

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1533**

1 On page 1 of the printed A-engrossed bill, delete lines 6 through 20 and
2 delete pages 2 through 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**
6 **households with incomes equal to or higher than 80 percent of the**
7 **median family income for the county in which the housing is built.**

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

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

19 **“[(2)] (3) [This] The provisions of subsection (2) of this section [does]**
20 **do not limit the authority of a [city, county or] metropolitan service district**
21 **to:**

1 “(a) Adopt or enforce a [*land*] use regulation, [*functional plan*] provision
2 or [*condition of approval*] **requirement** creating or implementing an incen-
3 tive, contract commitment, density bonus or other voluntary regulation,
4 provision or [*condition*] **requirement** designed to increase the supply of
5 moderate or lower cost housing units; or

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

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

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

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

18 “(b) **May apply only to multifamily structures containing at least**
19 **20 housing units;**

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

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

28 “(A) **Whole or partial fee waivers or reductions.**

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

1 **“(C) Finance-based incentives.**

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

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

14 **“(a) Density adjustments.**

15 **“(b) Expedited service for local permitting processes.**

16 **“(c) Modification of height, floor area or other site-specific re-**
17 **quirements.**

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

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

22 **“(a) Increase the number of affordable housing units in a develop-**
23 **ment.**

24 **“(b) Decrease the sale price of affordable housing units in a devel-**
25 **opment.**

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

29 **“(8)(a) A city or county that adopts or imposes a regulation, pro-**
30 **vision or requirement described in subsection (4) of this section may**

1 not apply the regulation, provision or requirement to any multifamily
2 structure for which an application for a permit, as defined in ORS
3 215.402 or 227.160, has been submitted as provided in ORS 215.416 or
4 227.178 (3), or, where such a permit is not required, a building permit
5 application has been submitted to the city or county prior to the ef-
6 fective date of the regulation, provision or requirement.

7 “(b) If a multifamily structure described in paragraph (a) of this
8 subsection has not been completed within the period required by the
9 permit issued by the city or county, the developer of the multifamily
10 structure shall resubmit an application for a permit, as defined in ORS
11 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such
12 a permit is not required, a building permit application under the reg-
13 ulation, provision or requirement adopted by the city or county under
14 subsection (4) of this section.

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

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

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

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

30 “(c) In addition to an approval process for affordable housing based

1 on clear and objective standards, conditions and procedures as pro-
2 vided in paragraph (a) of this subsection, a city or county may adopt
3 and apply an alternative approval process for applications and permits
4 for residential development based on approval criteria regulating, in
5 whole or in part, appearance or aesthetics that are not clear and ob-
6 jective if:

7 “(A) The developer retains the option of proceeding under the ap-
8 proval process that meets the requirements of paragraph (a) of this
9 subsection;

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

13 “(C) The approval criteria for the alternative approval process au-
14 thorize a density at or above the density level authorized in the zone
15 under the approval process provided in paragraph (a) of this sub-
16 section.

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

18 “320.170. (1) [*Construction taxes may be imposed by*] A school district, as
19 defined in ORS 330.005, **may impose a construction tax only** in accordance
20 with ORS 320.170 to 320.189.

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

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

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

29 **“Sec. 1.** (1) A local government or local service district, as defined in
30 ORS 174.116, or a special government body, as defined in ORS 174.117, may

1 not impose a tax on the privilege of constructing improvements to real
2 property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170**
3 **to 320.189**.

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

5 “(a) A tax that is in effect as of May 1, 2007, or to the extension or con-
6 tinuation of such a tax, provided that the rate of tax does not increase from
7 the rate in effect as of May 1, 2007;

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

9 “(c) The amendment or increase of a tax adopted by a county for trans-
10 portation purposes prior to May 1, 2007, provided that the proceeds of such
11 a tax continue to be used for those purposes.

12 “(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS**
13 **320.170 to 320.189**, construction taxes are limited to privilege taxes imposed
14 under [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189** and do not
15 include any other financial obligations such as building permit fees, financial
16 obligations that qualify as system development charges under ORS 223.297
17 to 223.314 or financial obligations imposed on the basis of factors such as
18 income.

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

20 “320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*]
21 **by a school district pursuant to ORS 320.170** may be imposed only on
22 improvements to real property that result in a new structure or additional
23 square footage in an existing structure and may not exceed:

24 “(a) \$1 per square foot on structures or portions of structures intended
25 for residential use, including but not limited to single-unit or multiple-unit
26 housing; and

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

29 “(2) In addition to the limitations under subsection (1) of this section, a
30 construction tax imposed on structures intended for nonresidential use may

1 not exceed \$25,000 per building permit or \$25,000 per structure, whichever is
2 less.

3 “(3)(a) For years beginning on or after June 30, 2009, the limitations un-
4 der subsections (1) and (2) of this section shall be adjusted for changes in
5 construction costs by multiplying the limitations set forth in subsections (1)
6 and (2) of this section by the ratio of the averaged monthly construction cost
7 index for the 12-month period ending June 30 of the preceding calendar year
8 over the averaged monthly construction cost index for the 12-month period
9 ending June 30, 2008.

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

14 “(c) As used in this subsection, ‘construction cost index’ means the En-
15 gineering News-Record Construction Cost Index, or a similar nationally re-
16 cognized index of construction costs as identified by the department by rule.

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

18 “320.186. A school district may pledge construction taxes **imposed pur-**
19 **suant to ORS 320.170** to the payment of obligations issued to finance or
20 refinance capital improvements as defined in ORS 320.183.

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

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

27 **“(2)(a) A tax may be imposed on improvements to residential real**
28 **property that result in a new residential structure or additional square**
29 **footage in an existing residential structure, including remodeling that**
30 **adds living space.**

1 **“(b) An ordinance or resolution imposing the tax described in par-**
2 **agraph (a) of this subsection must state the rate of the tax. The tax**
3 **may not exceed one percent of the permit valuation for residential**
4 **construction permits issued by the city or county either directly or**
5 **through the Building Codes Division of the Department of Consumer**
6 **and Business Services.**

7 **“(3)(a) A tax may be imposed on improvements to commercial and**
8 **industrial real property, including the commercial and industrial**
9 **portions of mixed-use property, that result in a new structure or ad-**
10 **ditional square footage in an existing structure, including remodeling**
11 **that adds living space.**

12 **“(b) An ordinance or resolution imposing the tax described in par-**
13 **agraph (a) of this subsection must state the rate and base of the tax.**

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

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

18 **“(b) Conformity of a tax imposed pursuant to this section by a city**
19 **or county to the requirements of this section and section 9 of this 2016**
20 **Act shall be determined without regard to any tax described in section**
21 **1 (2), chapter 829, Oregon Laws 2007, that is imposed by the city or**
22 **county.**

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

28 **“(2) Of the revenues deposited pursuant to subsection (1) of this**
29 **section, the city or county may retain an amount not to exceed four**
30 **percent as an administrative fee to recoup the expenses of the city or**

1 county incurred in complying with this section.

2 “(3) After deducting the administrative fee authorized under sub-
3 section (2) of this section and paying any refunds, the city or county
4 shall use the remaining revenues received under section 8 (2) of this
5 2016 Act as follows:

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

8 “(b) Fifteen percent to be distributed to the Housing and Commu-
9 nity Services Department to fund home ownership programs that
10 provide down payment assistance; and

11 “(c) Thirty-five percent for programs and incentives of the city or
12 county related to affordable housing as defined by the city or county,
13 respectively, for purposes of this section and section 8 of this 2016 Act.

14 “(4) After deducting the administrative fee authorized under sub-
15 section (2) of this section and paying any refunds, the city or county
16 shall use 50 percent of the remaining revenues received under section
17 8 (3) of this 2016 Act to fund programs of the city or county related to
18 housing.

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

20 “SECTION 11. A city or county may not adopt a regulation, pro-
21 vision or requirement under ORS 197.309, as amended by section 1 of
22 this 2016 Act, until the 180th day after the effective date of this 2016
23 Act.

24 “SECTION 12. This 2016 Act takes effect on the 91st day after the
25 date on which the 2016 regular session of the Seventy-eighth Legisla-
26 tive Assembly adjourns sine die.”.

27