3 195.065, 195.215, 197.296, 221.034, 285A.098 and 319.950.

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

5 **SECTION 1.** ORS 197.296 is amended to read:

6 197.296. (1)(a) The provisions of this section apply to metropolitan service district regional
7 framework plans and local government comprehensive plans for lands within the urban growth
8 boundary of a city that is located outside of a metropolitan service district and has a population of
9 25,000 or more.

10 (b) The Land Conservation and Development Commission may establish a set of factors under
11 which additional cities are subject to the provisions of this section. In establishing the set of factors
12 required under this paragraph, the commission shall consider the size of the city, the rate of popu-
13 lation growth of the city or the proximity of the city to another city with a population of 25,000 or
14 more or to a metropolitan service district.

15 (2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of
16 the comprehensive plan or regional plan that concerns the urban growth boundary and requires the
17 application of a statewide planning goal relating to buildable lands for residential use, a local gov-
18 ernment shall:

19 (a) Demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands
20 within the urban growth boundary established pursuant to statewide planning goals to accommodate
21 estimated housing needs for 20 years. The 20-year period [*shall commence*] **commences** on the date
22 initially scheduled for completion of the periodic or legislative review.

23 (b) **Cause the appropriate county, pursuant to ORS 195.065 (2)(a), to convene represen-**
24 **tatives of units of local government and districts that provide, or declare an interest in**
25 **providing, an urban service so that an urban services agreement can be renegotiated, as**

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 **necessary, in relation to any expansion of the urban growth boundary.**

2 (3) In performing the duties under subsection (2) of this section, a local government shall:

3 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the
4 housing capacity of the buildable lands; and

5 (b) Conduct an analysis of housing need by type and density range, in accordance with ORS
6 197.303 and statewide planning goals and rules relating to housing, to determine the number of units
7 and amount of land needed for each needed housing type for the next 20 years.

8 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable
9 lands" includes:

10 (A) Vacant lands planned or zoned for residential use;

11 (B) Partially vacant lands planned or zoned for residential use;

12 (C) Lands that may be used for a mix of residential and employment uses under the existing
13 planning or zoning; and

14 (D) Lands that may be used for residential infill or redevelopment.

15 (b) For the purpose of the inventory and determination of housing capacity described in sub-
16 section (3)(a) of this section, the local government must demonstrate consideration of:

17 (A) The extent that residential development is prohibited or restricted by local regulation and
18 ordinance, state law and rule or federal statute and regulation;

19 (B) A written long term contract or easement for radio, telecommunications or electrical facili-
20 ties, if the written contract or easement is provided to the local government; and

21 (C) The presence of a single family dwelling or other structure on a lot or parcel.

22 (c) Except for land that may be used for residential infill or redevelopment, a local government
23 shall create a map or document that may be used to verify and identify specific lots or parcels that
24 have been determined to be buildable lands.

25 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of
26 housing capacity and need pursuant to subsection (3) of this section must be based on data relating
27 to land within the urban growth boundary that has been collected since the last periodic review or
28 five years, whichever is greater. The data shall include:

29 (A) The number, density and average mix of housing types of urban residential development that
30 have actually occurred;

31 (B) Trends in density and average mix of housing types of urban residential development;

32 (C) Demographic and population trends;

33 (D) Economic trends and cycles; and

34 (E) The number, density and average mix of housing types that have occurred on the buildable
35 lands described in subsection (4)(a) of this section.

36 (b) A local government shall make the determination described in paragraph (a) of this sub-
37 section using a shorter time period than the time period described in paragraph (a) of this subsection
38 if the local government finds that the shorter time period will provide more accurate and reliable
39 data related to housing capacity and need. The shorter time period may not be less than three years.

40 (c) A local government shall use data from a wider geographic area or use a time period for
41 economic cycles and trends longer than the time period described in paragraph (a) of this subsection
42 if the analysis of a wider geographic area or the use of a longer time period will provide more ac-
43 curate, complete and reliable data relating to trends affecting housing need than an analysis per-
44 formed pursuant to paragraph (a) of this subsection. The local government must clearly describe the
45 geographic area, time frame and source of data used in a determination performed under this para-

1 graph.

2 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than
 3 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government
 4 shall take one or more of the following actions to accommodate the additional housing need:

5 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate
 6 housing needs for the next 20 years. As part of this process, the local government shall consider the
 7 effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include
 8 sufficient land reasonably necessary to accommodate the siting of new public school facilities. The
 9 need and inclusion of lands for new public school facilities shall be a coordinated process between
 10 the affected public school districts and the local government that has the authority to approve the
 11 urban growth boundary;

12 (b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to in-
 13 clude new measures that demonstrably increase the likelihood that residential development will oc-
 14 cur at densities sufficient to accommodate housing needs for the next 20 years without expansion
 15 of the urban growth boundary. A local government or metropolitan service district that takes this
 16 action shall monitor and record the level of development activity and development density by hous-
 17 ing type following the date of the adoption of the new measures; or

18 (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

19 (7) Using the analysis conducted under subsection (3)(b) of this section, the local government
 20 shall determine the overall average density and overall mix of housing types at which residential
 21 development of needed housing types must occur in order to meet housing needs over the next 20
 22 years. If that density is greater than the actual density of development determined under subsection
 23 (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined
 24 under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall
 25 adopt measures that demonstrably increase the likelihood that residential development will occur
 26 at the housing types and density and at the mix of housing types required to meet housing needs
 27 over the next 20 years.

28 (8)(a) A local government outside a metropolitan service district that takes any actions under
 29 subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use
 30 regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to
 31 197.314.

32 (b) The local government shall determine the density and mix of housing types anticipated as a
 33 result of actions taken under subsections (6) and (7) of this section and monitor and record the ac-
 34 tual density and mix of housing types achieved. The local government shall compare actual and
 35 anticipated density and mix. The local government shall submit its comparison to the commission
 36 at the next periodic review or at the next legislative review of its urban growth boundary, which-
 37 ever comes first.

38 (9) In establishing that actions and measures adopted under subsections (6) or (7) of this section
 39 demonstrably increase the likelihood of higher density residential development, the local government
 40 shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the
 41 housing types identified under subsection (3) of this section and is zoned at density ranges that are
 42 likely to be achieved by the housing market using the analysis in subsection (3) of this section.
 43 Actions or measures, or both, may include but are not limited to:

44 (a) Increases in the permitted density on existing residential land;

45 (b) Financial incentives for higher density housing;

- 1 (c) Provisions permitting additional density beyond that generally allowed in the zoning district
- 2 in exchange for amenities and features provided by the developer;
- 3 (d) Removal or easing of approval standards or procedures;
- 4 (e) Minimum density ranges;
- 5 (f) Redevelopment and infill strategies;
- 6 (g) Authorization of housing types not previously allowed by the plan or regulations;
- 7 (h) Adoption of an average residential density standard; and
- 8 (i) Rezoning or redesignation of nonresidential land.

9 **SECTION 2.** ORS 195.060 is amended to read:

10 195.060. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires
11 otherwise:

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

14 (2) "Urban growth boundary" means an acknowledged urban growth boundary contained in a
15 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) "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; and**

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

25 **SECTION 3.** ORS 195.060 is added to and made a part of ORS 195.065 to 195.085.

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

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

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

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

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

36 (d) Assign responsibilities for:

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

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

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

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

44 (f) **Include a preliminary estimate of the total capital costs associated with the urban**
45 **service infrastructure required for delivery of the urban service anticipated by the urban**

1 **service agreement and the share of costs attributable to each provider of the urban service.**

2 [(f)] (g) Establish a process for review and modification of the urban service agreement.

3 (2)(a) Each county shall have responsibility for convening representatives of all cities and spe-
 4 cial districts that provide, or declare an interest in providing, an urban service inside an urban
 5 growth boundary within the county, for the purpose of negotiating an urban service agreement. A
 6 county may establish two or more subareas inside an urban growth boundary for the purpose of such
 7 agreements. If an urban service is to be provided within the boundaries of a metropolitan service
 8 district, a county shall notify the metropolitan service district in advance of the time for cities and
 9 special districts to meet for the purpose of negotiating an urban service agreement, and the metro-
 10 politan service district shall exercise its review, advisory and coordination functions under ORS
 11 195.025.

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

14 (3) Decisions **under ORS 195.070** on a local government structure to be used to deliver an urban
 15 service [*under ORS 195.070*] are not land use decisions under ORS 197.015.

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

18 [(a) Sanitary sewers;]

19 [(b) Water;]

20 [(c) Fire protection;]

21 [(d) Parks;]

22 [(e) Open space;]

23 [(f) Recreation; and]

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

25 [(5)] (4) Whether the requirement of subsection (1) of this section is met by a single urban ser-
 26 vice agreement among multiple providers of a service, by a series of agreements with individual
 27 providers or by a combination of multiprovider and single-provider agreements [*shall be*] is a matter
 28 of local discretion.

29 **SECTION 5.** ORS 195.215 is amended to read:

30 195.215. (1) The governing body of the city or district shall determine the results of [*the*
 31 *election*] **an election held under ORS 195.205** from the official figures returned by the county clerk.
 32 If the governing body of the city finds that a majority of the votes cast in the territory and a ma-
 33 jority of the votes cast in the city favor the annexation plan, the governing body, by resolution or
 34 ordinance, shall declare the adoption of the annexation plan. The governing body of the district shall
 35 certify the results of the election to the appropriate county governing body. When a majority of the
 36 votes cast in the territory and a majority of the votes cast in the district favor the annexation plan,
 37 the county governing body by order shall so declare. The resolution, ordinance or order declaring
 38 approval of the annexation plan must contain a legal description of each territory annexed.

39 (2) **Notwithstanding subsection (1) of this section, when an election on an annexation plan**
 40 **is held as a result of a review and proposed expansion of an urban growth boundary pursuant**
 41 **to ORS 197.296 (2)(b), if the governing body of the city finds that a majority of the combined**
 42 **total of votes cast in the city and the territory proposed for annexation favor the annexation**
 43 **plan, the governing body, by resolution or ordinance, shall declare the adoption of the**
 44 **annexation plan.**

45 [(2)] (3) Annexation of particular tracts of territory takes effect in accordance with the pro-

visions of the adopted annexation plan.

SECTION 6. ORS 221.034 is amended to read:

221.034. (1) As used in this section:

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

(b) “Rural unincorporated community” means a settlement with a boundary identified in an acknowledged comprehensive plan of a county and that:

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

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

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

(D) Is not incorporated as a city.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **SECTION 7.** ORS 285A.098 is amended to read:

15 285A.098. (1) The Oregon Infrastructure Finance Authority may:

16 (a) Conduct hearings and conferences to develop facts, explain programs and activities, and ob-
 17 tain advice;

18 (b) Enter into agreements with other public bodies, as defined in ORS 174.109, or associations
 19 or private persons for services to assist the authority and the Oregon Infrastructure Finance Au-
 20 thority Board;

21 (c) Enter into agreements with other public bodies, as defined in ORS 174.109, the federal gov-
 22 ernment, associations or private persons for cooperative endeavors that further programs adminis-
 23 tered by the authority;

24 (d) Subject to applicable policies and procedures, enter into agreements for loans, grants or
 25 other assistance, including, but not limited to, direct purchase of goods or services, with local gov-
 26 ernments, as defined in ORS 174.116, special government bodies, as defined in ORS 174.117, or other
 27 eligible applicants for infrastructure development;

28 (e) Appoint committees, consultants or other persons with expertise in infrastructure-related
 29 matters to advise the Oregon Infrastructure Finance Authority Board or the authority;

30 (f) Obtain assistance or data from any state agency; or

31 (g) Perform any other act necessary to carry out the duties of the authority.

32 (2) The authority shall administer the state's participation in the federal Community Develop-
 33 ment Block Grant funding program authorized by 42 U.S.C. 5301 et seq.

34 **(3)(a) In coordination with the Department of Land Conservation and Development and**
 35 **the Department of Transportation, the authority may establish and administer a program**
 36 **to provide loans or grants for planning or construction of infrastructure projects that:**

37 **(A) Are necessary or appropriate to provide the urban service planned for and coordi-**
 38 **nated in an urban service agreement entered into under ORS 195.065; and**

39 **(B) Facilitate development or increase development capacity in portions of an urban area**
 40 **that are planned and zoned for mixed use, accessible by multiple modes of transportation and**
 41 **not highly dependent on the availability of a large capacity of motor vehicle parking.**

42 **(b) In awarding loans and grants under this subsection, the authority shall give the**
 43 **highest priority to infrastructure projects in urban areas in which the local governments**
 44 **have developed and evaluated alternative land use and transportation scenarios as required**
 45 **by section 37, chapter 865, Oregon Laws 2009, or pursuant to guidelines established under**

1 **ORS 184.893.**

2 **SECTION 8.** ORS 319.950 is amended to read:

3 319.950. (1) A city, county or other local government may enact or amend any charter provision,
4 ordinance, resolution or other provision taxing fuel for motor vehicles after submitting the proposed
5 tax to the electors of the local government for their approval.

6 (2) **If a local government, as defined in ORS 197.015, has developed and evaluated alter-**
7 **native land use and transportation scenarios as required by section 37, chapter 865, Oregon**
8 **Laws 2009, or pursuant to guidelines established under ORS 184.893, the local government**
9 **may enact or amend a charter provision, ordinance, resolution or other provision taxing fuel**
10 **for motor vehicles without submitting the proposed tax to the electors of the local govern-**
11 **ment for their approval.**

12