

## SENATE AMENDMENTS TO A-ENGROSSED SENATE BILL 1533

By COMMITTEE ON FINANCE AND REVENUE

February 24

1 On page 1 of the printed A-engrossed bill, delete lines 6 through 20 and delete pages 2 through  
2 5 and insert:

3 “**SECTION 1.** ORS 197.309 is amended to read:

4 “197.309. (1) **As used in this section:**

5 “(a) ‘**Affordable housing**’ means housing that is affordable to households with incomes  
6 equal to or higher than 80 percent of the median family income for the county in which the  
7 housing is built.

8 “(b) ‘**Multifamily structure**’ means a structure that contains three or more housing units  
9 sharing at least one wall, floor or ceiling surface in common with another unit within the  
10 same structure.

11 “[~~1~~] (2) Except as provided in subsection [~~2~~] (3) of this section, a [*city, county or*] metropolitan  
12 service district may not adopt a land use regulation or functional plan provision, or impose as a  
13 condition for approving a permit under ORS 215.427 or 227.178[,] a requirement, that has the effect  
14 of establishing the sales **or rental** price for a housing unit or residential building lot or parcel, or  
15 that requires a housing unit or residential building lot or parcel to be designated for sale **or rent**  
16 to [*any*] a particular class or group of purchasers **or renters**.

17 “[~~2~~] (3) [*This*] **The provisions of subsection (2) of this section** [*does*] **do** not limit the au-  
18 thority of a [*city, county or*] metropolitan service district to:

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

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

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

29 “(5) **A regulation, provision or requirement adopted or imposed under subsection (4) of**  
30 **this section:**

31 “(a) **May not require more than 20 percent of housing units within a multifamily struc-**  
32 **ture to be sold or rented as affordable housing;**

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

34 “(c) **Must provide developers the option to pay an in-lieu fee, in an amount determined**  
35 **by the city or county, in exchange for providing the requisite number of housing units within**

1 the multifamily structure to be sold or rented at below-market rates; and

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

5 “(A) Whole or partial fee waivers or reductions.

6 “(B) Whole or partial waivers of system development charges or impact fees set by the  
7 city or county.

8 “(C) Finance-based incentives.

9 “(D) Full or partial exemption from ad valorem property taxes on the terms described in  
10 this subparagraph. For purposes of any statute granting a full or partial exemption from ad  
11 valorem property taxes that uses a definition of ‘low income’ to mean income at or below  
12 60 percent of the area median income and for which the multifamily structure is otherwise  
13 eligible, the city or county shall allow the multifamily structure of the developer to qualify  
14 using a definition of ‘low income’ to mean income at or below 80 percent of the area median  
15 income.

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

18 “(a) Density adjustments.

19 “(b) Expedited service for local permitting processes.

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

21 “(d) Other incentives as determined by the city or county.

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

24 “(a) Increase the number of affordable housing units in a development.

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

26 “(c) Build affordable housing units that are affordable to households with incomes equal  
27 to or lower than 80 percent of the median family income for the county in which the housing  
28 is built.

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

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

41 “(9)(a) A city or county that adopts or imposes a regulation, provision or requirement  
42 under subsection (4) of this section shall adopt and apply only clear and objective standards,  
43 conditions and procedures regulating the development of affordable housing units within its  
44 jurisdiction. The standards, conditions and procedures may not have the effect, either indi-  
45 vidually or cumulatively, of discouraging development of affordable housing units through

1 unreasonable cost or delay.

2 “(b) Paragraph (a) of this subsection does not apply to:

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

6 “(B) An application or permit for residential development in historic areas designated for  
7 protection under a land use planning goal protecting historic areas.

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

13 “(A) The developer retains the option of proceeding under the approval process that  
14 meets the requirements of paragraph (a) of this subsection;

15 “(B) The approval criteria for the alternative approval process comply with applicable  
16 statewide land use planning goals and rules; and

17 “(C) The approval criteria for the alternative approval process authorize a density at or  
18 above the density level authorized in the zone under the approval process provided in para-  
19 graph (a) of this subsection.

20 “(10) If a regulation, provision or requirement adopted or imposed by a city or county  
21 under subsection (4) of this section requires that a percentage of housing units in a new  
22 multifamily structure be designated as affordable housing, any incentives offered under  
23 subsection (5)(d) or (6) of this section shall be related in a manner determined by the city  
24 or county to the required percentage of affordable housing units.

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

26 “320.170. (1) [*Construction taxes may be imposed by*] A school district, as defined in ORS 330.005,  
27 may impose a construction tax only in accordance with ORS 320.170 to 320.189.

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

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

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

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

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

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

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

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

44 “(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189,**  
45 construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS**

1 **320.170 to 320.189** and do not include any other financial obligations such as building permit fees,  
2 financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or  
3 financial obligations imposed on the basis of factors such as income.

4 **“SECTION 5.** ORS 320.176 is amended to read:

5 **“320.176. (1) Construction taxes imposed [under ORS 320.170 to 320.189] by a school district**  
6 **pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a  
7 new structure or additional square footage in an existing structure and may not exceed:

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

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

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

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

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

23 **“(c) As used in this subsection, ‘construction cost index’ means the Engineering News-Record**  
24 **Construction Cost Index, or a similar nationally recognized index of construction costs as identified**  
25 **by the department by rule.**

26 **“SECTION 6.** ORS 320.186 is amended to read:

27 **“320.186. A school district may pledge construction taxes imposed pursuant to ORS 320.170**  
28 **to the payment of obligations issued to finance or refinance capital improvements as defined in ORS**  
29 **320.183.**

30 **“SECTION 7. Sections 8 and 9 of this 2016 Act are added to and made a part of ORS**  
31 **320.170 to 320.189.**

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

35 **“(2)(a) A tax may be imposed on improvements to residential real property that result**  
36 **in a new residential structure or additional square footage in an existing residential struc-**  
37 **ture, including remodeling that adds living space.**

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

42 **“(3)(a) A tax may be imposed on improvements to commercial and industrial real prop-**  
43 **erty, including the commercial and industrial portions of mixed-use property, that result in**  
44 **a new structure or additional square footage in an existing structure, including remodeling**  
45 **that adds living space.**

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

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

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

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

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

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

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

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

23       “(b) Fifteen percent to be distributed to the Housing and Community Services Depart-  
24 ment to fund home ownership programs that provide down payment assistance; and

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

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

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

33       “SECTION 11. A city or county may not adopt a regulation, provision or requirement  
34 under ORS 197.309, as amended by section 1 of this 2016 Act, until the 180th day after the  
35 effective date of this 2016 Act.

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