

**B-Engrossed**  
**Senate Bill 1533**

Ordered by the Senate February 24  
Including Senate Amendments dated February 12 and February 24

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce and General Government)

**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.

Permits certain cities and counties to adopt land use regulations or functional plan provisions, or impose conditions for approval of permits, that effectively establish sales or rental price, **or require designation for sale or rent as affordable housing**, for up to 20 percent of multifamily structure *[or limit sales or rental purchase to class or group of purchasers or renters]* in exchange for one or more developer incentives.

Creates new authority for *[local government, local service district or special government body]* **city or county** to impose construction taxes, at rate not exceeding one percent of permit valuation, on improvements to residential, *commercial and industrial* real property that result in new **residential** structure or additional square footage in existing **residential** structure, including remodeling that adds living space, **and at rate determined by city or county on improvements to commercial and industrial real property, including commercial and industrial portions of mixed-use property, that result in new structure or additional square footage in existing structure, including remodeling that adds living space.** Requires *[local government, local service district or special government body]* **city or county** to use **net** construction tax revenue to fund **certain** developer incentives and programs of **city or county** related to *[needed]* **affordable housing**, and to *[distribute construction tax revenue]* **to make distributions** to Housing and Community Services Department to fund home ownership programs **that provide down payment assistance. Maintains current school district construction tax authority, local construction tax authority grandfathered in 2007 and moratorium on all other local government construction tax authority other than authority granted to cities and counties by Act.**

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to affordable housing; creating new provisions; amending ORS 197.309, 320.170, 320.176 and  
3 320.186 and section 1, chapter 829, Oregon Laws 2007; repealing section 9, chapter 829, Oregon  
4 Laws 2007; and prescribing an effective date.

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

6 **SECTION 1.** ORS 197.309 is amended to read:

7 197.309. (1) **As used in this section:**

8 (a) **"Affordable housing" means housing that is affordable to households with incomes**  
9 **equal to or higher than 80 percent of the median family income for the county in which the**  
10 **housing is built.**

11 (b) **"Multifamily structure" means a structure that contains three or more housing units**  
12 **sharing at least one wall, floor or ceiling surface in common with another unit within the**  
13 **same structure.**

14 *[(1)]* (2) Except as provided in subsection *[(2)]* (3) of this section, a *[city, county or]* metropolitan  
15 service district may not adopt a land use regulation or functional plan provision, or impose as a  
16 condition for approving a permit under ORS 215.427 or 227.178[,] a requirement, that has the effect

**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 of establishing the sales **or rental** price for a housing unit or residential building lot or parcel, or  
2 that requires a housing unit or residential building lot or parcel to be designated for sale **or rent**  
3 to *[any]* a particular class or group of purchasers **or renters**.

4 *[(2)] (3) [This]* **The provisions of subsection (2) of this section** *[does]* **do** not limit the authority  
5 of a *[city, county or]* metropolitan service district to:

6 (a) Adopt or enforce a *[land]* use regulation, *[functional plan]* provision or *[condition of*  
7 *approval]* **requirement** creating or implementing an incentive, contract commitment, density bonus  
8 or other voluntary regulation, provision or *[condition]* **requirement** designed to increase the supply  
9 of moderate or lower cost housing units; or

10 (b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

11 **(4) Notwithstanding ORS 91.225, a city or county may adopt a land use regulation or**  
12 **functional plan provision, or impose as a condition for approving a permit under ORS 215.427**  
13 **or 227.178 a requirement, that has the effect of establishing the sales or rental price for a**  
14 **new multifamily structure, or that requires a new multifamily structure to be designated for**  
15 **sale or rent as affordable housing.**

16 **(5) A regulation, provision or requirement adopted or imposed under subsection (4) of**  
17 **this section:**

18 (a) **May not require more than 20 percent of housing units within a multifamily structure**  
19 **to be sold or rented as affordable housing;**

20 (b) **May apply only to multifamily structures containing at least 20 housing units;**

21 (c) **Must provide developers the option to pay an in-lieu fee, in an amount determined by**  
22 **the city or county, in exchange for providing the requisite number of housing units within**  
23 **the multifamily structure to be sold or rented at below-market rates; and**

24 (d) **Must require the city or county to offer a developer of multifamily structures, other**  
25 **than a developer that elects to pay an in-lieu fee pursuant to paragraph (c) of this sub-**  
26 **section, at least one of the following incentives:**

27 (A) **Whole or partial fee waivers or reductions.**

28 (B) **Whole or partial waivers of system development charges or impact fees set by the**  
29 **city or county.**

30 (C) **Finance-based incentives.**

31 (D) **Full or partial exemption from ad valorem property taxes on the terms described in**  
32 **this subparagraph. For purposes of any statute granting a full or partial exemption from ad**  
33 **valorem property taxes that uses a definition of “low income” to mean income at or below**  
34 **60 percent of the area median income and for which the multifamily structure is otherwise**  
35 **eligible, the city or county shall allow the multifamily structure of the developer to qualify**  
36 **using a definition of “low income” to mean income at or below 80 percent of the area median**  
37 **income.**

38 **(6) A regulation, provision or requirement adopted or imposed under subsection (4) of**  
39 **this section may offer developers one or more of the following incentives:**

40 (a) **Density adjustments.**

41 (b) **Expedited service for local permitting processes.**

42 (c) **Modification of height, floor area or other site-specific requirements.**

43 (d) **Other incentives as determined by the city or county.**

44 **(7) Subsection (4) of this section does not restrict the authority of a city or county to**  
45 **offer developers voluntary incentives, including incentives to:**

1       **(a) Increase the number of affordable housing units in a development.**

2       **(b) Decrease the sale or rental price of affordable housing units in a development.**

3       **(c) Build affordable housing units that are affordable to households with incomes equal**  
4 **to or lower than 80 percent of the median family income for the county in which the housing**  
5 **is built.**

6       **(8)(a) A city or county that adopts or imposes a regulation, provision or requirement**  
7 **described in subsection (4) of this section may not apply the regulation, provision or re-**  
8 **quirement to any multifamily structure for which an application for a permit, as defined in**  
9 **ORS 215.402 or 227.160, has been submitted as provided in ORS 215.416 or 227.178 (3), or, if**  
10 **such a permit is not required, a building permit application has been submitted to the city**  
11 **or county prior to the effective date of the regulation, provision or requirement.**

12       **(b) If a multifamily structure described in paragraph (a) of this subsection has not been**  
13 **completed within the period required by the permit issued by the city or county, the devel-**  
14 **oper of the multifamily structure shall resubmit an application for a permit, as defined in**  
15 **ORS 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not**  
16 **required, a building permit application under the regulation, provision or requirement**  
17 **adopted by the city or county under subsection (4) of this section.**

18       **(9)(a) A city or county that adopts or imposes a regulation, provision or requirement**  
19 **under subsection (4) of this section shall adopt and apply only clear and objective standards,**  
20 **conditions and procedures regulating the development of affordable housing units within its**  
21 **jurisdiction. The standards, conditions and procedures may not have the effect, either indi-**  
22 **vidually or cumulatively, of discouraging development of affordable housing units through**  
23 **unreasonable cost or delay.**

24       **(b) Paragraph (a) of this subsection does not apply to:**

25       **(A) An application or permit for residential development in an area identified in a**  
26 **formally adopted central city plan, or a regional center as defined by Metro, in a city with**  
27 **a population of 500,000 or more.**

28       **(B) An application or permit for residential development in historic areas designated for**  
29 **protection under a land use planning goal protecting historic areas.**

30       **(c) In addition to an approval process for affordable housing based on clear and objective**  
31 **standards, conditions and procedures as provided in paragraph (a) of this subsection, a city**  
32 **or county may adopt and apply an alternative approval process for applications and permits**  
33 **for residential development based on approval criteria regulating, in whole or in part, ap-**  
34 **pearance or aesthetics that are not clear and objective if:**

35       **(A) The developer retains the option of proceeding under the approval process that meets**  
36 **the requirements of paragraph (a) of this subsection;**

37       **(B) The approval criteria for the alternative approval process comply with applicable**  
38 **statewide land use planning goals and rules; and**

39       **(C) The approval criteria for the alternative approval process authorize a density at or**  
40 **above the density level authorized in the zone under the approval process provided in para-**  
41 **graph (a) of this subsection.**

42       **(10) If a regulation, provision or requirement adopted or imposed by a city or county**  
43 **under subsection (4) of this section requires that a percentage of housing units in a new**  
44 **multifamily structure be designated as affordable housing, any incentives offered under**  
45 **subsection (5)(d) or (6) of this section shall be related in a manner determined by the city**

1 **or county to the required percentage of affordable housing units.**

2 **SECTION 2.** ORS 320.170 is amended to read:

3 320.170. (1) [*Construction taxes may be imposed by*] A school district, as defined in ORS 330.005,  
4 **may impose a construction tax only** in accordance with ORS 320.170 to 320.189.

5 (2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179,  
6 by a local government, local service district, special government body, state agency or state official  
7 that issues a permit for structural improvements regulated by the state building code.

8 **SECTION 3. Section 1, chapter 829, Oregon Laws 2007, is added to and made a part of**  
9 **ORS 320.170 to 320.189.**

10 **SECTION 4.** Section 1, chapter 829, Oregon Laws 2007, is amended to read:

11 **Sec. 1.** (1) A local government or local service district, as defined in ORS 174.116, or a special  
12 government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing  
13 improvements to real property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170**  
14 **to 320.189.**

15 (2) Subsection (1) of this section does not apply to:

16 (a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax,  
17 provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

18 (b) A tax on which a public hearing was held before May 1, 2007; or

19 (c) The amendment or increase of a tax adopted by a county for transportation purposes prior  
20 to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

21 (3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189,**  
22 construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS**  
23 **320.170 to 320.189** and do not include any other financial obligations such as building permit fees,  
24 financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or  
25 financial obligations imposed on the basis of factors such as income.

26 **SECTION 5.** ORS 320.176 is amended to read:

27 320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*] **by a school district**  
28 **pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a  
29 new structure or additional square footage in an existing structure and may not exceed:

30 (a) \$1 per square foot on structures or portions of structures intended for residential use, in-  
31 cluding but not limited to single-unit or multiple-unit housing; and

32 (b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use,  
33 not including multiple-unit housing of any kind.

34 (2) In addition to the limitations under subsection (1) of this section, a construction tax imposed  
35 on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000  
36 per structure, whichever is less.

37 (3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and  
38 (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations  
39 set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction  
40 cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged  
41 monthly construction cost index for the 12-month period ending June 30, 2008.

42 (b) The Department of Revenue shall determine the adjusted limitations under this section and  
43 shall report those limitations to entities imposing construction taxes. The department shall round  
44 the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

45 (c) As used in this subsection, "construction cost index" means the Engineering News-Record

1 Construction Cost Index, or a similar nationally recognized index of construction costs as identified  
2 by the department by rule.

3 **SECTION 6.** ORS 320.186 is amended to read:

4 320.186. A school district may pledge construction taxes **imposed pursuant to ORS 320.170** to  
5 the payment of obligations issued to finance or refinance capital improvements as defined in ORS  
6 320.183.

7 **SECTION 7.** Sections 8 and 9 of this 2016 Act are added to and made a part of ORS 320.170  
8 to 320.189.

9 **SECTION 8.** (1) The governing body of a city or county may impose a construction tax  
10 by adoption of an ordinance or resolution that conforms to the requirements of this section  
11 and section 9 of this 2016 Act.

12 (2)(a) A tax may be imposed on improvements to residential real property that result in  
13 a new residential structure or additional square footage in an existing residential structure,  
14 including remodeling that adds living space.

15 (b) An ordinance or resolution imposing the tax described in paragraph (a) of this sub-  
16 section must state the rate of the tax. The tax may not exceed one percent of the permit  
17 valuation for residential construction permits issued by the city or county either directly or  
18 through the Building Codes Division of the Department of Consumer and Business Services.

19 (3)(a) A tax may be imposed on improvements to commercial and industrial real property,  
20 including the commercial and industrial portions of mixed-use property, that result in a new  
21 structure or additional square footage in an existing structure, including remodeling that  
22 adds living space.

23 (b) An ordinance or resolution imposing the tax described in paragraph (a) of this sub-  
24 section must state the rate and base of the tax.

25 (4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS  
26 320.189 to the city or county that imposed the tax.

27 (5)(a) This section and section 9 of this 2016 Act do not apply to a tax described in section  
28 1 (2), chapter 829, Oregon Laws 2007.

29 (b) Conformity of a tax imposed pursuant to this section by a city or county to the re-  
30 quirements of this section and section 9 of this 2016 Act shall be determined without regard  
31 to any tax described in section 1 (2), chapter 829, Oregon Laws 2007, that is imposed by the  
32 city or county.

33 **SECTION 9.** (1) As soon as practicable after the end of each fiscal quarter, a city or  
34 county that imposes a construction tax pursuant to section 8 of this 2016 Act shall deposit  
35 the construction tax revenues collected in the fiscal quarter just ended in the general fund  
36 of the city or county.

37 (2) Of the revenues deposited pursuant to subsection (1) of this section, the city or  
38 county may retain an amount not to exceed four percent as an administrative fee to recoup  
39 the expenses of the city or county incurred in complying with this section.

40 (3) After deducting the administrative fee authorized under subsection (2) of this section  
41 and paying any refunds, the city or county shall use the remaining revenues received under  
42 section 8 (2) of this 2016 Act as follows:

43 (a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309  
44 (5)(c) and (d) and (7);

45 (b) Fifteen percent to be distributed to the Housing and Community Services Department

1 to fund home ownership programs that provide down payment assistance; and

2 (c) Thirty-five percent for programs and incentives of the city or county related to af-  
3 fordable housing as defined by the city or county, respectively, for purposes of this section  
4 and section 8 of this 2016 Act.

5 (4) After deducting the administrative fee authorized under subsection (2) of this section  
6 and paying any refunds, the city or county shall use 50 percent of the remaining revenues  
7 received under section 8 (3) of this 2016 Act to fund programs of the city or county related  
8 to housing.

9 SECTION 10. Section 9, chapter 829, Oregon Laws 2007, is repealed.

10 SECTION 11. A city or county may not adopt a regulation, provision or requirement un-  
11 der ORS 197.309, as amended by section 1 of this 2016 Act, until the 180th day after the ef-  
12 fective date of this 2016 Act.

13 SECTION 12. This 2016 Act takes effect on the 91st day after the date on which the 2016  
14 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

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