

House Bill 3165

Sponsored by Representative BENTZ

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**.

Eliminates statutory assignment of priority to certain land for purpose of inclusion of land within urban growth boundary.

A BILL FOR AN ACT

1
2 Relating to urban growth boundaries; creating new provisions; amending ORS 197.299, 197.314,
3 197A.320 and 268.390 and section 7, chapter 636, Oregon Laws 2009; and repealing ORS 197.298.

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

5 **SECTION 1. ORS 197.298 is repealed.**

6 **SECTION 2.** ORS 197A.320 is amended to read:

7 197A.320. (1) [*Notwithstanding the priority in ORS 197.298 for inclusion of land within an urban*
8 *growth boundary,*] A city outside of Metro shall comply with this section when determining which
9 lands to include within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314,
10 197A.310 or 197A.312.

11 (2) The Land Conservation and Development Commission shall provide, by rule, that:

12 (a) When evaluating lands for inclusion within the urban growth boundary, the city shall es-
13 tablish a study area that includes all land that is contiguous to the urban growth boundary and
14 within a distance specified by commission.

15 (b) The city shall evaluate all land in the study area for inclusion in the urban growth boundary
16 as provided in subsection (4) of this section, except for land excluded from the study area because:

17 (A) It is impracticable, as provided in subsection (3) of this section, to provide necessary public
18 facilities or services to the land.

19 (B) The land is subject to significant development hazards, including a risk of land slides, a risk
20 of flooding because the land is within the 100-year floodplain or is subject to inundation during
21 storm surges or tsunamis, and other risks determined by the commission.

22 (C) The long-term preservation of significant scenic, natural, cultural or recreational resources
23 requires limiting or prohibiting urban development of the land that contains the resources.

24 (D) The land is owned by the federal government and managed primarily for rural uses.

25 [*c) When evaluating the priority of land for inclusion under paragraph (b) of this subsection:*]

26 [*(A) The city shall evaluate the land within the study area that is designated as an urban reserve*
27 *under ORS 195.145 in an acknowledged comprehensive plan, land that is subject to an acknowledged*
28 *exception under ORS 197.732 or land that is nonresource land and select as much of the land as nec-*
29 *essary to satisfy the need for land using criteria established by the commission and criteria in an ac-*
30 *knowledged comprehensive plan and land use regulations.]*

31 [*(B) If the amount of land appropriate for selection under subparagraph (A) of this paragraph is*

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 *not sufficient to satisfy the need for land, the city shall evaluate the land within the study area that is*
2 *designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive*
3 *plan and select as much of the land as necessary to satisfy the need for land using criteria established*
4 *by the commission and criteria in an acknowledged comprehensive plan and land use regulations.]*

5 *[(C) If the amount of land appropriate for selection under subparagraphs (A) and (B) of this par-*
6 *agraph is not sufficient to satisfy the amount of land needed, the city shall evaluate land within the*
7 *study area that is designated for agriculture or forest uses in the acknowledged comprehensive plan*
8 *that is not predominantly high-value farmland, as defined in ORS 195.300, or does not consist pre-*
9 *dominantly of prime or unique soils, as determined by the United States Department of Agriculture*
10 *Natural Resources Conservation Service, and select as much of that land as necessary to satisfy the*
11 *need for land:]*

12 *[(i) Using criteria established by the commission and criteria in an acknowledged comprehensive*
13 *plan and land use regulations; and]*

14 *[(ii) Using the predominant capability classification system or the predominant cubic site class, as*
15 *appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic*
16 *site class lands first.]*

17 *[(D) If the amount of land appropriate for selection under subparagraphs (A) to (C) of this para-*
18 *graph is not sufficient to satisfy the need for land, the city shall evaluate land within the study area*
19 *that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly*
20 *high value farmland and select as much of that land as necessary to satisfy the need for land. A local*
21 *government may not select land that is predominantly made up of prime or unique farm soils, as de-*
22 *finied by the United States Department of Agriculture Natural Resources Conservation Service, unless*
23 *there is an insufficient amount of other land to satisfy its land need.]*

24 (3) For purposes of subsection (2)(b)(A) of this section, the commission shall determine
25 impracticability by rule, considering the likely amount of development that could occur on the lands
26 within the planning period, the likely cost of facilities and services, physical, topographical or other
27 impediments to service provision and whether urban development has occurred on similarly situated
28 lands such that it is likely that the lands will be developed at an urban level during the planning
29 period. When impracticability is primarily a result of existing development patterns, the rules of the
30 commission shall require that the lands be included within the study area, but may allow the de-
31 velopment capacity forecast for the lands to be specified at a lower level over the planning period.
32 The rules of the commission must be based on an evaluation of how similarly situated lands have,
33 or have not, developed over time.

34 (4) For purposes of subsection (2)(b)(C) of this section, the commission by rule shall determine
35 the circumstances in which and the resources to which this exclusion will apply.

36 *[(5) Notwithstanding subsection (2)(c)(D) of this section, the rules must allow land that would oth-*
37 *erwise be excluded from an urban growth boundary to be included if:]*

38 *[(a) The land contains a small amount of resource land that is not important to the commercial*
39 *agricultural enterprise in the area and the land must be included to connect a nearby and significantly*
40 *larger area of land of higher priority for inclusion within the urban growth boundary; or]*

41 *[(b) The land contains a small amount of resource land that is not predominantly high-value*
42 *farmland or predominantly made up of prime or unique farm soils and the land is completely sur-*
43 *rounded by land of higher priority for inclusion into the urban growth boundary.]*

44 [(6)] (5) When the primary purpose for expansion of the urban growth boundary is to accommo-
45 date a particular industry use that requires specific site characteristics, or to accommodate a public

1 facility that requires specific site characteristics and the site characteristics may be found in only
 2 a small number of locations, the city may limit the study area to land that has, or could be improved
 3 to provide, the required site characteristics. Lands included within an urban growth boundary for
 4 a particular industrial use, or a particular public facility, must remain planned and zoned for the
 5 intended use:

6 (a) Except as allowed by rule of the commission that is based on a significant change in cir-
 7 cumstance or the passage of time; or

8 (b) Unless the city removes the land from within the urban growth boundary.

9 [(7)] (6) Notwithstanding any other provision of this section, the commission may adopt rules
 10 that specify circumstances under which a city may exchange land within the urban growth boundary
 11 of the city for land that is outside of the urban growth boundary and that is designed to avoid ad-
 12 verse effects of an exchange on agricultural or forest operations in the surrounding area.

13 **SECTION 3.** ORS 197.299, as amended by section 5, chapter 92, Oregon Laws 2014, is amended
 14 to read:

15 197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the
 16 inventory, determination and analysis required under ORS 197.296 (3) not later than six years after
 17 completion of the previous inventory, determination and analysis.

18 (2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296
 19 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3)
 20 within one year of completing the analysis.

21 (b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) neces-
 22 sary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two
 23 years of completing the analysis.

24 (c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year
 25 after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land
 26 within the urban growth boundary to accommodate the estimated housing needs for 20 years from
 27 the time the actions are completed. The metropolitan service district shall consider and adopt new
 28 measures that the governing body deems appropriate under ORS 197.296 (6)(b).

29 (3) The Land Conservation and Development Commission may grant an extension to the time
 30 limits of subsection (2) of this section if the Director of the Department of Land Conservation and
 31 Development determines that the metropolitan service district has provided good cause for failing
 32 to meet the time limits.

33 (4)(a) The metropolitan service district shall establish a process to expand the urban growth
 34 boundary to accommodate a need for land for a public school that cannot reasonably be accommo-
 35 dated within the existing urban growth boundary. The metropolitan service district shall design the
 36 process to:

37 (A) Accommodate a need that must be accommodated between periodic analyses of urban growth
 38 boundary capacity required by subsection (1) of this section; and

39 (B) Provide for a final decision on a proposal to expand the urban growth boundary within four
 40 months after submission of a complete application by a large school district as defined in ORS
 41 195.110.

42 (b) At the request of a large school district, the metropolitan service district shall assist the
 43 large school district to identify school sites required by the school facility planning process de-
 44 scribed in ORS 195.110. [A need for a public school is a specific type of identified land need under
 45 ORS 197.298 (3).]

SECTION 4. ORS 197.314 is amended to read:

197.314. (1) Notwithstanding ORS 197.296, [197.298,] 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.651.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(7) This section shall not be construed as abrogating a recorded restrictive covenant.

SECTION 5. Section 7, chapter 636, Oregon Laws 2009, as amended by section 2, chapter 144, Oregon Laws 2011, is amended to read:

Sec. 7. (1) Notwithstanding contrary provisions of statewide land use planning goals relating to public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local government may change its comprehensive plan and land use regulations implementing the plan to allow residential development in a receiving area consistent with sections 6 to 8, chapter 636, Oregon Laws 2009, if the Land Conservation and Development Commission has approved a concept plan for the pilot project.

(2) The local governments having land use jurisdiction over lands included in the sending area and the receiving area for the pilot project shall adopt amendments to their respective comprehensive plans and land use regulations implementing the plans that are consistent with subsection (3) of this section.

(3) When the commission has approved a proposed concept plan, the local governments having land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay zone provisions and corresponding amendments to the comprehensive plan and land use regulations implementing the plan that identify the additional development allowed through participation in the pilot project. The Department of Land Conservation and Development shall review the overlay zones and corresponding comprehensive plan amendments in the manner of periodic review under ORS

1 [197.628 to 197.650] **197.628 to 197.651.**

2 (4) Notwithstanding ORS 197.296 [*and 197.298*] and statewide land use planning goals relating
3 to urbanization, a local government may amend its urban growth boundary to include adjacent lands
4 in a receiving area, consistent with an approved concept plan, if the net residential density of de-
5 velopment authorized in the receiving area is at least five dwelling units per net acre or 125 percent
6 of the average residential density allowed on land planned for residential use within the urban
7 growth boundary when the pilot project is approved by the commission, whichever is greater.

8 (5) Local governments or other entities may establish a development rights bank or other system
9 to facilitate the transfer of development rights.

10 (6) A county shall review an application for a pilot project under sections 6 to 8, chapter 636,
11 Oregon Laws 2009, as a comprehensive plan amendment. A county may apply other procedures, in-
12 cluding master plan approval, site plan review or conditional use review as the county finds appro-
13 priate to subsequent phases of review of the pilot project.

14 (7) When development rights transfers authorized by the pilot project under sections 6 to 8,
15 chapter 636, Oregon Laws 2009, result in the transfer of development rights from the jurisdiction
16 of one local government to another local government and cause a potential shift of ad valorem tax
17 revenues between jurisdictions, the local governments may enter into an intergovernmental agree-
18 ment under ORS 190.003 to 190.130 that provides for sharing between the local governments of the
19 prospective ad valorem tax revenues derived from new development in the receiving area.

20 **SECTION 6.** ORS 268.390 is amended to read:

21 268.390. (1) A district may define and apply a planning procedure that identifies and designates
22 areas and activities having significant impact upon the orderly and responsible development of the
23 metropolitan area, including, but not limited to, impact on:

- 24 (a) Air quality;
25 (b) Water quality; and
26 (c) Transportation.

27 (2) A district may prepare and adopt functional plans for those areas designated under sub-
28 section (1) of this section to control metropolitan area impact on air and water quality, transporta-
29 tion and other aspects of metropolitan area development the district may identify.

30 (3)(a) A district shall adopt an urban growth boundary for the district in compliance with ap-
31 plicable goals adopted under ORS chapters 195, 196 and 197. [*When a district includes land desig-*
32 *nated as urban reserve under ORS 195.145 (1)(b) within an urban growth boundary pursuant to ORS*
33 *197.298 (1), the district is not required to consider the capability classification system or the cubic foot*
34 *site class of the land as described in ORS 197.298 (2).]*

35 (b) Notwithstanding the procedural requirements for boundary changes under ORS 268.354, when
36 the district adopts an urban growth boundary, the urban growth boundary becomes the boundary
37 of the district.

38 (4) A district may review the comprehensive plans adopted by the cities and counties within the
39 district that affect areas designated by the district under subsection (1) of this section or the urban
40 growth boundary adopted under subsection (3) of this section and recommend or require cities and
41 counties, as it considers necessary, to make changes in any plan to ensure that the plan and any
42 actions taken under the plan substantially comply with the district's functional plans adopted under
43 subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this
44 section.

45 (5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:

1 (a) Require local comprehensive plans and implementing regulations to substantially comply
2 with the regional framework plan within two years after compliance acknowledgment.

3 (b) Require adjudication and determination by the district of the consistency of local compre-
4 hensive plans with the regional framework plan.

5 (c) Require each city and county within the jurisdiction of the district and making land use de-
6 cisions concerning lands within the land use jurisdiction of the district to make those decisions
7 consistent with the regional framework plan. The obligation to apply the regional framework plan
8 to land use decisions shall not begin until one year after the regional framework plan is acknowl-
9 edged as complying with the statewide land use planning goals adopted under ORS chapters 195, 196
10 and 197.

11 (d) Require changes in local land use standards and procedures if the district determines that
12 changes are necessary to remedy a pattern or practice of decision-making inconsistent with the re-
13 gional framework plan.

14 (6) A process established by the district to enforce the requirements of this section must provide:

15 (a) Notice of noncompliance to the city or county.

16 (b) Opportunity for the city or county to be heard.

17 (c) Entry of an order by the district explaining its findings, conclusions and enforcement reme-
18 dies, if any.

19 (7) Enforcement remedies ordered under subsection (6) of this section may include, but are not
20 limited to:

21 (a) Direct application of specified requirements of functional plans to land use decisions by the
22 city or county;

23 (b) Withholding by the district of discretionary funds from the city or county; and

24 (c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding mon-
25 eys pursuant to an enforcement order resulting from the enforcement action.

26 (8) An order issued under subsection (6) of this section:

27 (a) Must provide for relief from enforcement remedies upon action by the city or county that
28 brings the comprehensive plan and implementing regulations into substantial compliance with the
29 requirement.

30 (b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.

31 (9) The regional framework plan, ordinances that implement the regional framework plan and
32 any determination by the district of consistency with the regional framework plan are subject to
33 review under ORS 197.274.

34 **SECTION 7. The repeal of ORS 197.298 by section 1 of this 2015 Act and the amendments**
35 **to ORS 197.299, 197.314, 197A.320 and 268.390 and section 7, chapter 636, Oregon Laws 2009,**
36 **by sections 2 to 6 of this 2015 Act apply to the inclusion of land within an urban growth**
37 **boundary on or after the effective date of this 2015 Act.**

38